

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 25 final

Brussels, 27 January 1983

Amended proposal for a
COUNCIL DIRECTIVE
on the supervision of credit institutions on a consolidated basis

(submitted to the Council by the Commission
pursuant to the second paragraph of Article
149 of the EEC Treaty)

COM(83) 25 final

Original Proposal

New Version

THE COUNCIL OF THE EUROPEAN COMMUNITIES, unchanged

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

Having regard to the proposal from the Commission, unchanged

Having regard to the opinion of the European Parliament, unchanged

Having regard to the opinion of the Economic and Social Committee, unchanged

Whereas the 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⁽¹⁾ states that, in order to make it easier to take up and pursue the business of credit institutions, 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; unchanged

(1) O.J. N° L 322, 17.12.1977, p 30

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 as appropriate with the competent authorities of the other Member States concerned, in such a way that distortions of competition are avoided between such credit institutions and the domestic credit institutions of their host countries; whereas to that end controls and supervisory practices applied 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 the establishment of the principle of supervision on a consolidated basis is one such stage;

Whereas supervision on a consolidated basis should enable the supervisory authority of a parent credit institution to make a more considered judgment about the financial situation of that credit institution;

Whereas this Directive is concerned solely with ownership, partial or complete, of one credit or financial institution by another credit institution;

Whereas the principle of supervision unchanged
 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
 holdings in the Community are subject
 to equivalent supervision and that
 credit institutions from the Commu-
 nity with holdings outside the
 Community are able to apply the
 principles laid down in this Direc-
 tive without the flow of information
 being hindered;

Whereas, pending coordination of
 consolidated accounts and prudential
 returns it is not possible to imple-
 ment consolidated supervision on a
 consistent basis in all Member States;
 whereas this Directive represents
 an interim measure designed to
 establish the principle of super-
 vision on a consolidated basis and
 to eliminate the obstacles which
 have hitherto prevented Member
 States from implementing the prin-
 ciple on a unilateral basis;

Whereas, pending further coordina-
 tion the process of consolidation
 is to be undertaken by Member States
 according to their national
 procedures;

Whereas, pending coordination of
 consolidated accounts and prudential
 returns it is not possible to imple-
 ment consolidated supervision on a
 consistent basis in all Member States;
 whereas this Directive represents
 an interim measure designed to
 establish the principle of super-
 vision on a consolidated basis and
 to eliminate the obstacles which
 have hitherto prevented Member
 States from implementing the prin-
 ciple on a unilateral basis for
transactions throughout the Community;

unchanged

Whereas the provisions of this Directive do not preclude supervision of individual credit institutions by the competent authorities of the host Member State;

unchanged

Whereas although financial institutions as defined hereinafter are not subject to 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 appropriate activities within a group;

unchanged

Whereas this Directive does not contain any provisions concerning the rights of the supervisory authorities of a parent company to inspect credit institutions in which the parent company has a participation, which are situated in another Member State; the Member States will presume that they can obtain such rights by way of bilateral agreements; whereas as a transitional measure supervisory authorities will be able to appoint auditors to verify information received from credit institutions in another Member State,

Whereas this Directive does not contain any provisions concerning the rights of the supervisory authorities of a parent company to inspect credit institutions in which the parent company has a participation, which are situated in another Member State; the Member States will presume that they can obtain such rights by way of bilateral agreements; whereas as a transitional measure supervisory authorities will be able to appoint an auditor or expert to verify information received from credit institutions in another Member State;

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 undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; unchanged
- "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; unchanged
- "participation" means the ownership by a credit institution, whether directly or indirectly, of 20 % or more of the capital of another credit or financial institution; - "participation" means the ownership by a credit institution, whether 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; unchanged

- "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 (1), this Directive shall apply to all credit institutions. unchanged

2. The institutions exempted from the provisions of Directive 77/780/EEC and listed in Article 2 thereof shall be exempted from the provisions of this Directive. unchanged

3. Member States may defer the application of this Directive to certain institutions. Such deferment shall be on the terms set out in Article 2 (5) and (6) of Directive 77/780/EEC. unchanged

Article 3

General principles

1. Any credit institution which holds a participation in another credit or financial institution shall be subject, to the extent and in the manner required by Article 4, to unchanged

supervision on the basis of the consolidation of its financial situation with that of the institution in which it holds such participation, unless :

- the activities of the credit institution holding the participation are at least 80 % consolidated with another credit institution which is subject to supervision on a consolidated basis by the competent authorities of one of the Member States and the credit institution in which the participation is held is, without prejudice to the following indents, included in this supervision on a consolidated basis; or
 - the credit or financial institution in which the participation is held is situated in a non-member country where there are legal impediments to the transfer of the necessary information; or
 - the participation represents less than 2 % of the capital and reserves of the credit institution which holds the participation or less than 500 000 ECU whichever is the lesser amount; or
 - the nature of the business of the credit or financial institution in which the participation is held
- the activities of the credit institution holding the participation are at least 75 % consolidated with another credit institution which is subject to supervision on a consolidated basis by the competent authorities of one of the Member States and the credit institution in which the participation is held is, without prejudice to the following indents, included in this supervision on a consolidated basis; or
- unchanged
- the participation represents less than 2 % of the capital and reserves of the credit institution which holds the participation or less than 1 million ECU whichever is the lesser amount; or
 - the nature of the business of the credit or financial institution in which the participation is held

is such that, in the opinion of the competent authorities for the credit institution which holds the participation, consolidation would be inappropriate or misleading.

is such that, in the opinion of the competent authorities for the credit institution which holds the participation, after consultation with the said credit institution, consolidation would be inappropriate or misleading.

2. Pending subsequent coordination, unchanged
and except as otherwise provided in this Directive the process of consolidation shall be undertaken according to the national procedures applicable to the credit institution which holds the participation.

3. Supervision on a consolidated unchanged
basis shall be exercised by the competent authorities of the country in which the credit institution which holds the participation has its head office.

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

Article 4

Form and extent of consolidation

1. Where a credit institution holds unchanged
a participation of more than 50 %

in another credit or financial institution, the competent authorities for that credit institution shall require either full or pro rata consolidation of the institutions concerned.

2. Where a credit institution holds unchanged 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 a matter for the discretion of those competent authorities how consolidation should be effected. 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 the participation is held may agree that consolidation of such a holding is not required in given cases.

3. Where a credit institution holds unchanged a participation of 50 % or less in another credit or financial institution and a situation of effective control does not exist, it shall be a matter for the discretion of the competent authorities for that credit institution whether and how consolidation is to be effected.

Article 5

Facilitating measures

1. Member States shall ensure that unchanged
there are no legal impediments such
as to prevent any credit or finan-
cial institution supplying to a
credit institution which has a parti-
cipation therein information which
is necessary for supervision on a
consolidated basis to be effected
in accordance with this Directive.

2. Member States shall permit the unchanged
exchange between their competent
authorities of the information
necessary for supervision on a con-
solidated basis to be effected in
accordance with this Directive, it
being understood that, in the case
of financial institutions, the
collection of information shall in no
way imply a supervisory function
over such financial institutions by
those competent authorities.

3. Any exchange of information unchanged
between competent authorities pro-
vided for in this Directive shall
be subject to the obligation of
professional secrecy as set out in
Article 12 of Directive 77/780/EEC
and any such information shall be
used exclusively for the purposes
of supervision on a consolidated
basis as required by this Directive.

4. If, in applying the provisions of this Directive to a credit institution, the competent authorities in one Member State wish to verify the information received from a credit or financial institution in another Member State they may appoint an auditor, approved for this purpose by the competent authorities of the other Member State concerned, to undertake such verification.

4. If in applying the provisions of this Directive to a credit institution, the competent authorities in one Member State wish to verify the information received from a credit or financial institution in another Member State they may appoint an auditor, or an expert, approved for this purpose by the competent authorities of the other Member State concerned, to undertake such verification.

Article 6

Non-member countries

1. The application of the principle of supervision on a consolidated basis to Community credit institutions, the parent institutions of which have their head offices in non-member countries, and to credit institutions situated outside the Community whose parent institutions are situated within the Community shall be a matter for bilateral arrangements, on the basis of reciprocity, between the competent authorities of the Member States and the non-member countries concerned. Such arrangements shall seek to ensure that Member States' competent authorities are able to obtain the necessary information to enable a

unchanged

credit institution within the Community, with participations in credit or financial institutions outside the Community, to be supervised on a consolidated basis, and that supervisory authorities in non-member countries are able to obtain the information necessary to supervise parent institutions having head offices within their territory which have participations in credit institutions in one or more Member States.

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 the coordination of the arrangements referred to in paragraph 1. unchanged

Final provisions

Article 7

1. Member States shall bring into force the measures necessary to comply with this Directive not later than and shall forthwith inform the Commission thereof. unchanged

2. The Member States shall communicate to the Commission the texts of the main laws, regulations and unchanged

administrative provisions which they
adopt in the field covered by
this Directive.

Article 8

This Directive is addressed to the unchanged
Member States.