FIRST COUNCIL DIRECTIVE

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

(77/780/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Economic and Social Committee [2],

Whereas, pursuant to the Treaty, any discriminatory treatment with regard to establishment and to the provision of services, based either on nationality or on the fact that an undertaking is not established in the Member States where the services are provided, is prohibited from the end of the transitional period;

Whereas, 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;

Whereas, however, given the extent of these differences, the conditions required for a common market for credit institutions cannot be created by means of a single Directive; whereas it is therefore necessary to proceed by successive stages; whereas the result of this process should be 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;

Whereas measures to coordinate credit institutions must, both in order to protect savings and to create equal conditions of competition between these institutions, apply to all of them; whereas due regard must be had, where applicable, to the objective differences in their statutes and their proper aims as laid down by national laws;

Whereas the scope of those measures should therefore be as broad as possible, covering all institutions whose business is to receive repayable funds from the public whether in the form of deposits or in other forms such as the continuing issue of bonds and other comparable securities and to grant credits for their own account; whereas exceptions must be provided for in the case of certain credit institutions to which this Directive cannot apply;

Whereas the provisions of this Directive shall not prejudice the application of national laws which provide for special supplementary authorizations permitting credit institutions to carry on specific activities or undertake specific kinds of operations;

Whereas the same system of supervision cannot always be applied to all types of credit institution; whereas provision should therefore be made for application of this Directive to be deferred in the case of certain groups or types of credit institutions to which its immediate application might cause technical problems; whereas more specific provisions for such institutions may prove necessary in the future; whereas these specific provisions should nonetheless be based on a number of common principles;

Whereas the eventual aim is to introduce uniform authorization requirements throughout the Community for comparable types of credit institution; whereas at the initial stage it is necessary, however, to specify only certain minimum requirements to be imposed by all Member States;

Whereas this aim can be achieved only if the particularly wide discretionary powers which certain supervisory authorities have for authorizing credit establishments are progressively reduced; whereas the requirement that a programme of operations must be produced should therefore be seen merely as a factor enabling the competent authorities to decide on the basis of more precise information using objective criteria;

[1] OJ No C 128, 9. 6. 1975, p. 25.
[2] OJ No C 263, 17. 11. 1975, p. 25.

Whereas the purpose of coordination is to achieve a system whereby credit institutions having their head office in one of the Member States are exempt from any national authorization requirement when setting up branches in other Member States;

Whereas a measure of flexibility may nonetheless be possible in the initial stage as regards the requirements on the legal form of credit institutions and the protection of banking names;

Whereas equivalent financial requirements for credit institutions will be necessary to ensure similar safeguards for savers and fair conditions of competition between comparable groups of credit institutions; whereas, pending further coordination, appropriate structural ratios should be formulated that will make it possible within the framework of cooperation between national authorities to observe, in accordance with standard methods, the position of comparable types of credit institutions; whereas this procedure should help to bring about the gradual approximation of the systems of coefficients established and applied by the Member States; whereas it is necessary, however, to make a distinction between coefficients intended to ensure the sound management of credit institutions and those established for the purposes of economic and monetary policy; whereas, for the purpose of formulating structural ratios and of more general cooperation between supervisory authorities, standardization of the layout of credit institutions' accounts will have to begin as soon as possible;

Whereas the rules governing branches of credit institutions having their head office outside the Community should be analogous in all Member States; whereas it is important at the present time to provide that such rules may not be more favourable than those for branches of institutions from another Member State; whereas it should be specified that the Community may conclude agreements with third countries providing for the application of rules which accord such branches the same treatment throughout its territory, account being taken of the principle of reciprocity;

Whereas the examination of problems connected with matters covered by Council Directives on the business of credit institutions requires cooperation between the competent authorities and the Commission within an Advisory Committee, particularly when conducted with a view to closer coordination;

Whereas the establishment of an Advisory Committee of the competent authorities of the Member States does not rule out other forms of cooperation between authorities which supervise the taking up and pursuit of the business of credit institutions and, in particular, cooperation within the Contact Committee set up between the banking supervisory authorities,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Definitions and scope

Article 1

For the purposes of this Directive:

— 'credit institution' means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account,

— 'authorization' means an instrument issued in any form by the authorities by which the right to carry on the business of a credit institution is granted,

— 'branch' means a place of business which forms a legally dependent part of a credit institution and which conducts directly all or some of the operations inherent in the business of credit institutions; any number of branches set up in the same Member State by a credit institution having its head office in another Member State shall be regarded as a single branch, without prejudice to Article 4 (1),

— 'own funds' means the credit institution's own capital, including items which may be treated as capital under national rules.

Article 2

1. This Directive shall apply to the taking up and pursuit of the business of credit institutions.

2. It shall not apply to:

— the central banks of Member States,

— post office giro institutions,

— in Belgium, the communal savings banks ('caisses d'épargne communales — gemeentelijke spaarkassen'), the 'Institut de Réescompte et de Garantie — Herdiscontering- en Waarborginstituut', the 'Société nationale d'Investissement — Nationale Investeringsmaatschappij', the regional development companies ('sociétés de développement régional — gewestelijke ontwikkelingsmaatschappijen'), the 'Société nationale du Logement — Nationale Maatschappij voor de Huisvesting' and its authorized companies and the 'Société nationale terrienne — Nationale Landmaatschappij' and its authorized companies,

— in Denmark, the 'Dansk Eksportfinansieringsfond' and 'Danmarks Skibskreditfond',

— in Germany, the 'Kreditanstalt für Wiederaufbau', undertakings which are recognized under the 'Wohnungsgemeinnützigkeitsgesetz' (non-profit housing law) as bodies of state housing policy and are not mainly engaged in banking transactions and undertakings recognized under that law as non-profit housing undertakings,

— in France, the 'Caisse des Dépôts et Consignations', the 'Crédit Foncier' and the 'Crédit National',

— in Ireland, credit unions,

— in Italy, the 'Cassa Depositi e Prestiti',

— in the Netherlands, the 'NV Export-Financieringsmaatschappij', the 'Netherlandse Financieringsmaatschappij voor Ontwikkelingslanden NV', the 'Nederlandse Investeringsbank voor Ontwikkelingslanden NV', the 'Nationale Investeringsbank NV', the 'NV Bank van Nederlandse Gemeenten', the 'Nederlandse Waterschapsbank NV', the 'Financieringsmaatschappij Industrieel Garantiefonds Amsterdam NV', the 'Financieringsmaatschappij Industrieel Garantiefonds 's-Gravenhage NV', the 'NV Noordelijke Ontwikkelings Maatschappij', the 'NV Industriebank Limburgs Instituut voor ontwikkeling en financiering' and the 'Overijsselse Ontwikkelingsmaatschappij NV',

— in the United Kingdom, the National Savings Bank, the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, the Scottish Agricultural Securities Corporation Ltd, the Crown Agents for overseas governments and administrations, credit unions, and municipal banks.

3. The Council, acting on a proposal from the Commission, which, for this purpose, shall consult the Committee referred to in Article 11 (hereinafter referred to as 'the Advisory Committee') shall decide on any amendments to the list in paragraph 2.

4. (a) Credit institutions existing in the same Member State at the time of the notification of this Directive and permanently affiliated at that time to a central body which supervises them and which is established in that same Member State, may be exempted from the requirements listed in the first, second and third indents of the first subparagraph of Article 3 (2), the second subparagraph of Article 3 (2), Article 3 (4) and Article 6, if, no later than the date when the national authorities take the measures necessary to translate this Directive into national law, that law provides that :

— the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body,

— the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts,

— the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

(b) Credit institutions operating locally which are affiliated, subsequent to notification of this Directive, to a central body within the meaning of subparagraph (a) may benefit from the conditions laid down in subparagraph (a) if they constitute normal additions to the network belonging to that central body.

(c) In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or have resulted from scission or mergers of existing institutions dependent or answerable to the central body, the Council, acting on a proposal from the Commission, which shall, for this purpose, consult the Advisory Committee, may lay down additional rules for the application of subparagraph (b) including the repeal of exemptions provided for in subparagraph (a), where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in subparagraph (b) might have an adverse effect on competition. The Council shall decide by a qualified majority.

5. Member States may defer in whole or in part the application of this Directive to certain types or groups of credit institutions where such immediate application would cause technical problems which cannot be overcome in the short-term. The problems may result either from the fact that these institutions are subject to supervision by an authority different from that normally responsible for the supervision of banks, or from the fact that they are subject to a special system of supervision. In any event, such deferment cannot be justified by the public law statutes, by the smallness of size or by the limited scope of activity of the particular institutions concerned.

Deferment can apply only to groups or types of institutions already existing at the time of notification of this Directive.

6. Pursuant to paragraph 5, a Member State may decide to defer application of this Directive for a maximum period of five years from the notification thereof and, after consulting the Advisory Committee may extend deferment once only for a maximum period of three years.

The Member State shall inform the Commission of its decision and the reasons therefor not later than six months following the notification of this Directive. It shall also notify the Commission of any extension or repeal of this decision. The Commission shall publish any decision regarding deferment in the *Official Journal of the European Communities.*

Not later than seven years following the notification of this Directive, the Commission shall, after consulting the Advisory Committee, submit a report to the Council on the situation regarding deferment. Where appropriate, the Commission shall submit to the Council, not later than six months following the submission of its report, proposals for either the inclusion of the institutions in question in the list in paragraph 2 or for the authorization of a further extension of deferment. The Council shall act on these proposals not later than six months after their submission.

TITLE II

Credit institutions having their head office in a Member State and their branches in other Member States

Article 3

1. Member States shall require credit institutions subject to this Directive to obtain authorization before commencing their activities. They shall lay down the requirements for such authorization subject to paragraphs 2, 3 and 4 and notify them to both the Commission and the Advisory Committee.

2. Without prejudice to other conditions of general application laid down by national laws, the competent authorities shall grant authorization only when the following conditions are complied with :

— the credit institution must possess separate own funds,

— the credit institution must possess adequate minimum own funds,

— there shall be at least two persons who effectively direct the business of the credit institution.

Moreover, the authorities concerned shall not grant authorization if the persons referred to in the third indent of the first subparagraph are not of sufficiently good repute or lack sufficient experience to perform such duties.

3. (a) The provisions referred to in paragraphs 1 and 2 may not require the application for authorization to be examined in terms of the economic needs of the market.

(b) Where the laws, regulations or administrative provisions of a Member State provide, at the time of notification of the present Directive, that the economic needs of the market shall be a condition of authorization and where technical or structural difficulties in its banking system do not allow it to give up the criterion within the period laid down in Article 14 (1), the State in question may continue to apply the criterion for a period of seven years from notification.

It shall notify its decision and the reasons therefor to the Commission within six months of notification.

(c) Within six years of the notification of this Directive the Commission shall submit to the Council, after consulting the Advisory Committee, a report on the application of the criterion of economic need. If appropriate, the Commission shall submit to the Council proposals to terminate the application of that criterion. The period referred to in subparagraph (b) shall be extended for one further period of five years, unless, in the meantime, the Council, acting unanimously on proposals from the Commission, adopts a Decision to terminate the application of that criterion.

(d) The criterion of economic need shall be applied only on the basis of general predetermined criteria, published and notified to both the Commission and the Advisory Committee and aimed at promoting :

— security of savings,

— higher productivity in the banking system,

— greater uniformity of competition between the various banking networks,

— a broader range of banking services in relation to population and economic activity.

Specification of the above objectives shall be determined within the Advisory Committee, which shall begin its work as from its initial meetings.

4. Member States shall also require applications for authorization to be accompanied by a programme of operations setting out *inter alia* the types of business envisaged and the structural organization of the institution.

5. The Advisory Committee shall examine the content given by the competent authorities to requirements listed in paragraph 2, any other requirements which the Member States apply and the information which must be included in the programme of operations, and shall, where appropriate, make suggestions to the Commission with a view to a more detailed coordination.