ARCHIVES HISTORIQUES DE LA COMMISSION

COLLECTION RELIEE DES DOCUMENTS "COM"

COM (74)2010

Vol. 1974/0336

Historical Archives of the European Commission

Disclaimer

Conformément au règlement (CEE, Euratom) n° 354/83 du Conseil du 1er février 1983 concernant l'ouverture au public des archives historiques de la Communauté économique européenne et de la Communauté européenne de l'énergie atomique (JO L 43 du 15.2.1983, p. 1), tel que modifié par le règlement (CE, Euratom) n° 1700/2003 du 22 septembre 2003 (JO L 243 du 27.9.2003, p. 1), ce dossier est ouvert au public. Le cas échéant, les documents classifiés présents dans ce dossier ont été déclassifiés conformément à l'article 5 dudit règlement.

In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlusssachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(74) 2010 final
Brussels, 10 December 1974

Proposal for a

COUNCIL DIRECTIVE

on the coordination of laws, regulations and administrative provisions governing the commencement and carrying on of the business of credit institutions

(submitted to the Council by the Commission)

FINANCIAL CONSEQUENCES

The organization of meetings of the Committee provided for in Article 11 of the proposal might give rise to certain expenses. However, an exact evaluation of these expenses is impossible for the time being, given the fact that the authorities represented in the Committee will bear a part of the cost which will have to be determined later on.

TABLE OF CONTENTS

		Pages
1. Explanatory Memorandum		
I.	Reasons for and objectives of the Directive	1 - 5
II.	Commentary on the Articles	6 - 14
2. Proposal for a Directive		
- Whereas		15 - 18
- Title I :	Definitions and fields of application (Articles 1 and 2)	19 - 20
- Title II :	Provisions applying to credit institutions having their head office in a Member State and to their branches in other Member States (Articles 3 to 8)	21 - 27
- Title III :	Branches of institutions having their head offices outside the Community (Article 9)	28
- Title IV :	General and transitional provisions (Articles 10 to 13)	29 - 32
Title V :	Final provisions (Article 14)	33

EXPLANATORY MEMORANDUM

I. REASONS FOR AND OBJECTIVES OF THE DIRECTIVE

1. This proposal for a Directive is a further move towards the creation of a common market in banking. A first step in this direction was taken by Directive 73/183/EEC of 28 June 1973 which implemented the principle of non-discrimination in accordance with Articles 52 and 59 of the Treaty. Further integration should now be sought through the coordination of the most important provisions in the banking regulations of Member States.

2. At present, nine largely separate banking systems exist side by side in the Community. The aim is to promote their interpenetration and should be pursued in parallel with efforts to achieve economic and monetary union, for the proper functioning of the activities of credit institutions throughout the Community is complementary to the free movement of capital. Furthermore, approximating monetary policy measures will be a far simpler matter if they can be directed at credit institutions with a similar structure. But, in view of the divergences between the legal instruments and administrative practices governing supervision of the activity in question in the various countries, there is still a long way to go before attaining this objective.

3. It can only be to the advantage of the credit institutions themselves if the legal instruments and practices are coordinated since this would give them greater scope for carrying out their operations in the whole of the common market. Some institutions, it is true, through international cooperation agreements, already operate beyond the purely domestic frontiers.

.../...

Nevertheless, such cooperation is based mainly on the idea that national financial markets should remain separate and that this separation should be overcome by agreements that relate, for instance, to the financing of multinational undertakings or to joint operations in non-member countries, each institution confining its usual banking operations to its national territory. No real integration can be achieved unless credit institutions take on a European dimension and, in carrying out transactions on the markets of all Member States, compete with institutions from beyond their own frontiers.

4. One of the principal aims of coordination which is based on Article 57 of the Treaty is to make it easier to set up branches and for these branches to operate. This objective could be attained ultimately, for example, by making it possible to exempt, as far as possible, credit institutions that have already set up a network of branches throughout the Community from supervision by eight different host countries while, on the other hand, making them subject to centralized supervision in the country of origin alone. The eventual implementation of the principle of supervision in the country of origin would enable banks to operate at European level while rationalizing significant aspects of their activities.

5. Consequently, it will be necessary for the supervisory authorities to collaborate closely when carrying out their checks to ensure the soundness of credit institutions. Such collaboration is to be distinguished from that which could also be established between the monetary authorities in the pursuit of economic objectives.

.../...

Moreover, it can be seen that even the stage now reached in integration in the credit sector, namely the cooperation agreements concluded between a great many banks, makes it impossible for a national authority acting alone to exercise effective supervision. Concerted action by the supervisory authorities can be effective only if the authorities have similar instruments to work with and a common view of the objectives to be attained.

6. The example just given concerns branches of credit institutions; it would be desirable if similar measures could be applied to subsidiaries. For the purposes of applying solvency and liquidity ratios this Directive regards subsidiaries as autonomous institutions. In order to ensure greater efficiency in supervising credit institutions which operate in a number of countries a study will have to be made in the future of the possibility of subjecting subsidiaries to regulations similar to those governing branches.

7. The aims of coordination outlined above cannot however be achieved in one go. At the outset of the preparatory work, the Commission's departments had planned to draw up a draft directive covering all the major aspects of banking legislation. But with the accession of new Member States, in particular the United Kingdom, in which the banking legislation was not comparable with that in force in the original Member States, it was no longer possible to continue with this overall approach. Consequently, the Commission altered its approach and decided to proceed step by step, thus making it possible to separate the fields where problems were likely to be only minor from those where greater difficulties would arise and so achieve more rapid progress. The final stage of coordination

.../...

would not however be achieved before a long term evolution, the first stages of which would bring relatively modest results.

8. For this purpose, within this viewpoint, the field of application of the Directive is in principle to include all institutions that can be broadly defined as credit institutions, without however excluding the possibility of laying down more specific provisions for certain types of specialized institutions in the future.

9. The method of multi-stage measures implies that, on a number of points, the Directive proposed below merely outlines an answer to certain problems, and on others is confined to laying down a programme for measures to be taken in the future. In this context, the Commission attaches particular importance in the first instance to the provisions of the Directive relating to supervision of solvency and liquidity and secondly, the creation of a contact committee made up of the supervisory authorities.

10. With regard to the first of these provisions it should be stressed that applying the principle of supervision in the country of origin would, in the final stage, mean that a credit institution with branches in several Member States would no longer have to fulfil the requirements concerning solvency and liquidity in force in each host country. In fact, if this were not so the institution would frequently have to create funds in its branches which would assume the role of own capital, and would be obliged, with regard to the operations of the latter, to observe the rules in both the host country and the country of origin.

.../...

It would however be preferable for the institution to be required to observe only the rules which were in force in the country of origin. Information concerning its overall activities, i.e. including the data for all the branches, would have to be communicated to the authorities of the country of origin. The liquidity and solvency of the institutions as a whole would be calculated in a centralized manner, and this would have the effect of promoting both integration and rationalization (for example, liquidity clearance for the institution as a whole). If there is to be no distortion of competition between institutions from different Member States, the relationships between certain items in the balance sheets would be harmonized too in the end.

11. As regards the second vital point of the proposal, the Commission believes that by creating a contact committee in which the supervisory authorities would be represented, the methods, the priorities and the pace of eventual measures which would have to be taken in the future in a series of coordinating directives concerning the credit sector would be specified. The creation of a contact committee could even be regarded as the main point of this Directive.

COMMENTARY ON THE ARTICLES

Article 1

This article defines the various terms used throughout the directive.

Credit institution: this definition is based on the function performed by banks, savings banks, credit cooperatives and other like institutions concerned with finance in national economies. The essential task of such institutions is to act as a link between saving and investment, in other words to receive monies and grant loans. The fact that monies collected are repayable distinguishes the activity of the institutions in question from that of insurance or collective investment undertakings. These monies may be in the form of deposits (sight, term or savings), or they may also exist in other forms, mainly bonds, cash certificates, etc. The term "assets" covers loans, which are the most important form of investment and of which there is an endless variety (debit accounts, acceptance credits, term loans, etc.).

The article specifies that loans must be granted for the account of the institution itself and thus excludes intermediaries in the banking sector and the function of transmitting the funds of third parties. Receiving monies and granting loans must constitute the normal business of the institution, thus excluding commercial undertakings which also occasionally receive monies from the public and grant loans to their customers.

Authorization: This definition covers any form of administrative instrumen giving authorization, even if such instrument is not termed an "authorization", but is for example a document of registration or recognition.

.../...

Branch: The essential purpose of this definition is to distinguish between the institutions in question and subsidiaries, which are legally independent, and representative offices, which do not handle transactions.

Competent authorities: It was necessary to introduce the overall concept of "competent authorities" since banking supervision is organized in different ways in the Member States; in some cases it is centralized in specialized supervisory bodies, in others it is carried out by the central bank, and in others it is divided among different authorities. The definition covers all authorities which will apply the national provisions based on the directive, which sets out to protect the interests of depositors, i.e. those which ascertain the soundness of undertakings in the banking sector. They are to be distinguished from the monetary authorities even if at times the same authorities perform both functions: banking supervision and control of credit.

Article 2

The field of application laid down in this article is very broad. To ensure equal conditions of competition, it includes in principle all institutions that perform the essential functions of credit institutions outlined above, with no distinction being made in respect of the legal structure (for example public or private), geographical range of activities (local, national, or even international), any particular specialization, types of operation (short-term, medium- and long-term or universal), economic sector (agricultural loans, industrial loans, loans to the hotel trade, etc.) or on any other similar grounds. The directive is sufficiently general to be applicable to all these institutions.

.../...

There is a brief list excluding certain institutions to which the directive obviously cannot apply (e.g. central banks), although they are in principle covered by the definition of credit institutions.

It transpired from the preparatory work that the possibility of exclusion for a limited time should remain open to Member States. There are certain institutions which, although they undeniably belong to the banking sector, are subject to special legislation or special supervisory authority, or which for technical or political reasons are not considered on the same footing as other credit institutions by one or other Member State. Equal treatment, while desirable for reasons of competition, and feasible as regards Community law, nevertheless means, in view of the general nature of the directive, that Member States may have to make special adjustments, and it is not always possible to take the necessary measures immediately.

Provision is made for a special procedure to ensure that the deferment of the application of the directive to certain types or groups of institutions should not last too long.

Article 3

Prior authorization to commence activities is not yet required for credit institutions in all Member States. This requirement must be made general so that each host country may be certain that every institution benefitting from freedom of establishment and freedom of provision of services has been subjected to certain checks in its country of origin before commencing its business.

.../...

In the final stage of a common market in banking, such supervision should be conducted in the whole of the Community in accordance with the same criteria. For the time being, however, all that are given are the minimum conditions which each Member State must lay down.

As was decided in respect of the allied field of insurance, the identical criteria to be used in the final stage should not include an examination of technical need and the competent authorities should not be given discretionary powers to grant authorization. To achieve this end, provision has been made for applicants to submit a scheme of operations indicating the types of operations they expect to handle and the planned structural organization of the institution (paragraph 2). In this way, the grounds for decisions of Member States which, for the time being, still take technical need into consideration and have discretionary powers, will be made more transparent and will, to some extent, be subject to an initial measure of objective legislation. This does not imply that the other Member States are required by virtue of this provision to regard the information concerning the planned operations and structure as the criteria on which to base their decision but may simply check that a scheme has been submitted.

The authorized institutions shall be entered in a Community register; such registration shall not itself be regarded as authorization but merely have declaratory effect.

Articles 4 and 5

In the final stage of coordination, once they have been authorized in their country of origin, credit institutions may be considered as being authorized throughout the Community and require no further authorization for branches established in other Member States. Initially, however,

.../...

most Member States will have to continue to require credit institutions setting up branches for the first time on their territory to undergo individual examination. Just as it was found to be impossible to harmonize all the criteria for the authorization of a new credit institution, it is likewise impossible at present to coordinate the criteria for the authorization of branches. It is proposed, however, to relax two aspects of the procedure.

First, the fact that the credit institution in its country of origin is constituted in a legal form which cannot be used by credit institutions in the host country may not be invoked as a ground for refusing authorization. This type of mutual recognition of accepted legal forms for credit institutions does not, however, apply to a bank formed by one natural person, a type of undertaking that is now subject to reservations for reasons of soundness in nearly all countries.

Secondly, Article 5 relaxes the conditions concerning the protection of names : each credit institution is free to use the same name as that used in the country of origin, even if, in an extreme case, it is not in accordance with the law of the host country. The competent authorities in the host country may, however, to avoid any danger of confusion liable to distort competition, require a more precise description to be added to the name.

Articles 6 and 7

These Articles are a first step towards harmonizing banking ratios. First, Article 6 lists four ratios which should be used by all Member States for the purpose of comparison. However, this list is not exhaustive; Member States may continue to enforce other ratios.

.../...

These are not fixed rules, therefore, but initially are merely non-quantified ratios to be applied as an experiment. The various balance sheet items which are to be used in the ratios will likewise not be defined until a clear picture is available of future developments, as the Commission is aware that the ratios given may need to be changed as the structures of the banking market changes. For this reason, a general review clause is considered necessary.

These developments will depend on the joint experience of the supervisory authorities and could be discussed initially in the Contact Committee. It is obvious that the ratios first specified will need further additions and refinements, the general pattern of which is already emerging. In particular, it is planned to introduce a ratio which would reduce the risks involved in exchange operations; in view of recent events on the foreign exchange market it could become especially significant in the near future.

Article 7 deals with the application of the system to branches set up by a credit institution in another Member State. At present, endowment capital may still be required for such branches. In this case, it would be appropriate if the Member States concerned would agree that such funds must be deducted from the institution's own funds in the country of origin, unless the competent authorities in that country require an overall balance sheet to be drawn up showing also the assets and liabilities of the branch.

Article 8

This Article lists the grounds for withdrawing authorization. In particular it concerns the case where the credit institution's own funds are no longer adequate (paragraph 1, lit. d; this case is specifically excluded in paragraph 1, lit. c, since lit. c refers to initial capital and not operating capital; losses of initial capital are normal in the first

.../...

years of operation). It was necessary to include a general clause covering any infringement of the law (for example, tax legislation, exchange control legislation, etc.), for which the penalty laid down is the withdrawal of authorization.

Article 9

The Member States take widely differing attitudes to the access of banks from non-member countries. Policies range from the tightest restrictions to extremely liberal conditions. The principle that institutions of Member States should be treated no less favourably than banks from non-member countries is the only possible common denominator in the first stage of coordination.

It is therefore of vital importance that the Community as such should work out a joint approach on this matter in the near future and apply this policy in negotiations with non-member countries for the establishment of branches in all Member States.

Article 10

This Article contains provisions making clear the position of existing credit institutions and branches under the coordinated legislation.

Article 11

The importance the Commission attaches to collaboration between the competent authorities has already been mentioned. To provide a framework for this collaboration a Contact Committee is to be set up. The number of members of the Committee should be limited to ensure maximum efficiency. In the view of the Commission, members of the Committee should be persons who, in their respective Member States, are responsible for checking the

.../...

financial soundness of credit institutions and who, in their own administration, hold a position which enables them to take themselves the decisions required for the collaboration process.

Among the tasks of the Committee, those listed in paragraph 1, lit. b and lit. c are of particular importance.

The first of these tasks consists in bringing supervisory practices more closely into line, for example by arriving at a more precise definition of the relationship between certain items in the balance sheet.

The Committee does not have the power of decision on matters of national banking supervision. Nevertheless, the members of the Committee should, as far as possible, include discussion within the Committee in their national decision-making process.

The second task consists in examining the question, whenever members of the Committee find that certain circumstances hinder the approximation of supervisory practices, whether a coordination measure or some other action based on the EEC Treaty could remove the difficulty; the Committee should forward any relevant suggestions to the Commission which will take the action it considers desirable.

Article 12

The purpose of this provision is to solve any problem arising from the fact that persons employed by the competent authorities are on the one hand bound by the obligation of professional secrecy and on the other required to collaborate across frontiers and, in certain cases, to exchange information. In principle such information would retain the confidential classification accorded by the authority in the country of origin. However, to avoid any conflict between binding rules, in addition to this provision,

.../...

a means must be found of approximating the legislation involved: representatives of the competent authorities should not be obliged by their national laws to disclose information they receive from their counterparts in other countries where such information is confidential. They may however be allowed to disclose the information provided that express authorization has been given by the authorities who communicated the information.

Article 13

This provision guarantees, as is usual in this kind of directive, the right of appeal to courts in all Member States.

Article 14

This Article contains the usual final provisions and in particular specifies the time allowed for the implementation of the Directive; the Member States have to adhere to a time limit of two years, but, on the other hand, shall not implement the Directive until eighteen months after being informed of the deferred implementation of the Directive by some Member States concerning certain credit institutions.

.../...

Proposal for a Council Directive on the coordination of laws, regulations and administrative provisions governing the commencement and carrying on of the business of credit institutions

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;
Having regard to the Opinion of the Economic and Social Committee;
Whereas, in order to facilitate the commencement and carrying on of business by credit institutions, it is necessary to eliminate the most obstructive differences between the laws of the Member States concerning the regulations to which these institutions are subject;

Whereas, however, it is not possible, given the extent of these differences, to create the conditions required for a common market for credit institutions through a single Directive; whereas it is therefore necessary to proceed by successive stages; whereas the final result of this process should enable the competent authorities in a Member State to supervise a credit institution and its branches throughout the Community from the country of its head office;

Whereas, in order to ensure that credit institutions compete on equal terms, the provisions of this Directive should apply to all of these; whereas their field of application should therefore be as wide as possible, although

.../...

exceptions must be envisaged in the case of certain credit institutions, such as central banks, to which the Directive cannot apply;

Whereas, however, the same system of supervision cannot always be applied to all types of credit institution; whereas provision should therefore be made for application of the Directive to be deferred in the case of certain groups or types of institution to which its immediate application would be difficult for reasons of a technical nature; whereas in the future more specific provisions covering such institutions may prove necessary; whereas, however, such specific provisions should be based on a number of common principles;

Whereas the eventual aim is to introduce throughout the Community a parallel authorization procedure based on uniform requirements; whereas at the initial stage it is necessary, however, to specify only certain minimum requirements which all Member States should impose;

Whereas the above aim can be achieved only if assessment criteria which allow certain supervisory authorities particularly wide discretionary powers are progressively reduced; whereas, from this point of view, the requirement to produce an operating programme should be seen merely as a factor enabling the competent authorities to act on the basis of more precise information, within the framework of objective criteria;

Whereas the final objective of coordination is to introduce at a later stage, in parallel with the progressive attainment of economic and monetary union, a system whereby branches of an undertaking which is established in a Member State will throughout the Community be subject to no authorization requirement;

Whereas this objective cannot be attained immediately; whereas a certain degree of flexibility is however possible from the initial stage as regards the requirements concerning the legal forms of ~~constitution~~ of credit institutions and the protection of the use of certain descriptions;

.../...

whereas, until further coordination has been achieved, national laws shall remain entirely applicable in respect of all other matters;

Whereas the centralization of supervision in the country of origin will be facilitated if the financial requirements which the institutions must satisfy are equivalent; whereas, even prior to harmonization of the accounting information to be provided to the supervisory authorities by credit institutions, a first step in this direction can be made by drawing up a list of ratios between certain items in the accounts for observation purposes and in addition to any other ratios which may be demanded by the various Member States; whereas, moreover, it is necessary to begin without delay the standardization of the lay-out of accounts; whereas, within the framework of the cooperation referred to below, efforts will be made to ensure that a system of identically defined and equivalent ratios is progressively established for application in all member countries; whereas, in this connection it would be desirable to make a distinction between ratios intended to ensure the sound management of credit institutions and those established for the purposes of economic and monetary policy;

Whereas the rules governing branches of credit institutions having their head office outside the Community should be parallel in all Member States; whereas it is important at the present time to provide that such rules may not be more favourable to such branches than to those of institutions from another Member State; whereas it should be specified for future purposes that the rules applicable to such branches will be defined in agreements concluded between the Community and the third countries concerned, account being taken of the principle of reciprocity;

Whereas the examination of practical problems posed in the fields covered by the directives adopted by the Council and applying to credit institutions, and in particular in order to achieve further coordination, close cooperation between the competent authorities and the Commission will be necessary within

.../...

a Contact Committee; whereas it is vital that the authorities achieve in this framework the closest possible collaboration concerning the supervision of credit institutions;

Whereas, moreover, those professionally concerned should be consulted as to the pattern of future coordination; whereas the Commission should envisage the setting up of a Committee on which these interests will be represented;

HAS ADOPTED THIS DIRECTIVE:

TITLE I

DEFINITIONS AND FIELDS OF APPLICATION

Article 1

For the purposes of this Directive :

- "credit institution" means an undertaking whose usual business is to receive, directly or indirectly, deposits or other repayable monies from the public and to grant credits for its own account;

- "authorization" means an instrument issued under any form by a public authority, 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 the operations inherent in the business referred to above. 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. Any number of credit institutions affiliated to a central organization which, under national regulations, guarantees the totality of their engagements, may be regarded as branches;

- "competent authorities" means the authorities to which Member States entrust the application of the laws, regulations and administrative provisions relating to credit institutions and the supervision of them.

.../...

Article 2

1. This Directive applies to the commencement and carrying on of business by credit institutions.

2. It does not apply to:
- the central banks of Member States;
- Post Office Giro institutions;
- institutions whose object is to promote regional development in Member States;
- in Germany, the Kreditanstalt für Wiederaufbau;
- in France, the Banque Française du Commerce Extérieur;
- in the Netherlands, the N.V. Export-Financierung-Maatschappij, the Nederlandse Financieringsmaatschappij voor Ontwikkelingslanden N.V. and the Nederlandse Investeringsbank voor Ontwikkelingslanden N.V.

3. Member States may defer application of this Directive to certain types or groups of credit institutions where immediate application of the coordinated rules would cause technical problems which cannot be overcome in the short term. These problems may result from the fact that these concerns are submitted to control by an authority different from that normally responsible for control of banks, or from the fact that they are subjected to a particular system of control. In any event such deferment cannot be justified by public law statutes, smallness of size or limited scope of activity in the particular institutions concerned. Deferment can only apply to institutions already existing at the time of the notification of the directive.

4. The deferment of application under paragraph 3 above shall be motivated and notified to the Commission by the Member State in question.
Deferment shall be for a period of two years and may be renewed following consultation of the Committee referred to in Article 11. It shall take effect as from its publication in the Offical Journal of the European Communities, which shall be effected not later than six month following notification of this Directive.
On the recommendation of the Commission, which shall consult the said Committee, the Council shall decide the termination of such deferment by a Member State.

.../...

TITLE II

PROVISIONS APPLYING TO CREDIT INSTITUTIONS HAVING THEIR HEAD OFFICE IN A MEMBER STATE AND TO THEIR BRANCHES IN OTHER MEMBER STATES

Article 3

1. Member States shall provide that credit institutions subject to the provisions of this Directive shall have obtained authorization before they commence their activities. They shall, subject to paragraphs 2 and 3 below, determine the requirements for authorization and notify them to the Commission.

2. Without prejudice to any other requirements which may be laid down under national legislation, the competent authorities shall not grant authorization where:

- the credit institution does not possess adequate own funds;
- the persons who effectively manage its business are not adequately qualified or reputable.

3. Member States shall, in addition, require applications for authorization to be accompanied by a programme of operations in which, in particular, the types of business envisaged and the structural organization of the institution must be indicated.

4. The Committee provided for in Article 11 shall examine the definitions used by the competent authorities concerning the conditions contained in paragraph 2 and the information which should be included in the scheme of operations, and shall if necessary propose to the Commission more detailed coordination.

.../...

5. Reasons must be given for any refusal of authorization, and must be notified to the applicant within six months of receipt of the application or, if the latter is incomplete, not later than six months following receipt of documents containing all the information required under the provisions in force.

6. Every authorization or refusal shall be notified to the Commission. Each credit institution shall be entered in a list to be published in the Official Journal of the European Communities and to be maintained by the Commission.

Article 4

1. Pending further coordination enabling branches to be established throughout the Community without undergoing any authorization procedure, Member States may make the commencement of business in their territory by branches of the credit institutions covered by this Directive which have their head office in another Member State subject to authorization according to the law and procedure applicable to credit institutions established on their territory

2. However, Member States may not refuse authorization to branches of credit institutions on the sole ground that it is established in another Member State in a legal form which is not allowed in the case of a credit institution carrying out analogous activities in the host country. This provision shall not apply, however, to credit institutions formed by one natural person.

3. The competent authorities shall inform the Commission of their response to applications for authorization to set up such branches which are submitted to them.

...../...

4. The provisions of this Article shall be without prejudice to the rules applied by Member States to branches set up in their territory by credit institutions which have their head office there. Notwithstanding the provisions of the third indent of Article 1, second sentence, the law of Member States by which a separate authorization is required for each branch opened by a credit institution in their territory shall apply equally to the branches of credit institutions whose head office is in another Member State.

Article 5

Credit institutions to which this Directive applies may, notwithstanding any provisions concerning the use of the words "bank", "savings bank" or other similar descriptions which may exist in the host country, use throughout the territory of the Community the same name as they use in the country where their head office is situated. In the event of there being any danger of confusion, the competent authorities of the host Member States may for purposes of clarification require the addition to the name of a short explicative phrase.

Article 6

1. Pending more intensive coordination, the competent authorities shall, for purposes of observation and in addition to any eventual ratios which may be established by them, ascertain the following ratios with a view to examining the financial soundness of institutions to which this Directive applies:

a) the ratio of own funds to deposits;
b) the ratio of own funds to total assets; however, the competent authorities may exclude certain classes of assets which do not carry any risk, such as claims on or guaranteed by a Member State;
c) the ratio of own funds to non-liquid assets;
d) the ratio of current liabilities to liquid assets.

.../...

2. The ratios specified in paragraph 1 shall be calculated at least every three months by the competent authorities.

3. The competent authorities shall examine, in the Committee provided for in Article 11, the desirability

a) of ascertaining, in addition to the ratios specified in paragraph 1, the ratio of own funds to total open foreign exchange positions, both spot and forward on the one hand, and the ratio of own funds to the same positions with the different maturities taken into account on the other hand;

b) of extending the ratio specified in paragraph 1, lit.a., to all or part of current liabilities and of prescribing that Member States shall ascertain either this ratio or that specified in paragraph 1, lit.b;

c) of completing or replacing the ratio specified in paragraph 1, lit.d., by a ratio of short term current liabilities to liquid assets, and by a ratio of all or part of current liabilities to assets invested at medium or long term.

4. After consultation of the Committee provided for in Article 11, the Commission may alter the list of ratios in paragraph 1 to take account of structural changes in the field covered by this Directive.

5. The competent authorities shall, within the Committee provided for in Article 11 and with a view to their coordination, examine the methods of calculating the ratios specified in paragraph 1 above and, in particular, the precise definitions to be given to the various constituent parts; this examination shall be based on the results of the calculations obtained for comparable groups of credit institutions.

.../...

Article 7

1. With a view to supervising those credit institutions which have set up branches in one or more Member States other than that in which their head office is situated the Member States concerned shall collaborate closely. They shall supply one another with all information likely to facilitate the supervision of such branches and of the credit institution to which they belong.

2. The competent authorities of a Member State in whose territory such a branch is set up may, pending a more intensive coordination, require endowment capital to be placed at the disposal of the branch and may watch over the solvency of the latter by means of the ratios specified in Article 6, paragraph 1, lit. a, b and c on the basis of such capital; they shall inform the competent authorities of the country of origin of the results thereof.

.../...

Article 8

1. The competent authorities shall withdraw the authorization issued to a credit institution to which this Directive applies or to a branch authorized under Article 4 where such institution or branch :

a) does not make use of the authorization within six months, expressly renounces the authorization or has ceased to engage in business for more than six months (if the Member State concerned does not provide for the authorization to lapse in such cases);

b) obtained the authorization by deliberately giving false information or by other irregular means;

c) no longer fulfils the conditions under which authorization was granted, with the exception of those in respect of own funds;

d) no longer possesses sufficient own funds or endowment capital, or no no longer has the required solvency or liquidity;

e) fails fundamentally to fulfil its other obligations under national regulations where these expressly contain a measure providing for the withdrawal of authorization on this ground.

2. In addition, the authorization issued to a branch under Article 4 shall be withdrawn if the competent authority of the country in which the credit institution which established the branch has its head office has withdrawn authorization from that institution.

3. Withdrawal under paragraph 1, lit. c and d, shall be effected only if the measures prescribed by the competent authorities for correcting the situation of the institution or the branch do not seem likely to be successful or are not adopted by the institution or branch.

.../...

4. Before withdrawing from a branch an authorization granted under Article 4, the competent authority of the Member State in which its head office is situated shall be consulted. Where immediate action is called for, notification may take the place of such consultation. The same procedure shall occur, by analogy, in cases of withdrawal of authorization from an institution which has branches in other Member States.

5. Reasons must be given for any withdrawal of authorization, which must be notified to the parties concerned and to the Commission.

.../...

TITLE III

BRANCHES OF INSTITUTIONS HAVING THEIR HEAD OFFICE OUTSIDE THE COMMUNITY

Article 9

1. Pending more intensive coordination of the laws, regulations and administrative provisions relating to branches of credit institutions having their head office outside the Community, Member States shall not apply to such branches, in respect of the commencement or carrying on of their business, provisions which result in more favourable treatment than that accorded to branches of credit institutions of Member States.

2. The competent authorities shall inform the Committee provided for in Article 11 of all applications for the authorization of branches submitted to them by credit institutions having their head office outside the Community.

3. The Community may, through agreements concluded in accordance with the Treaty with one or more third countries, agree to apply provisions which, having regard to the principle of reciprocity, accord to branches of an institution having its head office outside the Community identical treatment throughout the Community.

.../...

TITLE IV

GENERAL AND TRANSITIONAL PROVISIONS

Article 10

1. Credit institutions to which this Directive applies which lawfully commenced business before the entry into force of the provisions of this Directive shall be deemed to be authorized. They must satisfy the condition laid down in the second indent of Article 3, paragraph 2, and shall be subject to the provisions of this Directive concerning the carrying on of business by credit institutions. They shall be included in the list provided for in Article 3, paragraph 6.

2. Branches, which before the entry into force of this Directive were lawfully set up in a Member State which requires such branches to be authorized by a credit institution subject to this Directive, shall be deemed to be authorized and shall be subject to this Directive.

3. If an institution or a branch deemed to be authorized under paragraphs 1 or 2 has not undergone any authorization procedure prior to commencing business, a prohibition on the carrying on of their business shall take the place of withdrawal of authorization. Article 8 shall in such circumstances apply by analogy.

.../...

1. There shall be set up alongside the Commission a Contact Committee having the following tasks :

a) of facilitating, without prejudice to the provisions of Articles 169 and 170 of the Treaty, a uniform application of the Directives adopted by the Council with regard to credit institutions, by regular consideration of the concrete problems involved in their application;

b) of facilitating a common attitude among competent authorities concerning the setting up of credit institutions and their operations; this concertation shall cover in particular :

- decisions of Member States about deferring the application of this Directive;
- conditions of authorization for new credit institutions or for branches of credit institutions based in another Member State or outside the Community;
- ratios of certain items of balance sheets set out in Article 6;
- withdrawal of authorizations;
- notifications to the Commission of changes in national laws affecting the sector covered by this Directive;

c) of assisting the Commission in the preparation of new proposals to the Council concerning further coordination, of advising on the evolution and structure of the banking sector;

d) of putting into effect the cooperation provided for in Article 7 of the Directive 73/183/EEC of 28 June 1973.

.../...

2. The Contact Committee shall be composed of a maximum of two representatives of the supervisory authorities of each Member State, together with two representatives of the Commission. These representatives may be accompanied from time to time and by prior agreement of the Committee by one or more advisers. The secretariat will be provided by the Commission.

3. The first meeting of the Committee shall be convened by the Commission under the Chairmanship of one of its representatives. At that meeting, the Committee shall adopt its Rules of Procedure, which will also include provisions concerning its links with the European Monetary Cooperation Fund, and shall also elect its Chairman and Deputy-Chairman.

4. The offices of president and vice-president shall be filled in rotation, for one year at a time, by members representing the competent authorities of one and the same Member State.

5. Meetings of the Committee shall be convoked by its president, either on his own initiative or at the request of one of its members.

6. All the Committee's discussions shall be subject to the obligation of professional secrecy, as specified in Article 12, paragraphs 1 and 2. The content of such discussion may not be made public in any way save with the express consent of the Committee.

Article 12

1. Member States shall ensure that all persons employed by the competent authorities are bound by the obligation of professional secrecy. This obligation of secrecy shall imply that no information received by them in the course of their duties may be disclosed except by virtue of provisions laid down by law. It shall also imply an absence of any obligation to communicate such information to other authorities.

2. Paragraph 1 shall also apply to the representatives of the Commission on the Committee provided for in Article 11.

3. The provisions of paragraph 1 shall not however preclude, as provided in this Directive, the communication of information between the competent authorities of the various Member States. Persons employed by competent authorities receiving such information shall be subject to the obligation of professional secrecy in respect thereof. They may only divulge such information on the express authorization in writing of the competent authority which communicated the information.

.../...

Article 13

Member States shall provide that decisions taken in respect of a credit institution in pursuance of laws, regulations or administrative provisions adopted in accordance with this Directive may be subject to appeal to the courts. The same shall apply where no decision is taken within six months of its submission in respect of an application for authorization which contains all the information required under the provisions currently in force.

.../...

TITLE V

FINAL PROVISIONS

Article 14

1. Within eighteen months of the publication provided for in Article 2, paragraph 4, and in any case within twenty-four months of the notification of this Directive, the Member States shall take the measures necessary to implement it. They shall notify the Commission of these measures without delay.

2. Once this Directive has been notified, the Member States shall, in sufficient time to enable it to give its views thereon, inform the Commission of all laws, regulations or administrative provisions which they propose to adopt in the field governed by this Directive.

3. This Directive is addressed to the Member States.