

COUNCIL DIRECTIVE
of 13 June 1983
on the supervision of credit institutions on a consolidated basis

(83/350/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas First Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions ⁽⁴⁾ states that, in order to make it easier to take up and pursue such business, it is necessary to eliminate the most obstructive differences between the laws of the Member States as regards the rules to which these institutions are subject;

Whereas the eventual aim is to provide for overall supervision of a credit institution operating in several Member States by the competent authorities in the Member State where it has its head office, in consultation, where appropriate, with the competent authorities of the other Member States concerned, so that distortion of competition between such credit institutions and the domestic credit institutions of their host countries is avoided; whereas, to that end, controls and supervisory practices applicable to credit institutions operating within the Community must be broadly similar from one Member State to another;

Whereas this objective can only be attained by stages; whereas establishment of the principle of supervision on a consolidated basis is one such stage;

Whereas, however, this Directive will not preclude supervision of individual credit institutions by the competent authorities of the host Member State;

Whereas supervision on a consolidated basis should enable the authorities supervising a parent credit institution to make a more soundly based judgment about the financial situation of that credit institution;

Whereas this Directive is concerned solely with cases where one credit or financial institution is owned wholly or in part by another credit institution;

Whereas the principle of supervision on a consolidated basis is broadly accepted; whereas Member States will therefore seek to conclude bilateral agreements with non-member countries designed to ensure that credit institutions in such countries with participations in the Community are subject to equivalent supervision and that credit institutions from the Community with holdings in non-member countries are able to apply the principles laid down in this Directive;

Whereas, pending coordination of consolidated accounts and prudential returns, it is not possible to implement consolidated supervision on a consistent basis in all Member States; whereas this Directive represents a first stage designed to establish the principle of supervision on a consolidated basis and to eliminate the obstacles which have hitherto prevented Member States from applying the principle on a unilateral basis for transactions throughout the Community;

Whereas, pending further coordination, the process of consolidation will be undertaken by Member States according to their national procedures;

Whereas this Directive is without prejudice to the possibility of a Member State introducing a more stringent system of supervision for credit institutions, in particular one making consolidation compulsory in other cases;

Whereas, although financial institutions as defined hereinafter are not covered by either Directive 77/780/EEC or this Directive, their inclusion in the consolidation procedure is necessary in order to ensure complete consolidation of all the credit activities within a group,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purposes of this Directive:

— 'credit institution' means, in accordance with the first indent of Article 1 of Directive 77/780/EEC, an

⁽¹⁾ OJ No C 40, 11. 2. 1983, p. 6.

⁽²⁾ OJ No C 13, 17. 1. 1983, p. 237.

⁽³⁾ OJ No C 178, 15. 7. 1982, p. 15.

⁽⁴⁾ OJ No L 322, 17. 12. 1977, p. 30.

undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account,

- 'financial institution' means an undertaking, not being a credit institution, whose principal activity is to grant credit facilities (including guarantees), to acquire participations or to make investments,
- 'participation' means the ownership by a credit institution, directly or indirectly, of 25 % or more of the capital of another credit or financial institution,
- 'supervision', pending subsequent coordination, means the techniques, in whatever form and however implemented, employed by the competent authorities in each Member State in order to monitor prudential aspects of a credit institution's business,
- 'competent authorities' means the national authorities which are empowered by law or regulation to supervise credit institutions.

Article 2

Scope

1. Subject to Article 3 (2), this Directive shall apply to all credit institutions.
2. The institutions exempted from the provisions of Directive 77/780/EEC and listed in Article 2 thereof shall be exempted from this Directive.
3. Member States may defer the application of this Directive to certain institutions for a maximum period of five years from the date of its notification. Such deferment shall be governed by Article 2 (5) and by the second subparagraph of Article 2 (6) of Directive 77/780/EEC.

Article 3

General principles

1. Any credit institution which has a participation in another credit or financial institution shall be subject, to the extent and in the manner required by Article 4, to supervision on the basis of the consolidation of its financial situation with that of the institution in which it has such participation.
2. However, Member States or the competent authorities may forgo supervision on a consolidated basis:

- if at least 75 % of the activities of the credit institution which has the participation are already consolidated with those of another credit institution which is itself subject to supervision on a consolidated basis by the competent authorities of one of the Member States and the credit institution in which it has the participation is included in this supervision on a consolidated basis, or
- if the credit institution or financial institution in which there is a participation is situated in a non-member country where there are legal impediments to the transfer of the necessary information, or
- if the total balance sheet of the credit or financial institution in which there is a participation represents less than the lesser of the following two amounts: 2 % of the total balance sheet of the credit institution which has the participation or 10 million ECU, or
- if the nature of the business of the credit institution or financial institution in which there is a participation is such that, in the opinion of the Member State concerned or the competent authorities for the credit institution which has the participation, consolidation of its financial situation would be inappropriate or misleading.

3. Supervision on a consolidated basis shall be exercised by the competent authorities of the country in which the credit institution which has the participation has its head office and, pending subsequent coordination, and except as otherwise provided in this Directive, supervision shall be carried out according to the national procedure applicable in that country.

4. Such supervision shall take place at least once a year and shall be without prejudice to supervision on an unconsolidated basis or to supervision carried out by the competent authorities of other Member States.

Article 4

Form and extent of consolidation

1. Where a credit institution has a participation of more than 50 % in another credit institution or financial institution, the relevant Member State or the competent authorities for that credit institution shall, for the purposes of supervision, require either full or *pro rata* consolidation of the financial situation of the institutions concerned.
2. Where a credit institution has a participation of 50 % or less in another credit or financial institution and, in the opinion of the competent authorities for that credit institution, a situation of effective control exists, it shall be for the relevant Member State or competent authorities to determine the method of consolidation. Pending further coordination, however, the competent authorities

in the Member State in which the credit institution has its head office and the competent authorities for the credit or financial institution in which it has the participation may agree that consolidation of such a participation is not required in specified cases.

3. Where a credit institution has a participation of 50 % or less in another credit institution or in a financial institution, and a situation of effective control does not exist, it shall be for the relevant Member State or competent authorities for that credit institution to determine whether and how consolidation is to be effected. Before effecting such consolidation, these authorities must inform the competent authorities for the credit or financial institution in which there is a participation.

Article 5

Facilitating measures

1. Member States shall ensure that there are no legal impediments preventing any credit or financial institution from supplying to a credit institution which has a participation in it information which is necessary for supervision on a consolidated basis to be effected in accordance with this Directive.

2. Member States shall permit the exchange between their competent authorities of the information necessary for supervision on a consolidated basis to be effected in accordance with this Directive, it being understood that, in the case of financial institutions, the collection or possession of information shall not in any way imply that a supervisory function is being exercised over those financial institutions by the competent authorities.

3. Any exchange of information between competent authorities which is provided for in this Directive shall be subject to the obligation of professional secrecy as set out in Article 12 of Directive 77/780/EEC; any such information shall be used exclusively for the purposes of the supervision on a consolidated basis laid down in this Directive.

4. If, in applying this Directive to a credit institution, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit or financial institution in another Member State, they must ask the competent authorities of that other Member State for this verification to be carried out. The authorities which have received the request must, within the framework of their competence, act upon it either by carrying out the verification themselves, or by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out.

Article 6

Non-member countries

1. Application of the principle of supervision on a consolidated basis to credit institutions whose parent companies have their head offices in non-member countries and to credit institutions situated in non-member countries and whose parent credit institutions have a head office in the Community should be the subject of bilateral agreements, on the basis of reciprocity, between the competent authorities of the Member States and the non-member countries concerned. Such agreements shall seek to ensure that Member States' competent authorities are able to obtain the necessary information to enable a credit institution within the Community, with participations in credit institutions or financial institutions outside the Community, to be supervised on a consolidated basis and that the competent authorities in non-member countries are able to obtain the information necessary to enable parent companies having head offices within their territory which have participations in credit institutions situated in one or more Member States to be supervised.

2. The Commission and the Advisory Committee set up under Article 11 of Directive 77/780/EEC shall be kept informed of such steps as may be taken in this context, and the Commission shall undertake coordination of the above agreements.

Final provisions

Article 7

1. Member States shall take the measures necessary to comply with this Directive not later than 1 July 1985. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 8

This Directive is addressed to the Member States.

Done at Luxembourg, 13 June 1983.

For the Council

The President

H. TIETMEYER