



Ref: CESR/04-104b

**THE ROLE OF CESR AT “LEVEL 3”
UNDER THE LAMFALUSSY PROCESS**

Consultation Paper

April 2004



Foreword

This consultation paper aims at presenting the views of the Committee of European Securities Regulators (CESR) on how it should organize its role at level 3 under the Lamfalussy procedure. The paper is structured in two parts. The first section provides an introduction and description of the current general principles governing the way in which the Lamfalussy approach and in particular the level 3 should work. The second section sets out in a more detailed manner the organization of CESR's role at level 3 which can be subdivided into the following three different categories: i) coordinated implementation of EU law, ii) regulatory convergence, and iii) supervisory convergence.

Now that the major pieces of securities law at EU level have been agreed, the importance of the day to day application of these texts by national competent authorities (which are the members of CESR) is at stake. The single market for financial services can become reality only if the CESR members are able to provide common regulatory answers in each and every corner of Europe. The focus is now clearly on those who have the responsibility to apply these new provisions. The objective of CESR at level 3 is to ensure convergent application of EU securities law. The form and content of the co-operation between national securities regulators working together within CESR at level 3 are not definitively established and are subject to public discussion. In particular, the Inter-Institutional Monitoring Group ("Monitoring Group") mentioned in its Second Interim Report the fact that "the differential transposition of EU Directives has become a serious impediment to the functioning of the internal market (...)" which could be prevented by consistent implementation at level 3. Therefore, the Monitoring Group encourages CESR to intensify its work on level 3 taking into account that the first set of level 1 and 2 measures have been recently adopted and need to be implemented consistently in the Member States. As component authorities entrusted by Member States, the members of CESR want to consult widely practitioners, consumers and end-users on the best ways and means to achieve this goal. CESR acknowledges that a discussion on the level 3 of the Lamfalussy procedure cannot be conducted in isolation from the other components of the overall Lamfalussy procedure. In this regard, the efforts of CESR at level 3 should be closely coordinated with the role of the Commission at level 4. CESR seeks the views from all market participants on the role of CESR at level 3 through this consultation as market participants are natural counterparties to the implementation process of new rules and have therefore a direct interest in the way CESR intends to fulfil its role at level 3.

The consultation paper intends to clarify the general principles covering level 3 in order to ensure real consistent implementation and application of EU securities market legislation, the maintenance of orderly markets and other relevant rules and analyses which activities CESR could further explore at level 3 and describes the arrangements and provisions that CESR has already made.

* * *

In order to give interested parties an opportunity to express their opinions on the consultation paper, CESR will hold an open hearing on 11 May 2004 at its premises in Paris. You can register for the open hearing via the new website of CESR www.cesr-eu.org under the heading consultations.

The deadline for submitting written responses to the consultation paper is 1 June 2004. Comments can be posted directly on CESR's website (www.cesr-eu.org) under the section "Consultations".

1. Background

1.1. Lamfalussy approach and the role of CESR

The Report of the Committee of Wise Men on the regulation of European securities markets (“Lamfalussy report”)¹ centred around a four level approach for regulatory reform (see Annex 1).

With regard to **level 1** the Committee expressed the view that all European services and securities legislation should be based around a conceptual legislative framework of essential principles. The advantage of this approach is that the legislative process can speed up as the level 1 political co-decision negotiations between the European Commission, the Council of Ministers and the European Parliament only have to focus on the essential issues and not on technical implementing details. The level 1 principles are incorporated in new types of Directives or Regulations in the field of securities which are decided by normal EU legislative procedures (i.e. proposal by the Commission to the Council of Ministers/European Parliament for co-decision). The European Commission consults, beforehand, with market participants, end-users (issuers and consumers), Member States and their regulators on any level 1 legislative proposal. Furthermore, the European Commission informs the European Parliament, the Member States and their regulators on an informal basis of forthcoming proposals. The nature and the extent of the technical implementing measures that should be taken at level 2 have to be specified in the EU directives and regulations. This means that the European Commission has to seek understanding with the Council of Ministers and the European Parliament on the scope of level 2 implementing measures.

With respect to **level 2**, the Committee proposed a working method for CESR, the European Commission and the European Securities Committee (ESC) to define, propose and decide on the technical implementing measures of level 1 directives and regulations. Firstly, the European Commission, after consultation with the ESC, asks CESR to draw up a technical advice for the implementing measures on the basis of a clear mandate of the European Commission. Subsequently, CESR publishes any mandate received from the European Commission to provide interested parties to make submissions. In addition, CESR consults with the market participants, consumers and end-users on the basis of a draft advice at a sufficiently early stage to be able to take the responses into account. CESR may also establish consultative working groups where appropriate. After the consultation procedure, CESR draws up the final advice and sends it to the European Commission. Finally, the European Commission presents a proposal for technical implementing measures to the ESC taking into account the technical advice of CESR. The European Commission ensures that the European Parliament is fully informed on all these proposals in order to check whether the proposals are in conformity with the scope of the implementing powers defined by co-decision in level. After the ESC has approved of the proposal of the European Commission, the technical implementing measures are formally adopted by the European Commission.

Level 3 concerns a strengthened co-operation between national regulators to ensure consistent and equivalent transposition and implementation of level 1 and level 2 legislation. This requires an active role of CESR in the field of common and uniform implementation of EU legislation. CESR should fulfil this role by producing administrative guidelines, interpretation recommendations, common standards, peer reviews and comparisons of regulatory practice to improve enforcement of the legislation concerned.

In particular, the Lamfalussy Report defines the role of CESR under the level 3 as follows:

- To produce consistent guidelines for the administrative regulations to be adopted on the national level;
- To issue joint interpretative recommendations and set common standards regarding matters not covered by EU legislation – where necessary, these could be adopted into Community law through a level 2 procedure;
- To compare and review regulatory practices to ensure effective enforcement throughout the Union and define best practice;
- To periodically conduct peer reviews of administrative regulation and regulatory practices in Member States.

¹ Lamfalussy Report of 15 February 2001.



The national securities regulators of Europe started working together on a voluntary basis in 1997 with the creation of FESCO. At that time the work was fundamentally focused on common approaches to day to day implementation of EU law and closer cooperation between national competent authorities. This work is reflected in the Lamfalussy approach at level 3 and is now exercised by an independent committee (“CESR”). While forming part of a four level approach, the independence of CESR members, working together at level 3, is the guarantee that all the decisions taken in application of the EU directives and regulations will be exclusively governed by the interest of investors and the proper functions of the markets.

Strengthened enforcement of the Community rules is identified by the Committee as **level 4**. Article 226 of the Treaty stipulates that *“If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice”*. This is the responsibility of the European Commission but Member States, regulators and the market participants have an important role in supplying information to the European Commission about any potential infringement of Community rules.

1.2. General principles

Level 3 is essential for improving the consistency of the day-to-day transposition and implementation of level 1 and 2 legislation by CESR members. It is the responsibility of the national regulators to set up a framework of strengthened cooperation and networking with a view to ensuring consistent implementation.

From the above, it is clear that CESR must put in place the necessary policies and procedures in order to fully play its role on all aspects of level 3. In order to reach a common understanding of all the basic principles underpinning level 3 and the possible role which CESR could fulfil at level 3, in accordance with the respective roles of the EU institutions, and in particular the role of the EU Commission as “Guardian of the Treaty”, it is important to set out the general principles of level 3 as laid down in the several texts adopted by the EU Institutions to implement the Lamfalussy Report.

First of all, it is stated in the Stockholm Resolution² that *“national regulators and CESR should also play an important role in the transposition process by securing more effective cooperation between supervisory authorities carrying out peer reviews and promoting best practices, so as to ensure more consistent and timely implementation of community legislation in member states”*.

The Commission Decision establishing CESR³ states that CESR should *“contribute to the consistent and timely implementation of Community legislation in the Member States by securing more effective cooperation between national supervisory authorities, carrying out peer reviews and promoting best practice”*.

Finally, in CESR’s Charter it is stated that its role is to: i) improve coordination among European Securities regulators; ii) act as an advisory group to assist the Commission, in particular in its preparation of draft implementing measures in the field of securities; iii) work to ensure more consistent and timely day to day implementation of community legislation in the Member States. More specifically the Level 3 role of CESR is defined in: Article 4.3 *“The Committee will foster and review common and uniform day to day implementation and application of Community legislation. It will issue guidelines, recommendations and standards that the members will introduce in their regulatory practices on a voluntary basis. It will also undertake reviews of regulatory practices within the single market”*, and Article 4.4 *“The Committee will develop effective operational network mechanisms to enhance day-to-day consistent supervision and enforcement of the Single Market for financial services”*.

Based on the principles mentioned above and the experience gained by CESR with respect to level 1 and 2 of the Lamfalussy process, as well as its experience as a network of national security regulators since

² Resolution of the European Council on more effective securities market regulation in the European Union, Stockholm, 23 March 2001.

³ Commission Decision of 6 June 2001, OJ L 191/43 of 13 July 2001 (2001/527/EC)



1997, it is put forward that three different categories of issues can be distinguished at level 3. These three areas cover: i) the coordinated implementation of EU law and rules; ii) the day to day regulatory convergence, and, finally, iii) the supervisory convergence.

In the following section the underlying principles of level 3 and possible activities of CESR will be further explored.

2. Analysis of level 3 in the Lamfalussy process

2.1. Introduction

Consistent implementation of level 1 and 2 legislation in Member States is a key element in achieving a single EU securities market. Recently, the first examples of decision-making at levels 1 and 2 have been successfully completed. This means that these measures (where in the form of directives) should be transposed in the domestic laws or regulations and be applied in a consistent manner. This implies that level 3 is an immediate and increasing priority.

As regards the overall functioning of the Lamfalussy approach, it should be stressed that the boundary between levels 2 and 3 has been progressively clarified through the work carried out for the Market Abuse Directive and the Prospectus Directive. A more specific definition of the content and role of CESR members at level 3 will also provide a better understanding of the interaction with level 4 which is the exclusive prerogative of the Commission (see also paragraph 1.1).

The purpose of this paper is to discuss and establish what level 3 means for CESR and its members, taking into account the crucial role of the EU Commission and the Member States.

The role of CESR under level 3 may be subdivided into three categories of issues.

1. Coordinated implementation of EU law: For the purpose of this paper co-coordinated implementation covers the work by Member States and their respective competent authorities in both, transposing directives into national laws and/or rules and in applying EU law on a daily basis.

2. Regulatory convergence: Regulatory convergence is for CESR members to establish common approaches and rules in order to facilitate harmonised implementation of EU law

3. Supervisory convergence: Supervisory convergence relates to the co-operation of regulators in the performances of the supervisory tasks and obligations under the Directives/Regulations.

In the following paragraph, the three categories of issues will be further analysed and illustrated with concrete examples. An overall description on how the Level 3 framework fits into the Lamfalussy process is provided in Annex 2.

Current activities of CESR at level 3:

- The Review Panel ensures more consistent and timely implementation of EU legislation by carrying out collective (peer) review through a system of correspondence tables, which are scrutinised and made public (the assessment started with the Standards on Investor Protection and Standards for Alternative Trading Systems which were adopted to facilitate further harmonisation and consistent implementation of the current ISD);
- An ad-hoc meeting of the Review Panel to discuss potential problems with regard to the Market Abuse Directive;
- The Working group of CESR-Pol establishes guidance on the definition of “accepted market practices” under the Market Abuse Directive
- The Prospectus Group delivers the guidelines to complete prospectus under the Prospectus Directive;

- CESR-Fin delivered a common approach to the enforcement of IFRS by its Standard no.1 on Financial Information;
- The joint CESR-ESCB group will issue Standards on Clearing and Settlement;
- CESR-Pol currently updates the CESR Multilateral MoU and conducted research in the field of Internet surveillance and a risk based approach to supervision.

2.2. Coordinated implementation of EU law by CESR members

The coordinated implementation of EU law covers the legal transposition process into national law and/or rules and the day-to-day application of the EU legislation.

The full responsibility to transpose EU Directives lies with the Member States, who can be brought before the court in case of infringement (Regulations are directly applicable in the Member States). This action is taken exclusively by the Commission, under the powers conferred by Article 226 of the Treaty⁴. In case of an EU directive, the national competent authorities (CESR members) may, where permissible at national level, intervene in this process, being delegated by national legislators to transpose certain technical measures. Furthermore, the national competent authorities (CESR members), either formally or informally, are often involved in the transposition process as advisors to their respective governments and parliaments. The coordinated implementation process also covers the day-to-day application of the EU legislation which is largely the responsibility of the national competent authorities. This aspect is of particular relevance when there is no transposition into national laws or rules (Regulations).

It is therefore necessary to coordinate efforts to avoid divergent implementation of EU law at a time when Member States and national regulators are transposing level 1 directives and the accompanying level 2 implementing measures into national law or rules.

Acting as “Guardian of the Treaty”, the EU Commission, as part of its enforcement duties, facilitates coordination between Member States as a preventative measure ahead of any infringement procedure. The Commission set out in its Communication on “Better monitoring of application of Community law”⁵ that it intends to make more generalised use of “package meetings” where Member States and national regulators can discuss any problems with the transposition and to examine preliminary draft transposition measures. Furthermore, the Commission may in co-operation with the Member States and the national regulators draw up “transposition guidelines”. Finally, the Commission will encourage the creation within the Member States of single coordination points responsible for the application of Community law.

To complement this at regulators level, CESR will coordinate ad-hoc sessions concerning, in particular, detailed measures that will largely be in the hands of the national regulators. It is therefore important that the efforts of the Commission and CESR are coordinated. Recently, CESR organized a first ad-hoc session, where CESR members discussed implementation issues of the Market Abuse Directive (“MAD”).

With respect to the implementation of EU law and CESR rules, CESR has established the Review Panel to carry out collective (peer) reviews through correspondence tables that are scrutinised and made public. As provided in the Terms of Reference of the Review Panel (see Annex 3: Ref. CESR/03-061), the role of the Review Panel is to assist CESR in its task of ensuring more consistent and timely implementation of Community legislation in Member States. Following a self-assessment by the CESR members and observers on the implementation of a specific set of rules, the Review Panel gives its opinion on this assessment and discusses common approaches for implementation. Finally, pressure by all market participants and overall stakeholders is to be expected through the publication of reports of the Review Panel and correspondence tables.

⁴ Under level 4, the Commission has an institutional role, as a « guardian of the Treaty », in controlling transposition of level 1 and level 2 directives by Member States after the transposition date has elapsed.

⁵ Communication on “Better monitoring of application of Community law” (OM (2002) 725 final/4 of 16.5.2003).



The CESR Standards on Investor Protection (Ref. CESR/01-14d and CESR/02-098b) and the CESR Standards for Alternative Trading Systems (Ref. CESR/02-86b) are a clear example of the overall exercise to achieve harmonised application of common standards. These Standards were adopted to facilitate further harmonisation and consistent implementation of the current ISD. The Review Panel assesses whether these Standards are fully implemented in the jurisdictions of the members and observers of CESR. It is envisaged that a similar exercise with respect to CESR's First Standard on Financial Information (CESR/03-073) will be conducted in 2004.

In its second report the Monitoring Group encouraged the use of level 2 measures which specifically mention the regulatory competences of national regulators. The fact that securities regulators in Member States have rulemaking powers would facilitate further coordinated work at level 3 with respect to regulatory convergence. Furthermore, it is CESR's view that the distinction established between level 1 and level 2 at EU level should be an indication of what could be transposed in national laws and what could be transposed by delegation in rules of national regulators. This process would facilitate the flexibility, which is called for in the Lamfalussy Report, to adapt any subsequent changes. This process requires similar regulatory powers for national regulators to implement level 2 measures and other CESR standards.

Finally, it is considered useful to keep alive the network of CESR experts which were involved in drafting the level 2 advice. This network could fulfil a permanent advisory role for any problems arising in the application of the legislation concerned.

Coordinated implementation of EU law

Current activities:

- Assessment by the Review Panel of the implementation of the CESR Standards on Investor Protection and ATS under the current ISD. First report made public on 4 March 2004;
- An Ad-hoc meeting at regulators level on transposition of Market Abuse Directive co-ordinated with package meetings on transposition issues held by the Commission, Member States and national regulators.

Proposed new activities:

- Network of CESR experts advising on the application of EU law;
- Recommend that CESR Members be given similar rulemaking powers;

Question 1:

Do you agree with the described role of CESR with respect to the coordinated transposition and application of EU law?

Question 2:

Do you see an "additional role" for CESR under level 3 where CESR could contribute to the co-ordinated implementation of EU law? If so, please explain what CESR should do to establish the role proposed?

2.3. Regulatory convergence

Regulatory convergence is the process of creating common rules. The legitimacy of the role of CESR at level 3 comes from the fact that CESR members take individual decisions on a daily basis that create jurisprudence. This "bottom up" approach relates to the normative nature of concrete decision making activities of the supervisors. The impact of precedents on decisions is determined by the law and cannot be fully controlled by legislators. In addition, in an integrated European market, the jurisprudence created by supervisors produces effects that cannot be limited to national jurisdictions and therefore must be faced at EU level.

Accordingly, in an attempt to take converging decisions, as recommended by the Stockholm Resolution, the members of CESR may decide to enter these common approaches simply into minutes of meetings or,



if felt necessary, to transform into indicative guidance, or into regulatory recommendations providing a benchmark or, more strongly, into standards that carry commitment of the CESR members. The members of CESR will introduce this guidance, recommendations and standards in their regulatory practices on a voluntary basis. Therefore, the common approaches, in particular the standards, which do not have the status of Community law (thus not legally binding at EU level), are implemented by CESR Members (with a consequence for the entities regulated by each of them). They are “binding” on national regulators vis-à-vis each other in order to respect their commitment under the CESR Charter on the one hand and to promote mutual confidence and to create “peer” pressure on the other hand. Furthermore, CESR standards can be “upgraded” at a later stage and form part of level 2 (or even level 1) legislation and become binding through the intervention of the Commission at level 2 where comitology is envisaged. As an additional tool, it would be interesting to know under which circumstances, where and when appropriate, the Commission could take the initiative to endorse these common approaches of CESR members as a proper manner of applying EU law.

CESR has already started working on “guidance” for level 3 issues which consist of a higher level of detail or a common implementation of the legislative measures: a) under the MAD for the process of assessing the co-ordination of accepted market practices by competent authorities; b) under the Prospectus Directive in delivering the guidelines to issuers on how best to complete a prospectus.

Finally, at level 3 CESR may intervene in areas not covered by EU law. In such non-harmonised sectors, CESR may adopt autonomous standards as a common EU-wide regulatory approach to securities business which might feed the regulatory process at EU level. The CESR-ESBC Standards on Clearing and Settlement are an example of this activity. The joint Working Group, composed of representatives of CESR and the ESCB, the 15 national central banks and CESR members published the consultation paper “Standards for securities clearing and settlement systems in the EU” along with the note “Scope of application of the CESR-ESCB Standards”. Adoption of these standards is envisaged during the course of 2004.

Regulatory convergence

Current activities:

- Guidelines to assess accepted market practices under MAD (CESR-Pol);
- Guidelines to complete a prospectus (Prospectus Group);
- Standards on Clearing and Settlement (CESR-ESCB).

Proposed new activities:

- In liaison with the EU Commission, where appropriate, conceive ways to give more authority to CESR guidelines, recommendations and standards;
- Alert the EU Commission as needs to update Level 2 measures (and possibly Level 1 texts);

Question 3:

Do you see any other aspect of regulatory convergence where CESR could play a role?

Question 4:

Do you think that CESR could play a role in providing coordinated opinion on new services or products with pan-European scope?

Question 5:

Would you consider endorsement by the Commission of the common guidance established by CESR as a helpful tool to ensure consistent application of EU directives/regulations?

2.4. Supervisory convergence

Supervisory convergence relates to how regulators approach the practical operation of rules and legislation. Convergence of both supervisory objectives and techniques will be achieved by sharing these objectives and techniques to secure a common approach across Europe. This requires strengthened cooperation through CESR’s network, as called for in the Second Interim Report of the Monitoring Group.



Examples of this activity are given by the Standard no. 1 and draft Standard no. 2 on Financial Information, representing a common approach to the enforcement of International Financial Reporting Standards (IFRS) in Europe. CESR-Fin, through its Sub-committee on Enforcement (SCE), established the first standard on enforcement of financial information, in order to contribute to the development and implementation of a common approach to the supervision and enforcement of financial reporting in Europe. Building on this work, SCE developed a second standard to establish appropriate coordination of enforcement practices.

Furthermore, supervisory convergence implies cooperation and efficient exchange of information. In an integrated financial market, efficient co-operation between regulators is essential to allow proper performance of the respective supervisory tasks. Efficient administrative procedures should be in place to ensure that day-to-day flow of information takes place without encountering any obstacle. An example of this activity is supplied by the current work undertaken by CESR-Pol. CESR-Pol's objective is to enhance the sharing of information, co-operation and co-ordination of surveillance and enforcement activities between CESR members. The ability of CESR members to co-operate in the field of exchange of information and enforcement is the CESR Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Markets ("MoU"). In 2003 CESR-Pol adopted a "Service Level Agreement" which sets out a common agreement on how the Members wish to see their requests for assistance directed to fellow Members treated under this MoU. In addition, best-practice guidelines are being developed in the field of joint investigations. Furthermore, current work is undertaken in CESR-Pol to exchange experiences in conducting investigations on market abuses (both at national level and cross-border level) and the risk-based approach to supervision. Finally, CESR-Pol undertook a survey of current Internet surveillance activities and automated tools for detecting illegal securities activities. This survey facilitates the development of new methods of surveillance and possibly the setting up of common approaches.

Supervisory convergence can also be found in responses to supervision and enforcement actions. Sharing common experiences in the field of enforcement actions is crucial to ensure that similar cases are treated consistently and in an equivalent manner across Europe. The various directives in the securities field impose extensive obligations for close co-operation on national regulators (CESR members). We enclose a catalogue of all mutual recognition and cooperation obligations under the directives where CESR is active (see Annex 4). The catalogue gives a global picture of the various practical working links that will need to be established in the near future. Within these obligations, one can distinguish those resulting from the mutual recognition of decisions from another competent authority and, those asking competent regulators to cooperate in the performance of their supervisory tasks. If there is a lack of cooperation by one competent authority, the MAD (Article 16.4) explicitly envisages this situation and gives a legal "mediation" role to CESR. CESR-Pol will be exploring this further in order to have an operational mechanism in place if necessary.

The Monitoring Group encouraged CESR to set up an internal mediator system under its Charter in order to solve conflicts between national securities regulators. For example, as regards the mutual recognition of decisions from the home competent regulator by the host competent regulator(s) (licenses of intermediaries and regulated markets, approvals of prospectus or UCITS), the directives are drafted in a manner that mutual recognition is an increasingly automatic procedure. It might happen, however, and most likely in very limited cases that the home and the host competent regulators (or two host competent regulators) disagree. Normal procedure would be to refer the case to the European Commission and the Court of Justice, if the matter requires an official interpretation of the relevant directive. But in order to have more rapid and less costly solutions, one could imagine that "mediation" of an advisory nature by peers (other members of CESR) results in an acceptable solution for specific cases. This will need of course to be in accordance with the speed of markets and, therefore in most cases, intervene *ex post*. In addition, the existence of a "mediation" system should not be regarded as an incentive to systematically question the increased automaticity of mutual recognition.

Other practical examples of methods by which supervisory convergence might be obtained, include joint supervisory visits to cross-jurisdictional institutions.

Convergence is also achieved through the sharing of national decisions or cases that progressively establishes "EU Jurisprudence". As a first experiment, CESR-fin will introduce, for the use of accounting enforcements authorities, a database of applications examples of International Financial Reporting Standards, so as to facilitate the sharing of practical cases and ensure convergence over time. Such a type of database could also be extended to other regulatory interpretations and judicial cases so as to facilitate



consistent implementation and application of EU legislation. More operationally, ahead of a decision by a competent national regulator, if rapid coordination is necessary, such a regulator could feel the need to collect the views of its fellow CESR members. In order to provide rapid answers, specific “urgent issues groups” could be called under the auspices of CESR.

As a more long term objective, several ways of empowering the understanding by the staff of the CESR members of the EU dimension of the performance of their tasks can be envisaged. They cover specific training sessions to operational staff on the application of the new EU legislation, but also a more ambitious exchange of personnel between CESR members or even the advertising of positions on a EU scale, for which CESR could play the role of clearing house.

Supervisory convergence

Current activities:

- Standards on enforcement of financial information (CESR-Fin);
- Database on enforcement case of IFRS (CESR-Fin);
- Practical improvements of the MoU on exchange of information and surveillance/survey on Internet surveillance (CESR-Pol).

Proposed new activities:

- Guidelines for joint investigations (CESR-Pol);
- Joint supervisory visits to cross-jurisdictional institutions;
- Urgent issues group/specific cases devoted Task Force;
- Exchange and training of staff;
- Develop additional information databases in particular in the area of regulatory interpretations and judicial cases;
- “Mediation mechanism” by peers to find acceptable solutions when two competent authorities disagree on a mutual recognition or in case of a lack of co-operation.

Question 6:

Do you see any other aspect of supervisory convergence where CESR could play a role? If so, how and why?

Question 7:

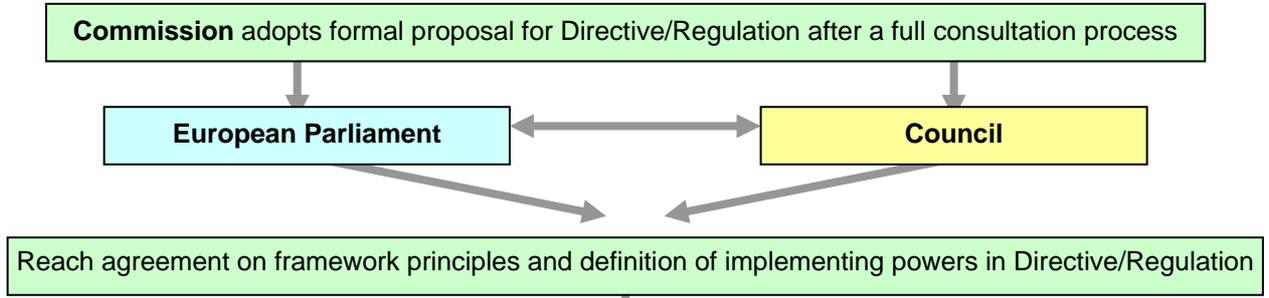
What kind of mediation role do you consider would be appropriate for CESR?

Question 8:

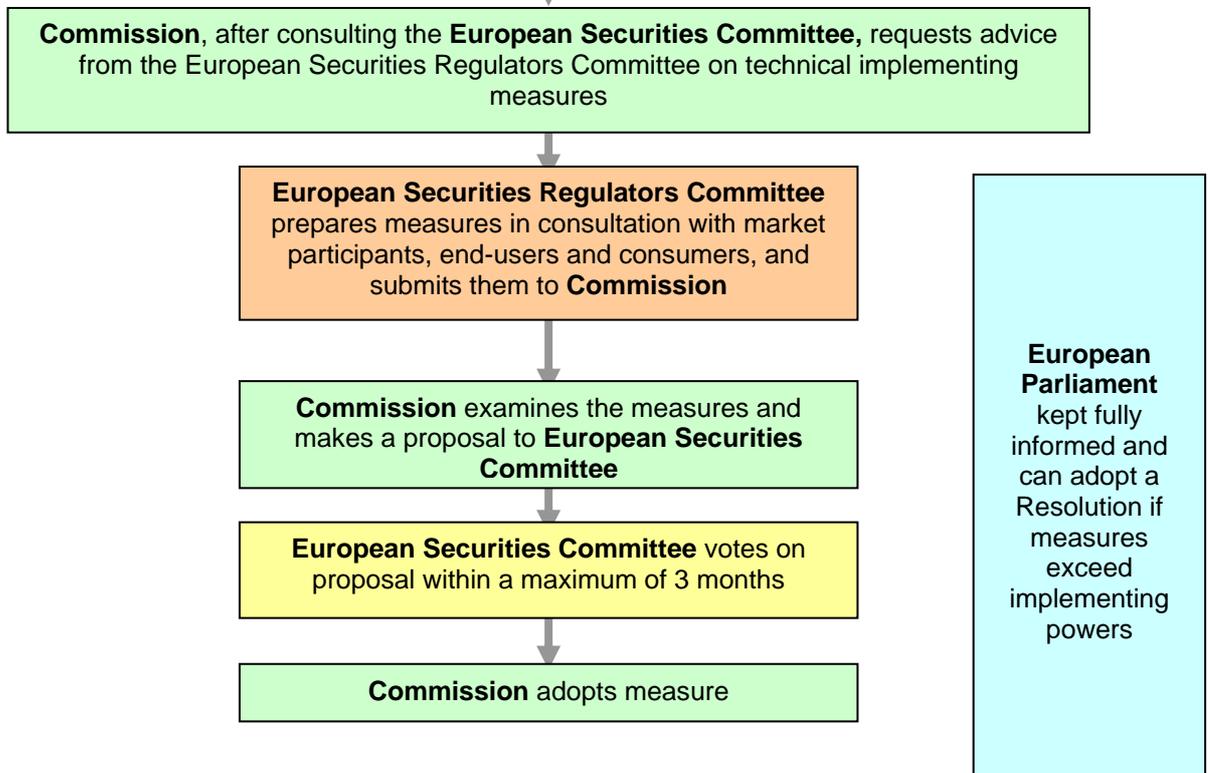
Do you have any comments on the catalogue of all mutual recognition and cooperation obligations under the Directives where CESR is active (see Annex 4)?

Annex 1 : THE FOUR-LEVEL APPROACH RECOMMENDED BY THE COMMITTEE (p.6 of the Lamfalussy Report)

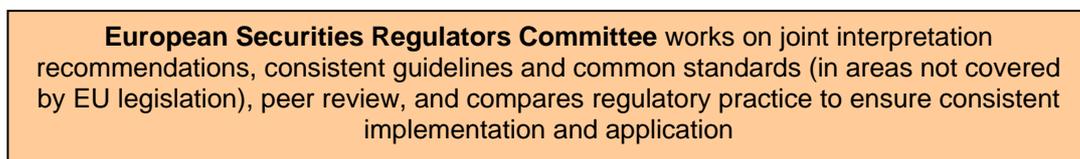
LEVEL 1



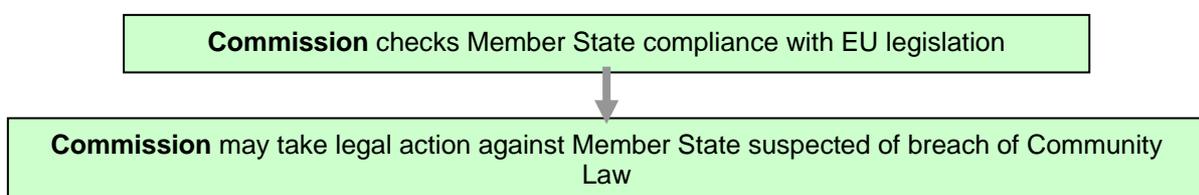
LEVEL 2



LEVEL 3

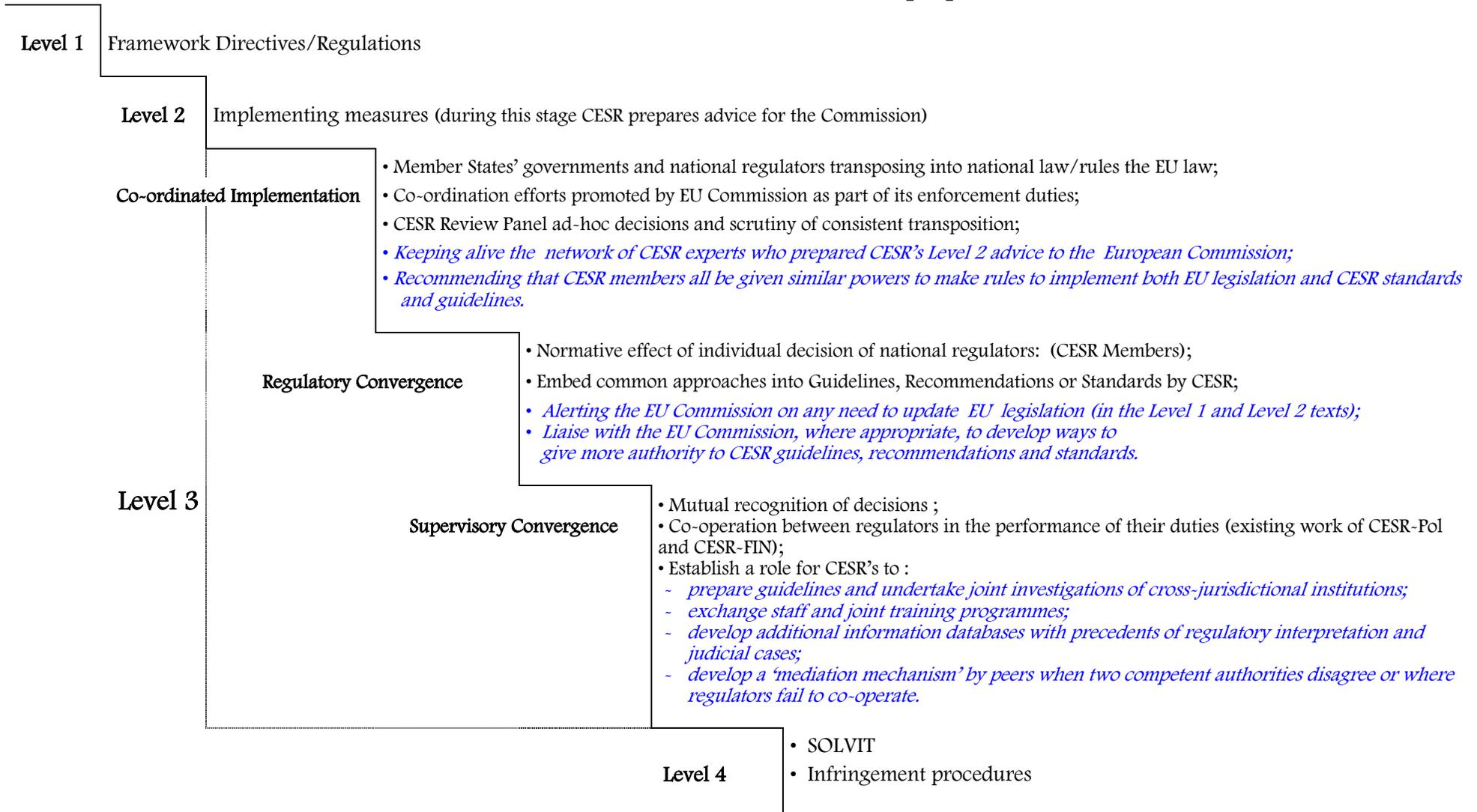


LEVEL 4





Annex 2: Level 3 Framework in context and new proposals (in italics)





Annex 3: Terms of Reference of the Review Panel (Ref. CESR/03-061)

<u>Chair</u>	The Vice-Chairman of CESR.
<u>Membership</u>	Internal Coordinators of each CESR member.
<u>Observers</u>	The EU Commission can attend the meetings of the Panel.
<u>Secretariat</u>	The Secretariat of CESR facilitates the work of the Panel.
<u>Role</u>	The role of the Panel is to assist CESR in its task of ensuring more consistent and timely implementation of Community legislation in Member States.
<u>Mandate</u>	The Panel is the middle-step in the implementation process; it intervenes after the self-assessment conducted by members and before the final approval by the CESR. It gives its opinion on the overall process of implementation, discusses common approaches for the implementation, provides common understanding and expresses views on specific problems encountered by individual members. In case of particular circumstances, the Panel may propose to establish a special group to address issues of technical nature. Clarifications of CESR Standards will be collected by the Secretariat and shared with the Panel.
<u>Monitoring of the implementation process</u>	<p>The organisation of monitoring the implementation the adoption will be based on the following steps:</p> <ul style="list-style-type: none">- self-assessment by members: the Secretariat of CESR will send to the members a correspondence table, after the agreed deadline for implementation of EU rules and CESR standards; the table should be filled in by each member with the precise indication of measures of implementation adopted for each standard;- review by CESR: the correspondence table will be reviewed by the Secretariat and the Panel. The Panel submits periodically to CESR, together with correspondence tables, a report for final approval. The panel can collect the opinion of the Market Participants Consultative Panel before final submission;- publication of the self-assessment: the report of the panel and the correspondence table, once approved by CESR, are posted on its web-site. This table will be regularly updated, to take into consideration changes.

Annex 4: Catalogue of all mutual recognition and cooperation obligations

Table as to co-operation and co-ordination between competent authorities as provided for in the MAD, Prospectus Directive, ISD new, Transparency Directive, Directive on Takeover bids, UCITS directive and financial conglomerate directive (Ref. CESR/04-085).

MARKET ABUSE DIRECTIVE (Directive 2003/6/EC)	INSIDER DIRECTIVE (Directive 89/592/EEC)	CHANGES POSSIBLY NECESSARY AS TO COOPERATION BETWEEN COMPETENT AUTHORITIES
<p><u>Art. 16 par. 1:</u> <i>“Competent authorities shall cooperate with each other whenever necessary for the purpose of carrying out their duties, making use of their powers whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate in investigation activities.”</i></p>	<p><u>Art. 10 par. 1 first sentence:</u> <i>“The competent authorities in the Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties, making use of the powers mentioned in Article 8 (2).”</i></p>	<p>Competent authorities do not only have to use the powers provided for pursuant to the MAD (Art. 12 of the MAD, which sets out the minimum powers for competent authorities), but, in addition to that, powers given to the competent authorities <u>under national law</u>, when co-operating with competent authorities in other MSs.</p> <p>The Commission can adopt <u>implementing measures</u> on the procedures for exchange of information and cross-border inspections (Art. 16 par. 5 MAD).</p>
<p><u>Art. 16 par. 2:</u> <i>“Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1. Where necessary, the competent authorities receiving any such request shall immediately take the necessary measures in order to gather the required information. If the requested competent authority is not able to supply the required information immediately, it shall notify the requesting competent authority of the reasons.</i></p> <p>...</p> <p><i>The competent authorities may refuse to act on a request for information where:</i></p> <ul style="list-style-type: none"> - communication might adversely affect the sovereignty, security or public policy of the Member State addressed, 	<p><u>Art. 10 par. 1 second sentence:</u> <i>“To this end, and notwithstanding Article 9, they shall exchange any information required for that purpose, including information relating to actions prohibited, under the options given to Member States by Article 5 and by the second sentence of Article 6, only by the Member State requesting cooperation.”</i></p> <p><u>Art. 10 par. 2:</u> <i>“The competent authorities may refuse to act on a request for information:</i></p> <ul style="list-style-type: none"> a) where communication of the information might adversely affect the 	<ol style="list-style-type: none"> 1. Competent authorities have to act <u>immediately</u> on a request by another authority, which is not explicitly provided for in the Insider Directive. 2. In case of <u>refusing</u> the provision of information, the requested authority has to notify the requesting authority, giving as much detailed information as possible, which is not explicitly required under the Insider Directive. 3. A competent authority, whose <u>request for information</u> has not been acted on within a reasonable period of time or has

<p>- <i>judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed, or</i></p> <p>- <i>where a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.</i></p> <p><i>In any such case, they shall notify the requesting competent authority accordingly, providing as detailed information as possible on those proceedings or the judgment.</i></p> <p><i>Without prejudice to Article 226 of the Treaty, a competent authority whose request for information is not acted upon within a reasonable time or whose request for information is rejected may bring that non-compliance to the attention of the Committee of European Securities Regulators, where discussion will take place in order to reach a rapid and effective solution.</i></p> <p><i>...”</i></p>	<p><i>sovereignty, security or public policy of the State addressed;</i></p> <p><i>b) where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the State addressed or where final judgment has already been passed on such persons for the same actions by the competent authorities of the State addressed.”</i></p>	<p>been refused, may turn to CESR, where discussion will take place in order to reach a <u>rapid and effective solution</u>. This approach of “mediation” between competent authorities where one authority considers that another authority does not apply the Directive correctly is new in EU securities law. (It may also be noted that it is not the Member States at a political level, but the competent authorities, i.e. the regulators, that are involved in this procedure.) Under the Insider Directive the only formal way to solve such a case, would have been to bring an action before the European Court of Justice pursuant to Art. 226 of the EC Treaty – a lengthy and costly way. This route is also available under the MAD, but it could be regarded as a means of last resort to be used only if no acceptable solution can be reached within CESR.</p>
<p><u>Art. 16 par. 3:</u></p> <p><i>“Where a competent authority is convinced that acts contrary to the provisions of this Directive are being, or have been, carried out on the territory of another Member State or that acts are affecting financial instruments traded on a regulated market situated in another Member State, it shall give notice of that fact in as specific a manner as possible to the competent authority of the other Member State. The competent authority of the other Member State shall take appropriate action. It shall inform the notifying competent authority of the outcome and, so far as possible, of significant interim developments. This paragraph shall not prejudice the competences of the competent authority that has forwarded the information. The competent authorities of the various Member States that are competent for the purposes of Article 10 shall consult each other on the proposed follow-up to their action.”</i></p>	<p>No corresponding provision</p>	<p><u>New</u></p> <p>This obligation on competent authorities to <u>report</u> acts, which might be contrary to the MAD and which have been carried out in another MS, to that MS’s competent authority is <u>new</u>. This is also the case with regard to the requirement that that competent authority keeps the other authority informed about the proceedings.</p> <p>The forum envisaged for consultations on the proposed follow-up to their actions in such proceedings as foreseen in par. 3 last sentence would probably best be <u>CESR</u> (possibly CESR-Pol).</p>

<p><u>Art. 16 par. 4:</u> <i>“A competent authority of one Member State may request that an investigation be carried out by the competent authority of another Member State, on the latter's territory.</i></p> <p><i>It may further request that members of its own personnel be allowed to accompany the personnel of the competent authority of that other Member State during the course of the investigation.</i></p> <p><i>The investigation shall, however, be subject throughout to the overall control of the Member State on whose territory it is conducted.</i></p> <p><i>The competent authorities may refuse to act on a request for an investigation to be conducted as provided for in the first subparagraph, or on a request for its personnel to be accompanied by personnel of the competent authority of another Member State as provided for in the second subparagraph, where such an investigation might adversely affect the sovereignty, security or public policy of the State addressed, or where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the State addressed or where a final judgment has already been delivered in relation to such persons for the same actions in the State addressed. In such case, they shall notify the requesting competent authority accordingly, providing information, as detailed as possible, on those proceedings or judgment.</i></p> <p><i>Without prejudice to the provisions of Article 226 of the Treaty, a competent authority whose application to open an inquiry or whose request for authorisation for its officials to accompany those of the other Member State's competent authority is not acted upon within a reasonable time or is rejected may bring that non-compliance to the attention of the Committee of European Securities</i></p>	<p>No corresponding provision</p>	<p><u>New</u> Competent authorities are required to co-operate in <u>cross-border inspections</u>. If a competent authority refuses to carry out an inspection on its territory requested by another competent authority, or refuses to let personnel from that authority accompany its personnel during the investigation, that authority may bring such a case to the attention of CESR, where discussion will take place. The considerations as to the procedure pursuant to par. 2 (“mediation”) would also apply here.</p>
---	-----------------------------------	--

<p><i>Regulators, where discussion will take place in order to reach a rapid and effective solution.”</i></p>		
<p>Proposal for Commission Directive of [...] implementing Directive 2003/6/EC of the European parliament and of the Council as regards market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification managers’ transaction and the notification of suspicious transactions</p>		<p>CHANGES POSSIBLY NECESSARY AS TO COOPERATION BETWEEN COMPETENT AUTHORITIES</p>
<p>Recital 4 and Article 3, pars. 2, 3, 4 and 5: <i>“(4) Competent authorities, while considering the acceptance of a particular market practice, should consult other competent authorities, particularly for cases where there exist comparable markets to the one under scrutiny. (...) In case of discrepancies between market practices which are accepted in one Member State and not in another one, discussion could take place in the Committee of European Securities Regulators in order to find a solution.”</i></p> <p><u>Article 3, pars. 2, 3, 4 and 5:</u> <i>“2. Without prejudice to Article 11(2) of Directive 2003/6/EC, Member States shall ensure that competent authorities, before accepting or not the market practice concerned, consult as appropriate relevant bodies such as representatives of issuers, financial service providers, consumers, other authorities and market operators.</i></p> <p><i>The consultation procedure shall include consultation of other competent authorities, in particular where there exist comparable markets, i.e. in structures, volume, type of transactions.</i></p> <p><i>3. (...) Member States shall further ensure that competent authorities transmit their decisions as soon as possible to the Committee of European Securities Regulators which shall make them immediately available on its website.(...)</i></p>	<p><u>No corresponding provision</u></p>	<p><u>New</u> Competent authorities should consult, among others, other competent authorities on specific cases. This discussion could take place within CESR in case of discrepancies between market practices. CESR will make available the decisions of the competent authorities on its website.</p>

4. When investigatory actions on specific cases have already started, the consultation procedures set out in paragraphs 1 to 3 may be delayed until the end of such investigation and possible related sanctions.

5. A market practice which was accepted following the consultation procedures set out in paragraphs 1 to 3 shall not be changed without the same consultation procedures.”

<p style="text-align: center;">ISD2 (Common Position adopted by the Council on 8 December 2003, Doc. 13421/3/03)</p>	<p style="text-align: center;">ISD (Directive 93/22/EC)</p>	<p style="text-align: center;">CHANGES POSSIBLY NECESSARY AS TO COOPERATION BETWEEN COMPETENT AUTHORITIES</p>
<p><u>Art. 10 par. 4:</u> <i>“If the acquirer of any holding referred to in paragraph 3 is an investment firm, a credit institution or an insurance undertaking authorised in another Member State, or the parent undertaking of an investment firm, credit institution or insurance undertaking authorised in another Member State, or a person controlling an investment firm, credit institution or insurance undertaking authorised in another Member State, and if, as a result of that acquisition, the undertaking would become the acquirer's subsidiary or come under his control, the assessment of the acquisition shall be subject to the prior consultation provided for in Article 60.”</i></p> <p><u>Art. 60:</u> <i>“1. The competent authorities of the other Member State involved shall be consulted prior to granting authorisation to any investment firm which is:</i> <i>(a) a subsidiary of an investment firm or credit institution authorised in another Member State;</i> <i>(b) a subsidiary of the parent undertaking of an investment firm or credit institution authorised in another Member State;</i> <i>(c) controlled by the same natural or legal persons as control an investment firm or credit institution authorised in another Member State</i></p> <p><i>2. The competent authority of the Member State responsible for the supervision of credit institutions or insurance undertakings shall be consulted prior to granting an authorisation to an investment firm which is:</i> <i>(a) a subsidiary of a credit institution or insurance undertaking authorised in the Community; or</i> <i>(b) a subsidiary of the parent undertaking of a credit</i></p>	<p><u>Art. 9 par. 2:</u> <i>“If the acquirer of the holding referred to in paragraph 1 is an investment firm authorized in another Member State or the parent undertaking of an investment firm authorized in another Member State or a person controlling an investment firm authorized in another Member State and if, as a result of that acquisition, the firm in which the acquirer proposes to acquire a holding would become the acquirer's subsidiary or come under his control, the assessment of the acquisition must be the subject of the prior consultation provided for in Article 6.”</i></p> <p><u>Art. 6:</u> <i>“The competent authorities of the other Member State involved shall be consulted beforehand on the authorization of any investment firm which is:</i> <i>- a subsidiary of an investment firm or credit institution authorized in another Member State,</i> <i>- a subsidiary of the parent undertaking of an investment firm or credit institution authorized in another Member State,</i> <i>or</i> <i>- controlled by the same natural or legal persons as control an investment firm or credit institution authorized in another Member State.”</i></p>	<p>As to the <u>acquisition of a qualifying holding</u> (Art. 10(4) ISD2) in an investment firm or the <u>authorisation of an investment firm</u> (Art.60 ISD2), consultation will not only have to take place between the competent authority, where the investment firm is established, and competent authorities in another MS responsible for investment firms, but also with competent authorities responsible for <u>credit institutions and insurance undertakings</u> in another MS, if a credit institution or an insurance undertaking is involved.</p>

<p><i>institution or insurance undertaking authorised in the Community;</i> <i>(c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in the Community.</i></p> <p><i>3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall exchange all information regarding the suitability of shareholders and the reputation and experience of directors that is of relevance to the other competent authorities involved, for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.”</i></p>		
<p><u>Art. 25 par. 3 and par.6:</u> <i>“3. (...)</i> <i>The competent authorities shall, in accordance with Article 58, establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives this information.</i></p> <p><i>6. When, in accordance with Article 32(7), reports provided for under this Article are transmitted to the competent authority of the host Member state, it shall transmit this information to the competent authorities of the home Member state of the investment firm, unless they decided that they do not want to receive this information.”</i></p>	<p><u>Art.20 par.1(b) and par. 2:</u> <i>“1. (...) home Member States shall at least require:</i> <i>(b) that investment firms report to competent authorities in their home Member States all the transactions referred to in (a) where those transactions cover:</i> <i>- shares or other instruments giving access to capital,</i> <i>- bonds and other forms of securitized debt,</i> <i>- standardized forward contracts relating to shares or</i> <i>- standardized options on shares</i> <i>(...)</i></p> <p><i>2. Where an investment firm carries out a transaction on a regulated market in its host Member State, the home Member State may waive its own requirements as regards reporting if the investment firm is subject to equivalent requirements to report the</i></p>	<p><u>New</u> Member States have to ensure that the competent authority of the <u>most liquid market for financial instruments</u> admitted to trading on a regulated market also receives transaction reports.</p> <p>Regarding <u>transactions executed by a branch</u> established in another Member State, ISD2 provides for the transmission of transaction reports to the home authorities <u>by the host authority</u>, unless the home authority “opted out” of receiving this information.</p>

<p><u>Art. 31 par. 2, 3 and 4:</u> “2. (...)” <i>In cases where the investment firm intends to use tied agents, the competent authority of the home Member State of the investment firm shall, at the request of the competent authority of the host Member State and within a reasonable time, communicate the identity of the tied agents that the investment firm intends to use in that Member State. The host Member State may make public such information.</i></p> <p><i>3. The competent authority of the home Member State shall, within one month of receiving the information, forward it to the competent authority of the host Member State. The investment firm may then start to provide the investment service or services concerned in the host Member State.</i></p> <p><i>4. In the event of a change in any of the particulars communicated in accordance with paragraph 2, an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the home Member State shall inform the competent authority of the host Member State of those changes.”</i></p>	<p><i>transaction in question to the authorities in charge of that market.”</i></p> <p><u>Art. 18 par. 2 and 3:</u> “2. <i>The competent authorities of the home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the host Member State. The investment firm may then start to provide the investment service or services in question in the host Member State.</i> ... 3. <i>Should the content of the information communicated in accordance with the second indent of paragraph 1 be amended, the investment firm shall give notice of the amendment in writing to the competent authorities of the home Member State and of the host Member State before implementing the change, so that the competent authorities of the host Member State may, if necessary, inform the firm of any change or addition to be made to the information communicated under paragraph 2.”</i></p> <p><u>Art 19 par. 9:</u> “<i>In the event of the withdrawal of authorization, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the investment firm concerned from initiating any further transactions within its territory and to safeguard investors' interests. ... ”</i></p>	<p><u>New</u> If an investment firm intends to use <u>tied agents</u>, the information must be exchanged only when the host authority requests it from the home authority.</p> <p>The obligation of the home MS to provide information to the host MS as to the <u>provision of investment services</u> by an investment firm established in the home MS will continue to apply.</p> <p>The forwarding of information about the <u>withdrawal of authorisation</u> of an investment firm providing services in the host MS by that in the home MS (Art. 19 par. 9 ISD) is not explicitly required under the ISD2.</p> <p>The home authority would be responsible for informing the host authority about changes in the particulars of an investment firm, whereas now this duty is on the investment firm itself.</p>
--	---	--

<p><u>Art. 31 par. 6:</u> <i>“6. The investment firm or the market operator that operates an MTF shall communicate to the competent authority of its home Member State in which it intends to provide such arrangements [for remote membership]. The competent authority of the home Member State of the MTF shall communicate, within one month, this information to the Member State in which investment firm or the market operator intends to provide such arrangements.</i></p> <p><i>The competent authority of the home Member state of the MTF shall, on the request of the competent authority of the host Member State of the MTF and within reasonable delay, communicate the identity of the members or participants of the MTF established in that Member State.”</i></p>	<p><u>No corresponding provision</u></p>	<p>The home authority of an MTF must communicate to the competent authority of the Member State where the MTF intends to provide <u>arrangements for remote membership</u> such intentions with one month. Upon request of the host authority, the home authority of the MTF has to communicate the <u>identity of the members or participants of the MTF</u>.</p>
<p><u>Art. 32 par. 3, 4 and 9 :</u> <i>“3. Unless the competent authority of the home Member State has reason to doubt the adequacy of the administrative structure or the financial situation of an investment firm, taking into account the activities envisaged, it shall, within three months of receiving all the information, communicate that information to the competent authority of the host Member State and inform the investment firm concerned accordingly.</i></p> <p><i>4. In addition to the information referred to in paragraph 2, the competent authority of the home Member State shall communicate details of the accredited compensation scheme of which the investment firm is a member in accordance with Directive 97/9/EC to the competent authority of the host Member State. In the event of a change in the particulars, the competent authority of the home Member State shall inform the authority of the host Member State accordingly.</i></p> <p><i>9. In the event of a change in any of the information</i></p>	<p><u>Art. 17 par. 3 and 7:</u> <i>“3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of an investment firm, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the investment firm concerned accordingly.</i> <i>They shall also communicate details of any compensation scheme intended to protect the branch's investors.</i> <i>...</i> <i>7. In the event of a change in the particulars communicated in accordance with the second subparagraph of</i></p>	<p>No major changes to the current rules on the <u>establishment of branches</u> of an investment firm in another MS.</p> <p>The information about the <u>withdrawal of authorisation</u> of an investment firm having a branch in the host MS by that in the home MS (Art. 19 par. 9 ISD) is not explicitly required under the ISD2 but falls under the obligation (ex Art. 16 par. 2) of investment firms to notify the competent authorities of any material changes to the conditions for initial authorisation.</p>

<p><i>communicated in accordance with paragraph 2, an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of those changes by the competent authority of the home Member State.”</i></p>	<p><i>paragraph 3, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.”</i></p> <p><u>Art. 19 par. 9:</u> <i>“In the event of the withdrawal of authorization, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the investment firm concerned from initiating any further transactions within its territory and to safeguard investors' interests. ...”</i></p>	
<p><u>Art. 32 par. 8:</u> <i>“Each Member State shall provide that, where an investment firm authorised in another Member State has established a branch within its territory, the competent authority of the home Member State of the investment firm, in the exercise of its responsibilities and after informing the competent authority of the host Member State, may itself or through the intermediary of persons instructed for that purpose, may carry out on-site inspections in that branch.”</i></p> <p><u>Art. 57:</u> <i>“1. A competent authority of one Member State may request the co-operation of the competent authority of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation. In the case of investment firms that are remote members of a regulated market the competent authority of the regulated market may choose to address them directly, in which case it shall inform the competent authority of the home Member State of the remote member accordingly.</i></p> <p><i>Where a competent authority receives a request with respect to an on-the-spot verification or an investigation, it shall, within the framework of its powers::</i></p>	<p><u>Art. 24:</u> <i>“1. Each host Member State shall ensure that, where an investment firm authorized in another Member State carries on business within its territory through a branch, the competent authorities of the home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for the purpose carry out on-the-spot verification of the information referred to in Article 23 (3).</i></p> <p><i>2. The competent authorities of the home Member State may also ask the competent authorities of the host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so.</i></p>	<p>The general principle that the host-country authority of an investment firm must be informed beforehand to have <u>on-site inspections</u> by the home authority of a branch of that investment firm established in a host MS will still be applicable.</p> <p>Similar to the existing ISD, Art. 57 of the ISD2 provides for the possibility to ask the competent authority in another MS to carry out an on-site inspection on its behalf. The requested authority may only refuse to act on the grounds set out in Art. 59 ISD2.</p>

<p>(a) carry out the verifications or investigations itself; or (b) allow the requesting authority to carry out the verification or investigation; or (c) allow auditors or experts to carry out the verification or investigation.</p> <p><u>Art. 59:</u> <i>A competent authority may refuse to act on a request for cooperation in carrying out an investigation as provided for in paragraph 1 only where:</i> (a) such an investigation might adversely affect the sovereignty, security or public policy of the State addressed; (b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Member State addressed; (c) final judgement has already been given in the Member State addressed in respect of the same persons and the same actions. <i>In the case of such a refusal, the competent authority shall notify the requesting competent authority accordingly, providing as detailed information as possible.”</i></p>	<p>3. This Article shall not affect the right of the competent authorities of a host Member State, in discharging their responsibilities under this Directive, to carry out on-the-spot verifications of branches established within their territory.”</p>	
<p><u>Art. 41 par. 1 and 2:</u> “1. ... <i>Notwithstanding the possibility for the operators of regulated markets to inform directly the operators of other regulated markets, Member States shall require that an operator of a regulated market that suspends or removes from trading a financial instrument makes public this decision and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States.</i></p> <p>2. <i>A competent authority which demands the suspension or removal of a financial instrument from trading on one or more regulated markets shall immediately make public its decision and inform the competent authorities of other Member States. Except where it would cause significant</i></p>	<p><u>No corresponding provision</u></p>	<p><u>New</u> A competent authority shall inform other competent authorities about the <u>suspension or removal</u> of a financial instrument from trading on a regulated market, regardless if it has been required by the regulated market on its own initiative or at the competent authority’s request. The authorities of the other Member States will demand the suspension or removal of the financial instruments traded under their authority, except in special circumstances like expected damage to investors’ interest or to functioning of the market.</p>

<p><i>damage to the investors' interests or the orderly functioning of the market the competent authorities of the other Member States shall demand the suspension or removal of that financial instrument from trading on the regulated markets and MTFs that operate under their authority."</i></p>		
<p><u>Art. 42 par. 6</u> <i>"(...) The regulated market shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State shall communicate, within one month, this information to the Member State in which the regulated market intends to provide such arrangements. The competent authority of the home Member State of the regulated market shall, on the request of the competent authority of the host Member State and within a reasonable time, communicate the identity of the members or participants of the regulated market established in that member State."</i></p> <p><u>Art. 56</u> <i>2. When, taking into account the situation of the securities markets in the host Member State, the operations of a regulated market that has established arrangements in a host member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the home and host competent authorities of the regulated market shall establish proportionate cooperation agreements.</i></p>	<p><u>Art. 15 par. 4</u> <i>"Subject to paragraphs 1, 2 and 3, where the regulated market of the host Member State operates without any requirement for a physical presence the investment firms referred to in paragraph 1 may become members of or have access to it on the same basis without having to be established in the host Member State. In order to enable their investment firms to become members of or have access to host Member States' regulated markets in accordance with this paragraph home Member States shall allow those host Member States' regulated markets to provide appropriate facilities within the home Member States' territories."</i></p>	<p><u>New</u> A <u>regulated market</u> must notify to its home authority its intention to provide <u>arrangements</u> (access and trading) in another Member State's territory. The home authority informs the Member State in which the regulated market intends to provide such arrangements and, on request, supplies the host authority with the identity of the members or participants of the regulated market.</p> <p>If a regulated market has important arrangements in a host Member State, the host and home authorities shall establish a cooperation agreement.</p>
<p><u>Art. 47:</u> <i>"Each Member State shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States and the Commission. A similar communication shall be effected in</i></p>	<p><u>Art. 16:</u> <i>"For the purpose of mutual recognition and the application of the Directive, it shall be for each Member State to draw up a list of the regulated markets for which it is the</i></p>	<p>The communication of the <u>list of regulated markets</u> to all Member States remains practically identical under the ISD2, except that in the future the rules of procedures and operation (and</p>

<p><i>respect of each change to that list. ...”</i></p>	<p><i>home Member State and which comply with its regulations, and to forward that list for information, together with the relevant rules of procedures and operation of those regulated markets, to the other Member States and the Commission. A similar communication shall be effected in respect of each change to the aforementioned list or rules. (...)”</i></p>	<p>changes thereof) of the regulated markets need not to be communicated to the Commission or other Member States.</p>
<p><u>Art. 48 par.1 and 2</u> <i>“1. Each Member State shall designate the competent authorities which are to carry out each of the duties provided for under the different provisions of this Directive. Member States shall inform the Commission and the competent authorities of other Member States of the identity of the competent authorities responsible for enforcement of each of those duties, and of any division of those duties.</i></p> <p><i>2. (...)</i> <i>Member States shall inform the Commission and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.”</i></p>	<p><u>Art. 22</u> <i>1. Member States shall designate the competent authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of those duties.</i> <i>2. The authorities referred to in paragraph 1 must be either public authorities, bodies recognized by national law or bodies recognized by public authorities expressly empowered for that purpose by national law.</i> <i>3. The authorities concerned must have all the powers necessary for the performance of their functions.</i></p>	<p>According to the ISD2 Member States shall inform the Commission <u>and</u> the competent authorities of other Member States of the identity of its competent authorities and of any arrangements regarding the delegation of tasks.</p>
<p><u>Art. 54 par. 3, 4 and 5:</u> <i>“3. Without prejudice to cases covered by criminal law, the competent authorities, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Directive may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of the Directive or, in the case of other authorities, bodies or natural or legal persons, for the purposes for which such information was provided to them and/or in the context of administrative or judicial proceedings specifically related to the exercise of those functions. However, where the competent</i></p>	<p><u>Art. 25 :</u> <i>“1. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Accordingly no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that individual investment firms cannot be identified,</i></p>	<p>The <u>professional secrecy obligation</u> does not prevent competent authorities from exchanging confidential information in accordance with the ISD2 <u>or</u> otherwise provided by other authorities in the context of administrative or judicial proceedings. If the competent authority (or any other organisation) communicating the information consents, the authority that receives the information may use it for other purposes.</p>

<p>authority <u>or</u> other authority, body or person communicating information consents thereto, the authority receiving the information may use it for other purposes.</p> <p>4. Any confidential information received, exchanged or transmitted pursuant to this Directive shall be subject to the conditions of professional secrecy laid down in this Article. Nevertheless, this Article shall not prevent the competent authorities from exchanging or transmitting confidential information in accordance with this Directive and with other Directives (...) or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.</p> <p>5. This Article shall not prevent the competent authorities from exchanging or transmitting in accordance with national law, confidential information that has not been received from a competent authority of another Member State.”</p>	<p>without prejudice to cases covered by criminal law.</p> <p>Nevertheless, where an investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that investment firm may be divulged in civil or commercial proceedings.</p> <p>2. Paragraph 1 shall not prevent the competent authorities of different Member States from exchanging information in accordance with this Directive or other Directives applicable to investment firms. That information shall be subject to the conditions of professional secrecy imposed in paragraph 1.”</p>	
<p><u>Art. 56:</u> “1. Competent authorities of different Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive, in the exercise of their powers under this Directive or national law. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate in any investigation activities.</p> <p>3. Member States shall take the necessary administrative and organisational measures to facilitate the assistance provided for in paragraph 1. Competent authorities shall be able to use their powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in that Member State.</p>	<p><u>Art. 23 par. 3:</u> “Where, through the provision of services or by the establishment of branches, an investment firm operates in one or more Member States other than its home Member State the competent authorities of all the Member States concerned shall collaborate closely in order more effectively to discharge their respective responsibilities in the area covered by this Directive.”</p>	<p>One important difference appears to be the application of the <u>duty of co-operation</u> between competent authorities of different MSs: whereas pursuant to Art. 23 par. 3 ISD cooperation has to take place if an investment firm operates in another MS (through provision of services or establishment of a branch), Art. 56 ISD2 provides for a <u>broader scope</u>, because a competent authority will be required to co-operate with another authority even if the conduct under investigation in the other MS does not constitute an infringement of any regulation in force in that MS.</p> <p>A further change would be the obligation of a competent authority to <u>notify another competent authority</u> of acts contrary to the ISD2, carried out by</p>

<p>4. Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify this in as specific a manner as possible to the competent authority of the other Member State. The latter authority shall take appropriate action. It shall inform the notifying competent authority of the outcome of the action and, to the extent possible, of significant interim developments.”</p>		<p>entities not subject to the supervision of the former. The latter would have to react in an appropriate way on such a notification and to inform the other authority about its reaction.</p>
<p><u>Art. 58 par. 1, 3 and 4:</u> <i>“1. Competent authorities of Member States having been designated as contact points for the purposes of this Directive in accordance with Article 56(1) shall immediately supply one another with the information required for the purposes of carrying out their duties set out in the provisions adopted pursuant to this Directive.</i></p> <p><i>Competent authorities exchanging information with other competent authorities under this Directive may indicate at the time of communication that such information must not be disclosed without their express agreement, in which case such information may be exchanged solely for the purposes for which those authorities gave their agreement.</i></p> <p><i>3. Authorities as referred to in Article 49 as well as other bodies or natural and legal persons receiving confidential information under paragraph 1 of this Article or under Articles 51 and 58 may use it only in the course of their duties, in particular:</i></p> <p><i>(a) to check that the conditions governing the taking up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed by Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms;</i></p> <p><i>(b) to monitor the proper functioning of trading venues;</i></p>	<p><u>Art. 25 par. 2:</u> <i>“2. Paragraph 1 shall not prevent the competent authorities of different Member States from exchanging information in accordance with this Directive or other Directives applicable to investment firms. That information shall be subject to the conditions of professional secrecy imposed in paragraph 1.”</i></p> <p><u>Art. 25 par. 3:</u> <i>“... Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.”</i></p> <p><u>Art. 25 par. 4:</u> <i>“4. Competent authorities receiving confidential information under paragraph 1 or 2 may use it only in the course of their duties:</i></p> <p><i>- to check that the conditions governing the taking up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or</i></p>	<p>Art. 25 par. 2 ISD does not only exempt from the <u>professional secrecy</u> provided for in Art. 25 par. 1 ISD the exchange of information under the ISD but also as to other directives applicable to investment firms (e.g. Insider Directive). By contrast, Art. 58 par. 1 ISD2 New only refers to the exchange of information pursuant to the ISD New when making reference to the professional secrecy obligation in Art. 54 ISD2.</p> <p>The permissible use of confidential information will be extended to duties to monitor the proper functioning of <u>trading venues</u>. Pursuant to Art. 58 par. 1 last sentence ISD2 a competent authority may consent with its express agreement to the use of confidential information for <u>other purposes</u> than those set in par. 3 (a) to (f), which is not stated in the ISD.</p>

<p>(c) to impose sanctions; (d) in administrative appeals against decisions by the competent authorities; (e) in court proceedings initiated under Article 48; or (f) in the extra-judicial mechanism for investors' complaints provided for in Article 53.</p> <p>4. The Commission may adopt, in accordance with the procedure referred to in Article 59(2), implementing measures concerning procedures for the exchange of information.</p> <p>5. Articles 54, 58 and 63 shall not prevent a competent authority from transmitting to central banks, the European System of Central Banks and the European Central bank, in their capacity as monetary authorities, and where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks; likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive."</p>	<p>consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed in Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms, - to impose sanctions, - in administrative appeals against decisions by the competent authorities, or - in court proceedings initiated under Article 26."</p> <p><u>Art. 25 par. 6:</u> "6. This Article shall not prevent a competent authority from transmitting: - to central banks and other bodies with a similar function in their capacity as monetary authorities, - where appropriate, to other public authorities responsible for overseeing payment systems, information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article."</p>	
<p><u>Art. 62 par. 1, 2 and 3:</u> "1. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that an investment firm acting within its territory under the freedom to provide services is in breach of the obligations arising from the provisions adopted pursuant to this Directive or that an investment firm that has a branch within its territory is in breach of the obligations arising from the provisions adopted pursuant to this</p>	<p><u>Art. 19 pars. 3, 4, 5 and 8:</u> "3. Where the competent authorities of a host Member State ascertain that an investment firm that has a branch or provides services within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's</p>	<p>If a host authority finds out about breaches of the obligations arising from the Directive provisions, it refers those findings to the home authority. The host authority may, if measures of home authority prove inadequate, take <u>precautionary measures</u> after informing the home authority. As a major difference to Art. 19 par. 8 of</p>

<p><i>Directive which do not confer powers to the competent authority of the host Member State, it shall refer those findings to the competent authority of the home Member State.</i></p> <p><i>If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the competent authority of the host Member State, after informing the competent authority of the home Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. This shall include the possibility of preventing offending investment firms from initiating any further transactions within their territories. The Commission shall be informed of such measures without delay.</i></p> <p><i>2. Where the competent authorities of a host Member State ascertain that an investment firm that has a branch within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the investment firm concerned to put an end to its irregular situation.</i></p> <p><i>If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall take all appropriate measures to ensure that the investment firm concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the home Member State.</i></p> <p><i>If, despite the measures taken by the host Member State, the investment firm persists in breaching the legal or</i></p>	<p><i>competent authorities, those authorities shall require the investment firm concerned to put an end to its irregular situation.</i></p> <p><i>4. If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The latter shall, at the earliest opportunity, take all appropriate measures to ensure that the investment firm concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.</i></p> <p><i>5. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the State in question, the investment firm persists in violating the legal or regulatory provisions referred to in paragraph 2 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalize further irregularities and, in so far as necessary, to prevent that investment firm from initiating any further transactions within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on investment firms.</i></p> <p><i>8. Before following the procedure laid</i></p>	<p>the ISD, Art. 62, the competence of the Commission to decide that the host Member State has to amend or abolish those precautionary measures has not been included in Art. 62 ISD2, though the Commission still has to be informed of such precautionary measures.</p> <p>The same procedure is laid down for the situation that a regulated market or an MTF is in breach of the obligations arising from the ISD2.</p>
--	---	---

regulatory provisions referred to in the first subparagraph in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise further irregularities and, in so far as necessary, to prevent that investment firm from initiating any further transactions within its territory. The Commission shall be informed of such measures without delay.”

3. Where the competent authority of the host Member State of a regulated market or an MTF has clear and demonstrable grounds for believing that such regulated market or MTF is in breach of the obligations arising from the provisions adopted pursuant to this Directive, it shall refer those findings to the competent authority of the home Member State of the regulated market or the MTF.

If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the said regulated market or the MTF persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. This shall include the possibility of preventing the said regulated market or the MTF from making their arrangements available to remote members or participants established in the host Member State. The Commission shall be informed of such measures without delay.”

down in paragraphs 3, 4 or 5 the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures.”

<p align="center">PROSPECTUS DIRECTIVE (DIRECTIVE 2003/71/EC)</p>	<p align="center">DIRECTIVE 2001/34/EC (integrating Directive 79/279/EEC, Directive 80/390/EEC, Directive 82/121/EEC and Directive 88/627/EEC) DIRECTIVE 89/298/EEC</p>	<p align="center">CHANGES POSSIBLY NECESSARY AS TO COOPERATION BETWEEN COMPETENT AUTHORITIES</p>
<p>Art. 13 par. 5: <i>“The competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that authority. ...”</i></p>	<p align="center"><u>No corresponding provision</u></p>	<p><u>New</u> The home-country authority may ask the competent authority in another MS to take on responsibility for the <u>approval of a prospectus</u>.</p>
<p>Art. 17 par. 2: <i>“If there are significant new factors, material mistakes or inaccuracies, as referred to in Article 16, arising since the approval of the prospectus, the competent authority of the home Member State shall require the publication of a supplement to be approved as provided for in Article 13(1). The competent authority of the host Member State may draw the attention of the competent authority of the home Member State to the need for any new information.”</i></p>	<p>Art. 18 of Directive 89/298/EEC: <i>“Any significant new factor or significant inaccuracy in a prospectus capable of affecting assessment of the transferable securities which arises or is noted between the publication of the prospectus and the definitive closure of a public offer must be mentioned or rectified in a supplement to the prospectus, to be published or made available to the public in accordance with at least the same arrangements as were applied when the original prospectus was disseminated or in accordance with procedures laid down by the Member States or by the bodies designated by them.”</i></p> <p>Art. 100 of Directive 2001/34/EC: <i>“Every significant new factor capable of affecting assessment of the securities which arises between the time when the listing particulars are adopted and the time when stock exchange dealings begin shall be covered by a supplement to the listing particulars, scrutinised in the same way as the latter and published in accordance with procedures to be laid down by the</i></p>	<p><u>New as to co-operation between competent authorities:</u> The host-country authority will be given the right to inform the home-country authority about the need for new information or changing of information in the prospectus.</p>

<p><u>Art. 17 par. 1:</u> <i>“Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that the competent authority of each host Member State is notified in accordance with Article 18. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses.”</i></p> <p><u>Art. 18:</u> <i>“1. The competent authority of the home Member State shall, at the request of the issuer or the person responsible for drawing up the prospectus and within three working days following that request or, if the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus, provide the competent authority of the host Member States with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Directive and with a copy of the said prospectus. If applicable, this notification shall be accompanied by a translation of the summary produced under the responsibility of the issuer or person responsible for drawing up the prospectus. The same procedure shall be followed for any supplement to the prospectus.</i></p> <p><i>2. The application of the provisions of Article 8(2) and (3) shall be stated in the certificate, as well as its justification.”</i></p>	<p><i>competent authorities.”</i></p> <p><u>Art. 21 par. 1 and 3 of Directive 89/298/EEC:</u> <i>“1. If approved in accordance with Article 20, a prospectus must, subject to translation if required, be recognized as complying or be deemed to comply with the laws of the other Member States in which the same transferable securities are offered to the public simultaneously or within a short interval of one another, without being subject to any form of approval there and without those States being able to require that additional information be included in the prospectus.</i> ... <i>3. The person making the public offer shall communicate to the bodies designated by the other Member States in which the public offer is to be made the prospectus that it intends to use in that State. That prospectus must be the same as the prospectus approved by the authority referred to in Article 20.”</i></p> <p><u>Art. 13 par. 1 of Directive 2001/34/EC:</u> <i>“Where applications are to be made simultaneously or within short intervals of one another for admission of the same securities to official listing on stock exchanges situated or operating in more than one Member State, or where an application for admission is made in respect of a security already listed on a stock exchange in another Member State, the competent authorities shall communicate with each other and make such arrangements as may be necessary to</i></p>	<p>The competent authorities will be subject to strict <u>deadlines</u> as to the provision of a certificate of approval of a prospectus to the other competent authorities. The <u>provision of the prospectus</u> to the host-country authority will have to be requested by the issuer itself, but the provision will be effected by the home-country authority.</p> <p>As the prospectus will be valid in other MSs without any need of approval of the host-country authorities, the coordination between competent authorities required under the current directives as to mutual recognition ceases to be necessary.</p>
--	--	--

expedite the procedure and simplify as far as possible the formalities and any additional conditions required for admission of the security concerned.”

Art. 38 par. 3 of Directive 2001/34/EC:

“When approving listing particulars, the competent authorities within the meaning of Article 37 shall provide the competent authorities of the other Member States in which application for official listing is made with a certificate of approval. If partial exemption or partial derogation has been granted pursuant to this Directive, the certificate shall state that fact and the reasons for it. “

Art 39 par. 1 of Directive 2001/34/EC:

“1. Where application for admission to official listing in one or more Member States is made and the securities have been the subject of a public-offer prospectus drawn up and approved in any Member State in accordance with Articles 7, 8 or 12 of Directive 89/298/EEC in the three months preceding the application for admission, the public-offer prospectus shall be recognised, subject to any translation, as listing particulars in the Member State or States in which application for admission to official listing is made, without its being necessary to obtain the approval of the competent authorities of that Member State or those Member States and without their being able to require that additional information be included in the prospectus.”

Art 40 par. 2 of Directive 2001/34/EC:

	<p><i>“Where an application for admission to official listing is made for securities which have been listed in another Member State less than six months previously, the competent authorities to whom application is made shall contact the competent authorities which have already admitted the securities to official listing and shall, as far as possible, exempt the issuer of those securities from the preparation of new listing particulars, subject to any need for updating, translation or the issue of supplements in accordance with the individual requirements of the Member State concerned.”</i></p>	
<p><u>Art. 21 par. 2:</u> “... Member States shall inform the Commission and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.”</p>	<p><u>Art. 19 of Directive 89/298/EEC:</u> <i>“The Member States shall designate the bodies, which may be the same as those referred to in Article 14, which shall cooperate with each other for the purposes of the proper application of this Directive and shall use their best endeavours, within the framework of their responsibilities, to exchange all the information necessary to that end. Member States shall inform the Commission of the bodies thus designated. The Commission shall communicate that information to the other Member States. ...”</i></p> <p><u>Art 105 par. 1 of Directive 2001/34/EC:</u> <i>“Member States shall ensure that this Directive is applied and shall appoint one or more competent authorities for the purposes of the Directive. They shall notify the Commission thereof, giving details of any division of powers among them.”</i></p>	<p>In the new Prospectus Directive, there is no explicit requirement for a MS to inform the Commission or other MSs about the <u>competent authorities designated</u>. However, it must inform both the Commission and the competent authorities of other MSs if there is a <u>delegation of tasks</u> from the competent authority to other entities.</p>

<p><u>Art. 22 par. 2 and 3:</u> <i>“2. Competent authorities of Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties and making use of their powers. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate when an issuer has more than one home competent authority because of its various classes of securities, or where the approval of a prospectus has been transferred to the competent authority of another Member State pursuant to Article 13 (5). They shall also closely cooperate when requiring suspension or prohibition of trading for securities traded in various Member States in order to ensure a level playing field between trading venues and protection of investors. Where appropriate, the competent authority of the host Member State may request the assistance of the competent authority of the home Member State from the stage at which the case is scrutinised, in particular as regards a new type or rare forms of securities. The competent authority of the home Member State may ask for information from the competent authority of the host Member State on any items specific to the relevant market. Without prejudice to Article 21, the competent authorities of Member States may consult with operators of regulated markets as necessary and, in particular, when deciding to suspend, or to ask a regulated market to suspend or prohibit trading.</i></p> <p><i>3. Paragraph 1 [professional secrecy] shall not prevent the competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.”</i></p>	<p><u>Art. 22 par. 1 of Directive 89/298/EEC:</u> <i>“The competent authorities shall cooperate wherever necessary for the purpose of carrying out their duties and shall exchange any information required for that purpose.”</i></p> <p><u>Art. 23 par. 2 and 3 of Directive 89/298/EEC:</u> <i>“2. Paragraph 1 [professional secrecy] shall not prevent the various Member State authorities referred to in Article 20 from forwarding information as provided for in this Directive. The information thus exchanged shall be covered by the obligation of professional secrecy applying to the persons employed then or previously by the authority receiving such information.</i></p> <p><i>3. Without prejudice to cases covered by criminal law, the authorities referred to in Article 20 receiving information pursuant to Article 21 may use it only to carry out their functions or in the context of an administrative appeal or in court proceedings relating to the carrying out of those functions.”</i></p> <p><u>Art. 106 of Directive 2001/34/EC:</u> <i>“The competent authorities shall cooperate whenever necessary for the purpose of carrying out their duties and shall exchange any information useful for that purpose.”</i></p> <p><u>Art. 107 par. 2 and 3 of Directive 2001/34/EC:</u> <i>“2. Paragraph 1 [professional secrecy] shall not, however, preclude the competent</i></p>	<p>It is not only provided for <u>co-operation and exchange of information</u> as to the prospectus itself, but also with respect to suspension or prohibition of trading of securities. Moreover, competent authorities may consult with <u>operators of regulated markets</u>, possibly in other MSs as well, in the case of suspension or prohibition of trading.</p>
--	---	--

	<p><i>authorities of the various Member States from exchanging information as provided for in this Directive. Information thus exchanged shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.</i></p> <p><i>3. Without prejudice to cases covered by criminal law, the competent authorities which, pursuant to Article 106, receive information under Title III, Chapter I, Title V, Chapter I and Annex I, may use it only for the performance of their duties or in the context of administrative appeals or legal proceedings in relation to such performance.”</i></p>	
<p><u>Art. 23:</u> <i>“1. Where the competent authority of the host Member State finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer or that breaches have been committed of the obligations attaching to the issuer by reason of the fact that the securities are admitted to trading on a regulated market, it shall refer these findings to the competent authority of the home Member State.</i></p> <p><i>2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer persists in breaching the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures in order to protect investors. The Commission shall be informed of such measures at the earliest opportunity.”</i></p>	<p>No corresponding provision</p>	<p><u>New:</u> In principle, it is the home-country authority that has to act in case of breaches of the law by issuers or investment firms. However, the host-country authority may take <u>precautionary measures</u> in case of urgency or necessity (i.e. inadequate measures by the home-country authority).</p>

<p align="center">TRANSPARENCY DIRECTIVE (COM (2003) 138)</p>	<p align="center">DIRECTIVE 2001/34/EC (integrating Directive 79/279/EEC, Directive 80/390/EEC, Directive 82/121/EEC and Directive 88/627/EEC)</p>	<p align="center">CHANGES POSSIBLY NECESSARY AS TO COOPERATION BETWEEN COMPETENT AUTHORITIES</p>
<p>Art. 18 par. 1: <i>“The competent authorities of the Member States shall draw up appropriate guidelines with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive [...]/.../EC [Prospectus], and this Directive. The aim of those guidelines shall be the creation of: (a) an electronic network to be set up at national level between national securities regulators, operators of regulated markets, and national company registers covered by Council Directive 68/151/EEC; and (b) a single electronic network, or a platform of electronic networks, across Member States.”</i></p>	<p>No corresponding provision</p>	<p>Competent authorities in the MSs will have to work on the creation of <u>guidelines</u> for national electronic networks and a single electronic network across the EU, which will concern information to be made available pursuant to this Directive, the Prospectus Directive and the MAD (and also information pursuant to the 4th Company Law Directive as to an EU-wide electronic network). Such guidelines could be established on <u>Level 3</u> of the Lamfalussy Process.</p>
<p>Art. 20 par. 3: <i>“3. Member States shall inform the Commission and competent authorities of other Member States of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations.”</i></p>	<p>Art 105 par. 1: <i>“Member States shall ensure that this Directive is applied and shall appoint one or more competent authorities for the purposes of the Directive. They shall notify the Commission thereof, giving details of any division of powers among them.”</i></p>	<p>The MSs have to inform not only the Commission, but also the competent authorities of other MSs with respect to the <u>delegation of tasks</u> to other entities.</p>
<p>Art. 21 par. 2 and 3: <i>“2. Competent authorities of the Member States shall cooperate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers, whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States. 3. Paragraph 1 [professional secrecy] shall not prevent the competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy, to which the</i></p>	<p>Art. 106: <i>“The competent authorities shall cooperate whenever necessary for the purpose of carrying out their duties and shall exchange any information useful for that purpose.”</i></p> <p>Art. 107 par. 2 and 3: <i>“2. Paragraph 1 [professional secrecy] shall not, however, preclude the competent authorities of the various Member States from exchanging information as provided for in this Directive. Information thus</i></p>	<p>No material changes in substance [except for par. 4 new, if endorsed, which provides for cooperation agreements with <u>third-country authorities</u>].</p>

<p><i>persons employed or formerly employed by the competent authorities receiving the information are subject.”</i></p> <p><i>[4. Member States may conclude cooperation agreements providing for exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out tasks (or some of them) assigned by the present Directive to the competent authorities, in accordance with Article 20. Such an exchange of information is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be intended for the supervisory task of the authorities or bodies mentioned. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement. (Ex Common Position of Council of 19 Nov. 2003, COM 2003/0045 (COD))]</i></p>	<p><i>exchanged shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.</i></p> <p><i>3. Without prejudice to cases covered by criminal law, the competent authorities which, pursuant to Article 106, receive information under Title III, Chapter I, Title V, Chapter I and Annex I, may use it only for the performance of their duties or in the context of administrative appeals or legal proceedings in relation to such performance.”</i></p>	
<p><u>Art. 22:</u> <i>“1. Where the competent authority of a host Member State finds that the issuer or the security holder has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the home Member State.</i></p> <p><i>2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the security holder persists in infringing the relevant legal or regulatory provisions, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take, in accordance with Article 3(2), all the appropriate measures in order to protect investors. The Commission shall be informed of such measures at the earliest opportunity.”</i></p>	<p>No corresponding provision</p>	<p><u>New:</u> In principle, it is the home-country authority that has to act in case of breaches of the law by issuers or security holders. However, the host-country authority may take <u>precautionary measures</u> in case of urgency or necessity (i.e. inadequate measures by the home-country authority).</p>

UCITS DIRECTIVES Directive 2001/107/EC & 2001/108/EC (amending Directive 85/611/EEC)	UCITS DIRECTIVE (Directive 85/611/EEC)	CHANGES POSSIBLY NECESSARY AS TO COOPERATION BETWEEN COMPETENT AUTHORITIES
<p><u>Art. 6a par. 3, 4, 5 and 7:</u></p> <p><i>3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the management company accordingly. They shall also communicate details of any compensation scheme intended to protect investors. Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the management company concerned within two months of receiving all the information. That refusal or failure to reply shall be subject to the right to apply to the courts in the home Member State.</i></p> <p><i>4. Before the branch of a management company starts business, the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for the supervision of the management company and, if necessary, indicate the conditions, including the rules mentioned in Articles 44 and 45 in force in the host Member State and the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5(3) and of investment advisory services and custody, under which, in the interest of the general good, that business must be carried on in the host Member State.</i></p> <p><i>5. On receipt of a communication from the competent authorities of the host Member State or on the expiry of</i></p>	<p>No corresponding provisions</p>	<p><u>New</u> (as far as it concerns management companies)</p> <p>If a management company intends to establish a <u>branch</u>, the authority of the home Member State must supply the authorities of the host Member State with specific information.</p> <p>If the authority of the host Member State decides that the <u>marketing arrangements</u> of the management company do not comply with the Directive provisions, it must inform the authority of the home Member State as well.</p> <p>If the <u>administrative structure or financial situation</u> of the management company changes, the authority of the home Member State must inform the authority of the host Member State on these changes.</p>

<p><i>the period provided for in paragraph 4 without receipt of any communication from those authorities, the branch may be established and start business. From that moment the management company may also begin distributing the units of the unit trusts/common funds and of the investment companies subject to this Directive which it manages, unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of two months — to be communicated to the competent authorities of the home Member State – that the arrangements made for the marketing of the units do not comply with the provisions referred to in Article 44(1) and Article 45.</i></p> <p>...</p> <p><i>7. In the event of a change in the particulars communicated in accordance with the first subparagraph of paragraph 3, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.”</i></p>		
<p><u>Art. 6b par 2:</u> <i>“2. The competent authorities of the home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the host Member State. They shall also communicate details of any applicable compensation scheme intended to protect investors.”</i></p>	<p>No corresponding provision</p>	<p><u>New</u> (as far as it concerns management companies) If the management company intends to <u>provide services</u> in another Member State, without establishing a branch, the authority of the home Member State must supply the authorities of the host Member State with specific information.</p>
<p><u>Art. 6c par. 4, 5, 8 and 9:</u> <i>“4. If the management company concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The latter shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned puts an end to its irregular situation. The nature of those measures</i></p>	<p>No corresponding provision</p>	<p><u>New</u> (as far as it concerns management companies) If a management company does not <u>report on their activities</u> in a host Member State, the authority of the host Member State will inform the authority of the home Member State, where after the latter shall take appropriate</p>

shall be communicated to the competent authorities of the host Member State.

5. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the Member State in question, the management company persists in breaching the legal or regulatory provisions referred to in paragraph 2 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise further irregularities and, insofar as necessary, to prevent that management company from initiating any further transaction within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies.

...

8. Before following the procedure laid down in paragraphs 3, 4 or 5 the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity. After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures.

9. In the event of the withdrawal of authorisation, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the management company concerned from initiating any further transactions within its territory and to safeguard investors' interests. Every two years the Commission shall submit a report on such cases to the Contact Committee set up under Article 53.”

measures.

If the competent authority of the host Member State takes precautionary measures, it must inform the Commission and the other Member States as soon as possible. The Commission may, after consultation of the authorities of the Member States concerned, request the amendment/abolishment of the measures.

If the authorisation of a management company is withdrawn, the competent authority of the host Member State must be informed.

<p>Art. 50 par. 1, 3, 4, 5, 6, 7, 8, 9, 10, and 11:</p> <p><i>“1. The authorities of the Member States referred to in Article 49 shall collaborate closely in order to carry out their task and must for that purpose alone communicate to each other all information required....</i></p> <p><i>3. Paragraph 2 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive or other Directives applicable to Ucits or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph 2.</i></p> <p><i>4. Member States may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 6 and 7 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.</i></p> <p><i>5. Competent authorities receiving confidential information under paragraphs 2 or 3 may use it only in the course of their duties:</i></p> <ul style="list-style-type: none"> <i>— to check that the conditions governing the taking-up of the business of Ucits or of undertakings contributing towards their business activity are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal control mechanisms,</i> <i>— to impose sanctions,</i> <i>— in administrative appeals against decisions by the</i> 	<p>Identical provision</p>	<p>Exchange of information is subject to conditions of <u>professional secrecy</u>. Information of another Member State may not be disclosed without the express agreement of the authority concerned.</p> <p><u>Confidential information</u> may only be used in the course of the specific duties.</p> <p>Exchange of information between national competent authorities and between <u>other financial organisations and supervisors</u> in one or different Member States cannot be restricted.</p> <p>In addition, Member States may authorise the exchange of information between competent authorities and <u>organisations involved in liquidation/bankruptcy</u> of UCITS. Member States must communicate to the Commission and the other Member</p>
--	----------------------------	---

<p><i>competent authorities, or</i> <i>— in court proceedings initiated under Article 51 (2).</i></p> <p><i>6. Paragraphs 2 and 5 shall not preclude the exchange of information:</i> <i>(a) within a Member State, where there are two or more competent authorities; or</i> <i>(b) within a Member State or between Member States, between competent authorities; and</i> <i>— authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings and other financial organizations and the authorities responsible for the supervision of financial markets,</i> <i>— bodies involved in the liquidation or bankruptcy of Ucits and other similar procedures and of undertakings contributing towards their business activity,</i> <i>— persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings and other financial institutions, in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 2.</i></p> <p><i>7. Notwithstanding paragraphs 2 to 5, Member States may authorize exchanges of information between the competent authorities and:</i> <i>— the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of undertakings for collective investment in transferable securities (Ucits) or undertakings contributing towards their business activity and other similar procedures, or</i> <i>— the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions. Member States</i></p>		<p>States the names of these organisations.</p>
---	--	---

which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

— the information shall be for the purpose of performing the task of overseeing referred to in the first subparagraph, — information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement. Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

8. Notwithstanding paragraphs 2 to 5, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorize the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law. Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

— the information shall be for the purpose of performing the task referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement. Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their

task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph. In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent. Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph. Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

9. This Article shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 5. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

10. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 2 to 5 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the

<p><i>conditions of professional secrecy imposed in paragraph 2. Member States shall, however, ensure that information received under paragraph 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.</i></p> <p><i>11. In addition, notwithstanding the provisions referred to in paragraphs 2 and 5, Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of Ucits and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments. Such disclosures may, however, be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under paragraphs 3 and 6 may never be disclosed in the circumstances referred to in this paragraph except with the express agreement of the competent authorities which disclosed the information.”</i></p>		
<p>Art. 52 par. 3: <i>“3. Any decision to withdraw authorization, or any other serious measure taken against a UCITS, or any suspension of re-purchase or redemption imposed upon it, must be communicated without delay by the authorities of the Member State in which the UCITS in question is situated to the authorities of the other Member States in which its units are marketed.”</i></p>	<p>Identical provision</p>	<p>If the authorisation of a management company is withdrawn, the authority of the host Member State must be informed.</p>
<p><u>Art.52a par. 1 and 2</u> <i>“1. Where, through the provision of services or by the establishment of branches, a management company operates in one or more host Member States, the competent authorities of all the Member States concerned shall collaborate closely. They shall supply one another on</i></p>	<p>No corresponding provision</p>	<p><u>New</u> If a <u>management company</u> is active in another Member State, the authorities concerned must cooperate actively by supplying each other information whenever this facilitates the supervision.</p>

<p><i>request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies. In particular, the authorities of the home Member State shall cooperate to ensure that the authorities of the host Member State collect the particulars referred to in Article 6c(2).</i></p> <p><i>2. Insofar as it is necessary for the purpose of exercising their powers of supervision, the competent authorities of the home Member State shall be informed by the competent authorities of the host Member State of any measures taken by the host Member State pursuant to Article 6c(6) which involve penalties imposed on a management company or restrictions on a management company's activities."</i></p>		
<p><u>Art.52b par. 1 and 2</u> <i>"1. Each host Member State shall ensure that, where a management company authorised in another Member State carries on business within its territory through a branch, the competent authorities of the management company's home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for the purpose, carry out on-the-spot verification of the information referred to in Article 52a.</i></p> <p><i>2. The competent authorities of the management company's home Member State may also ask the competent authorities of the management company's host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so."</i></p>	<p>No corresponding provision</p>	<p><u>New</u> Authorities of the home Member State can carry out <u>on-the-spot verifications</u> of the <u>branch</u> in another Member State after informing the authority of the host Member State.</p> <p>The authority of the home Member State may also ask the authority of the host Member State to carry out the verification.</p>

<p align="center">E-COMMERCE DIRECTIVE (Directive 2000/31/EC)</p>		<p align="center">CHANGES POSSIBLY NECESSARY AS TO COOPERATION BETWEEN COMPETENT AUTHORITIES</p>
<p><u>Art.19:</u> <i>“1. Member States shall have adequate means of supervision and investigation necessary to implement this Directive effectively and shall ensure that service providers supply them with the requisite information.</i></p> <p><i>2. Member States shall cooperate with other Member States; they shall, to that end, appoint one or several contact points, whose details they shall communicate to the other Member States and to the Commission.</i></p> <p><i>3. Member States shall, as quickly as possible, and in conformity with national law, provide the assistance and information requested by other Member States or by the Commission, including by appropriate electronic means.</i></p> <p><i>4. Member States shall establish contact points which shall be accessible at least by electronic means and from which recipients and service providers may:</i> <i>(a) obtain general information on contractual rights and obligations as well as on the complaint and redress mechanisms available in the event of disputes, including practical aspects involved in the use of such mechanisms;</i> <i>(b) obtain the details of authorities, associations or organisations from which they may obtain further information or practical assistance.</i></p> <p><i>5. Member States shall encourage the communication to the Commission of any significant administrative or judicial decisions taken in their territory regarding disputes relating to information society services and practices, usages and customs relating to electronic commerce. The Commission shall communicate these decisions to the other Member States.”</i></p>		<p><u>New</u> Member States <u>cooperate</u> with each other and appoint several <u>contact points</u>.</p>

<p style="text-align: center;">TAKEOVER BIDS DIRECTIVE (Common Position of Council of 28 November 2003; 2002/0240 COD)</p>		<p style="text-align: center;">CHANGES POSSIBLY NECESSARY AS TO CO-OPERATION BETWEEN COMPETENT AUTHORITIES</p>
<p><u>Recitals 5, 15 and 28 and Article 4 par. 2 and 4:</u> <i>“(5) Each Member State should designate an authority or authorities to supervise those aspects of bids that are governed by this Directive and to ensure that parties to takeover bids comply with the rules made pursuant to this Directive. All those authorities should cooperate with one another.</i> <i>(15) To be able to perform their functions satisfactorily, supervisory authorities should at all times be able to require the parties to a bid to provide information concerning themselves and should cooperate and supply information in an efficient and effective manner without delay to other authorities supervising capital markets.</i> <i>(28) (...) For the other provisions, it is important to entrust a contact committee with the task of assisting Member States and the supervisory authorities in the implementation of this Directive and of advising the Commission, if necessary, on additions or amendments to this Directive. In so doing the contact committee may make use of the information which Member States are to provide on the basis of this Directive concerning takeover bids that have taken place on their regulated markets.</i></p> <p><i>“2.(c) (...)</i> <i>If the securities of the offeree company have already been admitted to trading on regulated markets in more than one Member State at the date laid down in Article 21(1) and were admitted simultaneously, the supervisory authorities of those Member States shall agree which one of them shall be the authority competent to supervise the bid within four weeks of the date laid down in Article 21(1). (...)</i></p>		<p><u>New</u></p> <p>In case of <u>multi-listed companies</u>, supervisory authorities have to decide together which one is the competent one for supervising the bid.</p> <p>The supervisory authorities have to co-operate with each other. Exchange of information is subject to the obligation of <u>professional secrecy</u>.</p>

<p>4. The supervisory authorities of the Member States for the purposes of this Directive and other authorities supervising capital markets, in particular in accordance with Directive 93/22/EEC, Directive 2001/34/EC, Directive 2003/6/EC and Directive 2003/71/EC of the European parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading shall co-operate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive (...). Information thus exchanged shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the supervisory authorities receiving the information are subject. Co-operation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities in connection with bids, as well as such other assistance as may reasonably be requested by the supervisory authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.”</p>		
<p><u>Art.19 par. 1 and 2:</u> “1. A Contact Committee shall be appointed which has as its functions: (a) to facilitate, without prejudice to Articles 226 and 227 of the Treaty, the harmonised application of this Directive through regular meetings dealing with practical problems arising in connection with its application; (b) to advise the Commission, if necessary, on additions or amendments to this Directive. 2. It shall not be the function of the Contact Committee to appraise the merits of decisions taken by the supervisory authorities in individual cases.”</p>		<p><u>New</u></p> <p>A <u>Contact Committee</u> will be set up to facilitate the harmonised application of the Directive. It would be practical when supervisory authorities are represented in this Committee.</p>
<p>FINANCIAL CONGLOMERATES DIRECTIVE (2002/87/EC Directive of 16 December 2002)</p>		<p>CHANGES POSSIBLY NECESSARY AS TO CO-OPERATION BETWEEN COMPETENT AUTHORITIES</p>

Art. 3, pars. 3, 4, 5 and 6:

“3. Cross-sectoral activities shall also be presumed to be significant within the meaning of Article 2(14)(e) if the balance sheet total of the smallest financial sector in the group exceeds EUR 6 billion. If the group does not reach the threshold referred to in paragraph 2, the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate, or not to apply the provisions of Articles 7, 8 or 9, if they are of the opinion that the inclusion of the group in the scope of this Directive or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision, taking into account, for instance, the fact that:

(a) the relative size of its smallest financial sector does not exceed 5 %, measured either in terms of the average referred to in paragraph 2 or in terms of the balance sheet total or the solvency requirements of such financial sector; or

(b) the market share does not exceed 5 % in any Member State, measured in terms of the balance sheet total in the banking or investment services sectors and in terms of gross premiums written in the insurance sector.

Decisions taken in accordance with this paragraph shall be

notified to the other competent authorities concerned.

4. For the application of paragraphs 1, 2 and 3, the relevant competent authorities may by common agreement:

(a) exclude an entity when calculating the ratios, in the cases referred to in Article 6(5);

(b) take into account compliance with the thresholds envisaged in paragraphs 1 and 2 for three consecutive years so as to avoid sudden regime shifts, and disregard such compliance if there are significant changes in the group's structure.(...)

5. For the application of paragraphs 1 and 2, the relevant competent authorities may, in exceptional cases and by common agreement, replace the criterion based on

New

The relevant competent authorities may divert from the provisions by common agreement of which they have to notify the other competent authorities concerned.

The relevant competent authorities can only by common agreement apply the provisions in Art. 3, par. 4 or, in exceptional cases replace the criteria in pars. 1 and 2 with other parameters of Art. 3 by common agreement.

The coordinator needs the consent of the relevant competent authorities to decide not to apply certain ratios.

<p><i>balance sheet total with one or both of the following parameters or add one or both of these parameters, if they are of the opinion that these parameters are of particular relevance for the purposes of supplementary supervision under this Directive: income structure, off-balance-sheet activities.</i></p> <p>6. (...)</p> <p><i>During the period referred to in this paragraph, the coordinator may, with the agreement of the other relevant competent authorities, decide that the lower ratios or the lower amount referred to in this paragraph shall cease to apply.”</i></p>		
<p><u>Art. 4, pars. 1 and 2:</u></p> <p><i>“1. Competent authorities which have authorised regulated entities shall, on the basis of Articles 2, 3 and 5, identify any group that falls under the scope of this Directive. For this purpose:</i></p> <ul style="list-style-type: none"> <i>-competent authorities which have authorised regulated entities in the group shall, where necessary, cooperate closely,</i> <i>-if a competent authority is of the opinion that a regulated entity authorised by that competent authority is a member of a group which may be a financial conglomerate, which has not already been identified according to this Directive, the competent authority shall communicate its view to the other competent authorities concerned.</i> <p><i>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 the mixed financial holding company has its head office, as well as</i></p>		<p><u>New</u></p> <p>When a competent authority identifies a member of a financial conglomerate, which may involve co-operation between the competent authorities, it must <u>inform</u> the other competent authorities of its view.</p> <p>The coordinator <u>informs</u> the competent authorities which have authorised regulated entities of the financial conglomerate.</p>

<p><i>the Commission.”</i></p> <p><u>Art.5, par.4:</u> <i>“4. Where persons hold participations or capital ties in one or more regulated entities or exercise significant influence over such entities without holding a participation or capital ties, other than the cases referred to in paragraphs 2 and 3, the relevant competent authorities shall, by common agreement and in conformity with national law, determine whether and to what extent supplementary supervision of the regulated entities is to be carried out, as if they constitute a financial conglomerate.</i></p> <p><i>In order to apply such supplementary supervision, at least one of the entities must be a regulated entity as referred to in Article 1 and the conditions set out in Article 2(14)(d) and (e) must be met. The relevant competent authorities shall take their decision, taking into account the objectives of the supplementary supervision as provided for by this Directive. (...)”</i></p>		<p><u>New</u></p> <p>The relevant competent authorities must by <u>common agreement</u> decide whether supplementary supervision of the regulated entities is to be applied.</p>
<p><u>Art. 6, pars. 2 and 5:</u> <i>“2. (...) The results of the calculation and the relevant data for the calculation shall be submitted to the coordinator by the regulated entity within the meaning of Article 1 which is at the head of the financial conglomerate, or, where the financial conglomerate is not headed by a regulated entity within the meaning of Article 1, by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.</i></p> <p><i>5. The coordinator may decide not to include a particular entity in the scope when calculating the supplementary</i></p>		<p><u>New</u></p> <p>The coordinator can identify, after <u>consultation</u> of the relevant competent authorities, the entity which has to submit specific data to the coordinator.</p> <p>Before the coordinator decides that the inclusion of a particular entity is inappropriate, he must <u>consult</u> the relevant competent authorities.</p>

<p><i>capital adequacy requirements in the following cases:</i> <i>(...)</i> <i>(c) if the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision.</i> <i>(...)</i> <i>In the case mentioned in (c) of the first subparagraph the coordinator shall, except in cases of urgency, consult the other relevant competent authorities before taking a decision.</i> <i>(...)"</i></p>		
<p><u>Art.7, par.2:</u> <i>"2. The Member States shall require regulated entities or mixed financial holding companies to report on a regular basis and at least annually to the coordinator any significant risk concentration at the level of the financial conglomerate, in accordance with the rules laid down in this Article and in Annex II. The necessary information shall be submitted to the coordinator by the regulated entity within the meaning of Article 1 which is at the head of the financial conglomerate or, where the financial conglomerate is not headed by a regulated entity within the meaning of Article 1, by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate."</i></p>		<p><u>New</u> See comment on Art. 6, par. 2.</p>
<p><u>Art. 8, par. 2:</u> <i>"2.</i> <i>(...)</i> <i>The necessary information shall be submitted to the coordinator by the regulated entity within the meaning of Article 1 which is at the head of the financial conglomerate or,</i> <i>where the financial conglomerate is not headed by a regulated entity within the meaning of Article 1, by the mixed financial holding company or by the regulated</i></p>		<p><u>New</u> See comment on Art. 6, par. 2.</p>

<p><i>entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate. (..)”</i></p>		
<p><u>Art.10, pars. 1 and 3:</u> <i>“1. In order to ensure proper supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator, responsible for coordination and exercise of supplementary supervision, shall be appointed from among the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office.</i></p> <p><i>3. In particular cases, the relevant competent authorities may by common agreement waive the criteria referred to in paragraph 2 if their application would be inappropriate, taking into account the structure of the conglomerate and the relative importance of its activities in different countries, and appoint a different competent authority as coordinator. In these cases, before taking their decision, the competent authorities shall give the conglomerate an opportunity to state its opinion on that decision.”</i></p>		<p><u>New</u></p> <p>The competent authorities have to <u>appoint together</u>, on the basis of the criteria set out in paragraph 2, the coordinator responsible for coordination and exercise of supervision.</p> <p>The relevant competent authorities may by <u>common agreement</u> waive the criteria for appointment of the coordinator.</p>
<p><u>Art.11, pars. 1 and 2:</u> <i>“1. The tasks to be carried out by the coordinator with regard to supplementary supervision shall include:</i> <i>(a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules;</i> <i>(...)</i> <i>(e) planning and coordination of supervisory activities in going concern as well as in emergency situations, in</i></p>		<p><u>New</u></p> <p>The coordinator must <u>disseminate information</u> which is relevant for a competent authority's supervisory task and coordinate supervisory activities in <u>cooperation</u> with the relevant competent authorities.</p> <p>The coordinator and relevant competent</p>

<p><i>cooperation with the relevant competent authorities involved;</i> <i>(f) other tasks, measures and decisions assigned to the coordinator by this Directive or deriving from the application of this Directive.</i></p> <p><i>In order to facilitate and establish supplementary supervision on a broad legal basis, the coordinator and the other relevant competent authorities, and where necessary other competent authorities concerned, shall have coordination arrangements in place. The coordination arrangements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process among the relevant competent authorities as referred to in Articles 3, 4, 5(4), 6, 12(2), 16 and 18, and for cooperation with other competent authorities.</i></p> <p><i>2. The coordinator should, when it needs information which has already been given to another competent authority in accordance with the sectoral rules, contact this authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.”</i></p>		<p>authorities must set up coordination agreements which may entrust additional tasks to the coordinator.</p>
<p><u>Art.12, pars. 1, 2, 3 and 4:</u> <i>“1. The competent authorities responsible for the supervision of regulated entities in a financial conglomerate and the competent authority appointed as the coordinator for that financial conglomerate shall cooperate closely with each other.</i> <i>Without prejudice to their respective responsibilities as defined under sectoral rules, these authorities, whether or not established in the same Member State, shall provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under the sectoral rules and this Directive. In this regard, the competent authorities and the coordinator shall communicate on request all relevant information and shall communicate on their own</i></p>		<p><u>New</u></p> <p>Competent authorities must <u>cooperate</u> closely with each other, including the exchange of information, in order to enable the exercise of the authorities' supervisory tasks under the sectoral rules and this Directive and provide each other with information.</p> <p>Furthermore, competent authorities must <u>consult</u> each other with regard to certain decisions which are of importance for other competent authorities' supervisory tasks.</p>

<p><i>initiative all essential information.</i></p> <p><i>This cooperation shall at least provide for the gathering and the exchange of information with regard to the following items:</i></p> <ul style="list-style-type: none"> <i>(a) identification of the group structure of all major entities belonging to the financial conglomerate, as well as of the competent authorities of the regulated entities in the group;</i> <i>(b) the financial conglomerate's strategic policies;</i> <i>(c) the financial situation of the financial conglomerate, in particular on capital adequacy, intra-group transactions, risk concentration and profitability;</i> <i>(d) the financial conglomerate's major shareholders and management;</i> <i>(e) the organisation, risk management and internal control systems at financial conglomerate level;</i> <i>(f) procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;</i> <i>(g) adverse developments in regulated entities or in other entities of the financial conglomerate which could seriously affect the regulated entities;</i> <i>(h) major sanctions and exceptional measures taken by competent authorities in accordance with sectoral rules or this Directive.</i> <p><i>The competent authorities may also exchange with the following authorities such information as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: central banks, the European System of Central Banks and the European Central Bank.</i></p> <p><i>2. Without prejudice to their respective responsibilities as defined under sectoral rules, the competent authorities concerned shall, prior to their decision, consult each other with regard to the following items, where these decisions are of importance for other competent authorities' supervisory tasks:</i></p>		<p>The competent authorities and the coordinator must supply on request all relevant information and must communicate on their own initiative all essential information.</p>
--	--	--

(a) changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate, which require the approval or authorisation of competent authorities;

(b) major sanctions or exceptional measures taken by competent authorities.

A competent authority may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions. In this case, the competent authority shall, without delay, inform the other competent authorities.

3. The coordinator may invite the competent authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the supplementary supervision pursuant to Article 10, to ask the parent undertaking for any information which would be relevant for the exercise of its coordination tasks as laid down in Article 11, and to transmit that information to the coordinator.

Where the information referred to in Article 14(2) has already been given to a competent authority in accordance with sectoral rules, the competent authorities responsible for exercising supplementary supervision may apply to the first-mentioned authority to obtain the information.

4. Member States shall authorise the exchange of the information between their competent authorities and between their competent authorities and other authorities, as referred to in paragraphs 1, 2 and 3. The collection or possession of information with regard to an entity within a financial conglomerate which is not a regulated entity shall not in any way imply that the competent authorities are required to play a supervisory role in relation to these entities on a stand-alone basis.

Information received in the framework of supplementary supervision, and in particular any exchange of information between competent authorities and between competent authorities and other authorities which is provided for in this Directive, shall be subject to the provisions on professional secrecy and communication of

<p><i>confidential information laid down in the sectoral rules.”</i></p>		
<p>Art.15: <i>“Where, in applying this Directive, competent authorities wish in specific cases to verify the information concerning an entity, whether or not regulated, which is part of a financial conglomerate and is situated in another Member State, they shall ask the competent authorities of that other Member State to have the verification carried out. The authorities which receive such a request shall, within the framework of their competences, act upon it either by carrying out the verification themselves, by allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself. The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself.”</i></p>		<p><u>New</u></p> <p>If competent authorities wish to carry out a verification of information concerning an entity in another Member State, they must ask the competent authority of that Member State to have the verification carried out.</p>
<p>Art.16: <i>“If the regulated entities in a financial conglomerate do not comply with the requirements referred to in Articles 6 to 9 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 regulated entities’ financial position, the necessary measures shall be required in order to rectify the situation as soon as possible:</i> <i>- by the coordinator with respect to the mixed financial holding company,</i> <i>- by the competent authorities with respect to the regulated entities; to that end, the coordinator shall inform those competent authorities of its findings.</i> <i>Without prejudice to Article 17(2), Member States may determine what measures may be taken by their competent authorities with respect to mixed financial holding companies.</i> <i>The competent authorities involved, including the</i></p>		<p><u>New</u></p> <p>Supervisory action must be appropriately <u>coordinated</u> by the coordinator and the competent authorities involved.</p>

<p><i>coordinator, shall where appropriate coordinate their supervisory actions.”</i></p>		
<p><u>Art.18, pars. 1 and 3:</u> <i>“1. Without prejudice to the sectoral rules, in the case referred to in Article 5(3), competent authorities shall verify whether the regulated entities, the parent undertaking of which has its head office outside the Community, are subject to supervision by a third-country competent authority, which is equivalent to that provided for by the provisions of this Directive on the supplementary supervision of regulated entities referred to in Article 5(2). The verification shall be carried out by the competent authority which would be the coordinator if the criteria set out in Article 10(2) were to apply, on the request of the parent undertaking or of any of the regulated entities authorised in the Community or on its own initiative. That competent authority shall consult the other relevant competent authorities, and shall take into account any applicable guidance prepared by the Financial Conglomerates Committee in accordance with Article 21(5). For this purpose the competent authority shall consult the Committee before taking a decision. 3. Member States shall allow their competent authorities to apply other methods which ensure appropriate supplementary supervision of the regulated entities in a financial conglomerate. These methods must be agreed by the coordinator, after consultation with the other relevant competent authorities. The competent authorities may in particular require the establishment of a mixed financial holding company which has its head office in the Community, and apply this Directive to the regulated entities in the financial conglomerate headed by that holding company. The methods must achieve the objectives of the supplementary supervision as defined in this Directive and must be notified to the other competent authorities involved and the Commission.”</i></p>		<p><u>New</u></p> <p>In case the parent undertaking has its head office outside the Community, <u>consultation procedures</u> between the competent authorities and the coordinator apply.</p>

<p><u>Annex I:</u> “(…) <i>Without prejudice to the provisions of the next paragraph, Member States shall allow their competent authorities, where they assume the role of coordinator with regard to a particular financial conglomerate, to decide, after consultation with the other relevant competent authorities and the conglomerate itself, which method shall be applied by that financial conglomerate.</i> (…)</p> <p><i>I. Technical principles</i> (…) <i>Where there are no capital ties between entities in a financial conglomerate, the coordinator, after consultation with the other relevant competent authorities, shall determine which proportional share will have to be taken into account, bearing in mind the liability to which the existing relationship gives rise.”</i></p>		<p><u>New</u></p> <p>The coordinator may only decide after <u>consultation</u> with the other relevant competent authorities which method with respect to capital adequacy has to be applied by the financial conglomerate.</p> <p>The coordinator needs to consult with the relevant competent authorities on the level of proportional share to take into account.</p>
<p><u>Annex II:</u> “<i>The coordinator, after consultation with the other relevant competent authorities, shall identify the type of transactions and risks regulated entities in a particular financial conglomerate shall report in accordance with the provisions of Article 7(2) and Article 8(2) on the reporting of intra-group transactions and risk concentration. When defining or giving their opinion about the type of transactions and risks, the coordinator and the relevant competent authorities shall take into account the specific group and risk management structure of the financial conglomerate. In order to identify significant intra-group transactions and significant risk concentration to be reported in accordance with the provisions of Articles 7 and 8, the coordinator, after consultation with the other relevant competent authorities and the conglomerate itself, shall define appropriate thresholds based on regulatory own funds and/or technical provisions.</i> (…)”</p>		<p><u>New</u></p> <p>The coordinator may only decide after <u>consultation</u> with the other relevant competent authorities on the technical application of the provisions on intra-group transactions and risk concentration.</p>



--	--	--