II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/30/EEC

of 6 April 1992

on the supervision of credit institutions on a consolidated basis

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas Council Directive 83/350/EEC of 13 June 1983 on the supervision of credit institutions on a consolidated basis (3) established the necessary framework for the introduction of supervision of credit institutions on a consolidated basis; whereas, following the transposition of that Directive into the national law of the Member States, the principle of supervision on a consolidated basis is now applied throughout the Community;

Whereas, in order to be effective, supervision on a consolidated basis must be applied to all banking groups, including those the parent undertakings of which are not credit institutions; whereas the competent authorities must hold the necessary legal instruments to be able to exercise such supervision;

Whereas, in the case of groups with diversified activities the parent undertakings of which control at least one credit institution subsidiary, the competent authorities must be able to assess the financial situation of a credit institution in such a group; whereas, pending subsequent coordination, the Member States may lay down appropriate methods of consolidation for the achievement of the objective of this Directive; whereas the competent authorities must at least have the means of obtaining from all undertakings within a group the information necessary for the performance of their function; whereas cooperation between the authorities responsible for the supervision of different financial sectors must be established in the case of groups of undertakings carrying on a range of financial activities;

Whereas rules limiting the risks taken by a credit institution on the mixed-activity holding company of which it is a subsidiary, as well as those taken on the other subsidiaries of the same mixed-activity holding company, can be particularly useful; whereas it would, however, appear to be preferable to settle this question in a more systematic manner in the framework of a future Directive on the limitation of large exposures;

Whereas the Member States can, furthermore, refuse or withdraw banking authorization in the case of certain group structures considered inappropriate for carrying on banking activities, in particular because such structures could not be supervised effectively; whereas in this respect the competent authorities have the powers mentioned in Article 8 (1) (c) of the First Council Directive (77/780/EEC) of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (4) and in Articles 5 and 11 of the Second Council Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (5), in order to ensure the sound and prudent management of credit institutions;

(1) OJ No C 326, 16. 12. 1991, p. 106, and OJ No C 94, 13. 4. 1992.
(2) OJ No C 102, 18. 4. 1991, p. 19.
(3) OJ No L 193, 18. 7. 1983, p. 18.
(4) OJ No L 322, 17. 12. 1977, p. 30. Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).
(5) OJ No L 386, 30. 12. 1989, p. 1.

Whereas the Member States can equally apply appropriate supervision techniques to groups with structures not covered by this Directive; whereas, if such structures become common, this Directive should be extended to cover them;

Whereas supervision on a consolidated basis must take in all activities defined in the Annex to Directive 89/646/EEC; whereas all undertakings principally engaged in such activities must therefore be included in supervision on a consolidated basis; whereas, as a result, the definition of a financial institution given in Directive 83/350/EEC must be widened to cover such activities;

Whereas, regarding the consolidation of financial institutions involved in activities principally subject to market risks and subject to particular rules of supervision, the coordination of the methods for the consolidated supervision of market risks is possible in the framework of Community harmonization of capital adequacy of investment firms and credit institutions, for which the Commission has introduced a proposal for a Directive; whereas such harmonization concerns, *inter alia,* the conditions which must be applied when offsetting opposing positions in the group and the case where these financial institutions are subject to specific supervisory rules regarding their financial stability; whereas this implies that, until the future Directive on capital adequacy to cover market risks is brought into effect, the competent authorities shall include in consolidated supervision financial institutions which are principally exposed ot market risks, in accordance with methods determined by those authorities in the light of the particular nature of the risks involved;

Whereas, following the adoption of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [1], which, together with the Seventh Council Directive (83/349/EEC) of 13 June 1983 on consolidated accounts [2], established the rules of consolidation applicable to consolidated accounts published by credit institutions, it is now possible to define more precisely the methods to be used in prudential supervision exercised on a consolidated basis;

Whereas this Directive is fully in keeping with the objectives defined in the Single European Act; whereas it will, in particular, ensure the homogeneous application throughout the Community of prudential rules established by other Community legislation, which must be observed on a consolidated basis; whereas this Directive is, in particular, necessary for the correct application of Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions [3];

Whereas supervision of credit institutions on a consolidated basis must be aimed at, in particular, protecting the interests of the depositors of the said institutions and at ensuring the stability of the financial system;

Whereas it is desirable that agreement should be reached, on the basis of reciprocity, between the Community and third countries with a view to allowing the practical exercise of consolidated supervision over the largest possible geographical area;

Whereas the amendments to be made to Directive 83/350/EEC are so considerable that it is preferable that it be wholly replaced by this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purposes of this Directive:

— *credit institution* shall mean a credit institution within the meaning of the first indent of Article 1 of Directive 77/780/EEC, or any private or public undertaking which corresponds to the definition in the first indent of Article 1 of Directive 77/780/EEC and has been authorized in a third country,

— *financial institution* shall mean an undertaking, other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities referred to in numbers 2 to 12 of the list appearing in the Annex to Directive 89/646/EEC,

— *financial holding company* shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, one at least of such subsidiaries being a credit institution,

— *mixed-activity holding company* shall mean a parent undertaking, other than a financial holding company or a credit institution, the subsidiaries of which include at least one credit institution,

— *ancillary banking services* undertaking shall mean an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institution,

— *participation* shall mean the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking,

[1] OJ No L 372, 31. 12. 1986, p. 1.
[2] OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).
[3] OJ No L 124, 5. 5. 1989, p. 16.

— *parent undertaking* shall mean a parent undertaking within the meaning of Article 1 (1) of the Directive 83/349/EEC and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking,

— *subsidiary* shall mean a subsidiary undertaking within the meaning of Article 1 (1) of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent,

— *competent authorities* shall mean the national authorities which are empowered by law or regulation to supervise credit institutions.

Article 2

Scope

This Directive shall apply to credit institutions that have obtained the authorization referred to in Article 3 of Directive 77/780/EEC, financial holding companies and mixed-activity holding companies which have their head offices in the Community.

The institutions permanently excluded by Article 2 of Directive 77/780/EEC, with the exception, however, of the Member States' central banks, shall be treated as financial institutions for the purposes of this Directive.

Article 3

Supervision on a consolidated basis of credit institutions

1. Every credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such institutions shall be subject, to the extent and in the manner prescribed in Article 5, to supervision on the basis of its consolidated financial situation. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6.

2. Every credit institution the parent undertaking of which is a financial holding company shall be subject, to the extent and in the manner prescribed in Article 5, to supervision on the basis of the consolidated financial situation of that financial holding company. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6. The consolidation of the financial situation of the financial holding company shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the financial holding company standing alone.

3. The Member States or the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 4 may decide in the cases listed below that a credit institution, financial institution or auxiliary banking services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation :

— if the undertaking that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information,

— if, in the opinion of the competent authorities, the undertaking that should be included is of negligible interest only with respect to the objectives of monitoring credit institutions and in all cases if the balance sheet total of the undertaking that should be included is less than the smaller of the following two amounts : ECU 10 million or 1 % of the balance sheet total of the parent undertaking or the undertaking that holds the participation. If several undertakings meet the above criteria, they must nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the aforementioned objectives, or

— if, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking that should be included would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.

4. When the competent authorities of a Member State do not include a credit institution subsidiary in supervision on a consolidated basis under one of the cases provided for in the second and third indents of paragraph 3, the competent authorities of the Member State in which that credit institution subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that credit institution.

5. Supervision of solvency, and of the adequacy of own funds to cover market risks and control of large exposures, as governed by the relevant Community acts in force, shall be exercised on a consolidated basis in accordance with this Directive. Member States shall adopt any measures necessary, where appropriate, to include financial holding companies in consolidated supervision, in accordance with paragraph 2.

Compliance with the limits set in Article 12 (1) and (2) of Directive 89/646/EEC shall be supervised and controlled on the basis of the consolidated or sub-consolidated financial situation of the credit institution.

6. The competent authorities shall ensure that, in all the undertakings included in the scope of the supervision on a consolidated basis that is exercised over a credit institution in implementation of paragraphs 1 and 2,