

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 8 December 1989

RE-EXAMINED PROPOSAL FOR A SECOND COUNCIL DIRECTIVE
ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE
PROVISIONS RELATING TO THE TAKING-UP AND PURSUIT
OF THE BUSINESS OF CREDIT INSTITUTIONS
AND AMENDING DIRECTIVE 77/780/EEC

(presented by the Commission pursuant to
Article 149(2)(d) of the EEC Treaty)

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Explanatory Memorandum

1. The original proposal for a Second Banking Coordination Directive was submitted by the Commission to the Council on 23 February 1988¹⁾.
2. The Economic and Social Committee delivered its opinion²⁾ on 29 September 1988 and the European Parliament delivered its opinion³⁾ on 15 March 1989.
3. Pursuant to Article 149(3) of the Treaty, the Commission submitted an amended proposal⁴⁾ which largely took account of the proposed amendments.
4. On 24 July 1989 the Council unanimously agreed on a common position⁵⁾ on which the Council has delivered its reasons⁶⁾ and the Commission its observations⁷⁾.
5. The European Parliament had its second reading on 20 November 1989 under the cooperation procedure and voted in favour of one amendment⁸⁾.

1) OJ N° C 84 of 31.3.1988, p. 1

2) OJ N° C 318 of 12.12.1988, p. 42

3) OJ N° C 96 of 17.4.1989, p. 49

4) OJ N° C 167 of 3.7.1989, p. 33

5) The Council Doc. 7835/89 of 24.7.1989

6) The Council Doc. 7835/89, Add. 1 of 20.7.1989

7) Sec(89) 1205 final - SYN 120 of 24.7.1989

8) EP 135.129

6. The amendment proposed by Parliament intends to introduce new rules relating to the supervision of capital adequacy requirements imposed on third country bank branches in the Community. The Commission is of the opinion that this amendment is unnecessary as third country branches will not benefit from the single banking license and the privileges associated with it as introduced in the proposed directive. However, even though the Commission cannot accept this amendment, it does recognize the validity of Parliament's concern that it is desirable over the longer term to ensure that all Member States treat foreign bank branches in the same way and that the latter do not enjoy more favourable treatment than Community banks. For these reasons the Commission shall assess the situation with regard to treatment of third country branches both before and after implementation of the directive and if necessary propose measures to remedy possible distortions of competition.
7. With regard to the question of comitology the Council proposes to use the regulatory committee, procedure III(b) of the Council's decision of 13 July 1987⁹⁾ in Art. 22 of the Council's common position.
8. The Commission thought it appropriate to propose in all the banking directives the procedure of regulatory committee, procedure III(a) of the Council's decision of 13 July 1987. This procedure gives the Commission all the powers it needs and it is the only adequate procedure taking into account the nature of the measures which will have to be taken. In the banking field, the implementing powers will not be used for a day-to-day management, as it is the case in other sectors (e.g. agriculture) where the management committee procedure is appropriate.
9. This is the reason why the Commission prefers to persist in its reexamined proposal and vigorously defend the regulatory committee version III(a).

⁹⁾ OJ N° L 197 of 18.7.1987, p. 33

10. The Commission would also propose one amendment to Art. 9, para 4 of the Common position, in order to extend the duration of measures regarding decisions concerning future or pending requests for authorisation and the acquisition of holdings by undertakings from a third country from three months to six months. Such an extension will enhance the effectiveness of those measures as a bargaining counter in the parallel negotiations with the third country in question.

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Common position of the Council

Reexamined proposal of the Commission

Recitals 1 to 22 unchanged

23rd Recital

Whereas technical modifications to the detailed rules laid down in this directive may from time to time be necessary to take account of new developments in the banking sector; whereas the Commission shall accordingly make such modifications as are necessary, after consulting the Banking Advisory Committee, within the limits of the implementing powers conferred on the Commission by the Treaty; whereas that Committee shall act as a "Regulatory" Committee, according to the rules of procedure laid down in Article 2, procedure III, variant (b) of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁾;

23rd Recital

Whereas technical modifications to the detailed rules laid down in this directive may from time to time be necessary to take account of new developments in the banking sector; whereas the Commission shall accordingly make such modifications as are necessary, after consulting the Banking Advisory Committee, within the limits of the implementing powers conferred on the Commission by the Treaty; whereas that Committee shall act as a "Regulatory" Committee, according to the rules of procedure laid down in Article 2, procedure III, variant (a) of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁾

1) OJ No L 197, 18.7.1987, p. 33

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Common position of the Council

Reexamined proposal of the Commission

Articles 1 to 9: unchanged

Article 9(1) to (3): unchanged

Article 9(4)

Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information that Community credit institutions in a third country do not receive national treatment offering the same competitive opportunities as are available to domestic credit institutions and that the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure laid down in Article 22(2), that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending at the moment of the decision of future requests for authorisations and the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question. The duration of the measures referred to may not exceed three months.

Article 9(4)

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Common position of the Council

Before the end of that three-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued;

Such limitations or suspension may not apply to the setting up of subsidiaries by credit institutions or their subsidiaries duly authorised in the Community, or to the acquisition of holdings in Community credit institutions by such institutions or subsidiaries.

Reexamined proposal of the Commission

Before the end of that six-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued;

Such limitations or suspension may not apply to the setting up of subsidiaries by credit institutions or their subsidiaries duly authorised in the Community, or to the acquisition of holdings in Community credit institutions by such institutions or subsidiaries.

Articles 9(5) to 21: unchanged

Article 22(1): unchanged

Article 22(2)

2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.

Article 22(2)

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Common position of the Council

The Commission representative shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States in the committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

Reexamined proposal of the Commission

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States in the committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

Common position of the Council

If the Council does not act within three months of the referral to it the Commission shall adopt the measures proposed, unless the Council has decided against those measures by a simple majority.

Reexamined proposal of the Commission

If on the expiry of three months from the day of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Articles 23 to 25 and Annex unchanged

EUROPEAN PARLIAMENT

1989 - 1990 SESSION

Decision of the European Parliament on the common position of the Council on the proposal from the Commission for a second directive on the coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (Doc. C 3-0016/89 - Doc. A 3-0074/89).

EXTRACT

FROM THE MINUTES

OF THE SITTING OF

22 NOVEMBER 1989

PE 135.129

DECISION

(COOPERATION PROCEDURE: second reading)

on the common position of the Council on the proposal from the Commission for a second Council directive on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions and amending Directive 77/180/EEC

The European Parliament,

- having regard to the common position of the Council (Doc. C 3-16/89),
- having regard to the relevant provisions of the EEC Treaty and its Rules of Procedure,
- 1. Has amended the common position as set out below;
- 2. Has instructed its President to forward this decision to the Council and Commission.

Common position of the Council

Amendments adopted by Parliament

(AMENDMENT No. 4)

Article 9a (new)

Article 9a

1. Member States shall require branches of credit institutions whose parent undertakings are based outside the Community to possess authorization before taking up business, in accordance with the provisions of Directive 77/180/EEC.

2. The competent authorities of a Member State may grant the authorization referred to in paragraph 1, if the undertaking fulfils the following conditions:

(a) it has received authorization to undertake banking work from the State by whose law it is governed and is therefore subject to supervision by the relevant authorities of this state

(b) it seeks to establish a branch in the Member State in question.

(c) it pays endowment capital which may not be less than 5 million ECU - for setting up the branch

(d) it appoints at least two directors to manage the branch who must qualify as fit and proper persons

(e) its financial resources in the state in which it operates are not inferior to those provided for in the Directive in connection with the solvency ratio or equivalent amounts

(f) in respect of branches established in the host Member State, it undertakes at least to adhere to the solvency ratios respected by the credit institutions established in the Member State in question. In calculating the solvency ratio, account shall be taken only of the operations undertaken by the branch

(g) it submits a programme of activities as the credit institutions authorized to operate in that Member State are obliged to do.

3. If an undertaking which has received authorization to establish a branch in a Member State obtains authorization to establish branches in one or more other Member States, it may benefit from one of the following advantages:

(a) the solvency ratio must be calculated in relation to the total operations undertaken in the Community. In this case the operations of all the branches established in the Community must be taken into account

(b) it shall be exempt from the obligation of paying the endowment capital provided for in paragraph 2(d) of the present Article.

4. If at least two Member States partially or wholly approve the request, the competent authorities of the Member State in which the oldest branch of the petitioner is established shall verify the state of solvency of the undertaking in relation to the overall operations which it undertakes in the Member States which have approved the request. However, at the request of the undertaking and subject to the unanimous approval of the Member States concerned, this verification may be undertaken by the relevant authorities of another Member State. The authority charged with undertaking the verification shall receive from the other Member States the necessary information regarding the branches located in their territory.

5. The advantages conferred by the present Article may be revoked on the initiative of one or more of the Member States concerned.

6. The supervisory authority of the state in which the oldest branch is established or which is entrusted with the task of verifying the overall solvency of the branches shall enjoy the same status as the authority of the Member State in which a Community credit institution is based.

7. Where authorization is revoked by the authorities referred to in paragraph 4 of this Article, the authority in question shall notify the authorities of the other Member States in which the undertaking operates and the latter shall take appropriate measures. If authorization is revoked because of inadequate overall solvency as established by the Member States referred to in the provisions of paragraph 4 of this Article, the Member States which gave their authorization shall revoke this authorization.

8. The Commission may, by means of agreements concluded on the basis of the EEC Treaty with one or more third countries, agree to the application of provisions different from those provided for in this Article so as to ensure, on the basis of reciprocity, adequate protection for deposits in the Member States.

9. Branches of credit institutions which are governed by the laws of a third country shall be subject to the provisions contained in the recommendations on large exposures and the introduction of a system of deposit guarantees.

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