
STATUTORY INSTRUMENTS

1992 No. 3218

**The Banking Coordination (Second
Council Directive) Regulations 1992**

PART II

RECOGNITION OF EUROPEAN INSTITUTIONS

Functions of Bank

Duty to prepare for supervision

8.—(1) In any case where—

- (a) the Bank receives from the relevant supervisory authority in an institution's home State a notice given in accordance with paragraph 3 of Schedule 2 to these Regulations; and
- (b) the notice states that the institution intends to establish a branch in the United Kingdom,

the Bank shall, before the expiry of the period of two months beginning with the day on which it received the notice, draw to the attention of the institution such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the activities mentioned in the notice, the Bank considers appropriate.

(2) In any case where the Bank receives from the relevant supervisory authority in an institution's home State such a notice as is mentioned in paragraph (1) above—

- (a) the Bank shall also, before the expiry of the said period of two months, consider whether the situation as respects the institution is such that the powers conferred by paragraph (2) of regulation 9 below are likely to become exercisable; and
- (b) if it considers that the situation is such as is mentioned in sub-paragraph (a) above, the Bank may impose, as soon as the requirements of paragraph 1 of Schedule 2 to these Regulations have been complied with in relation to the institution, such restriction under regulation 10 below as appears to it desirable.

(3) In any case where the Bank receives from an institution a notice given in accordance with paragraph 4 of Schedule 2 to these Regulations, the Bank shall, before the expiry of the period of one month beginning with the day on which it received the notice, draw to the attention of the institution such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the proposed change mentioned in the notice, the Bank considers appropriate.

(4) Nothing in this regulation shall require the Bank to draw to the attention of an institution any provision which, in connection with the same notice, has been or will be drawn to its attention under regulation 14 below.

(5) In this regulation and regulation 9 below “the relevant Acts” means the Banking Act(1), the Financial Services Act(2), the Consumer Credit Act(3) and the Insurance Companies Act(4).

(1) 1987 c. 22.

(2) 1986 c. 53.

Power to prohibit the acceptance of deposits

9.—(1) In this regulation “prohibition” means a prohibition on accepting deposits in the United Kingdom.

(2) Subject to paragraph (3) and regulation 11 below, the Bank may impose a prohibition on a European institution if—

- (a) the institution is a European authorised institution which has established a branch in the United Kingdom and it appears to the Bank that the branch is not or may not be maintaining or, as the case may be, will not or may not maintain adequate liquidity;
- (b) the Bank is informed by the relevant supervisory authority in the institution’s home State that it has failed to take any or sufficient steps to cover risks arising from its open positions on financial markets in the United Kingdom;
- (c) it appears to the Bank that the institution has failed to comply with any obligation imposed on it by these Regulations or by or under any of the relevant Acts;
- (d) the Bank is informed by a supervisory authority in the institution’s home State that it has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive⁽⁵⁾;
- (e) it appears to the Bank that it has been provided with false, misleading or inaccurate information by or on behalf of the institution or by or on behalf of a person who is or is to be a director, controller or manager of the institution; or
- (f) it appears to the Bank that the situation as respects the institution is such that, if it were authorised by the Bank under the Banking Act, the Bank could revoke the authorisation.

(3) The Bank may not impose a prohibition on a European institution on the ground mentioned in paragraph (2)(f) above unless—

- (a) the Bank has requested the relevant supervisory authority in the institution’s home State to take all appropriate measures for the purpose of securing that the institution remedies the situation; and
- (b) the Bank is satisfied either—
 - (i) that that authority has failed or refused to take measures for that purpose; or
 - (ii) that the measures taken by that authority have proved inadequate for that purpose.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Bank on the institution concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) In the case of a European institution which is a member of a self-regulating organisation, the reference in paragraph (2)(c) above to any obligation imposed by or under the relevant Acts shall be taken to include a reference to any obligation imposed by the rules of that organisation.

(6) In this regulation “controller”, “director” and “manager” have the same meanings as in the Banking Act.

(7) Schedule 3 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation and restrictions imposed under regulation 10 below) shall have effect.

(3) 1974 c. 39.

(4) 1982 c. 50.

(5) Council Directive [89/646/EEC](#) (OJNo. L386, 30.12.89).

Power to restrict listed activities

10.—(1) In this regulation “restriction” means a direction that a European institution or former European institution—

- (a) may not carry on in the United Kingdom any home-regulated activity (other than the acceptance of deposits) which is specified in the direction; or
- (b) may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any homeregulated activity which is so specified.

(2) Where it appears to the Bank that the situation as respects a European institution is such that the powers conferred by paragraph (2) of regulation 9 above are exercisable, the Bank may, instead of or as well as imposing a prohibition, impose such restriction as appears to it desirable.

(3) Where it appears to the Bank that the situation as respects a former European authorised institution is such that the powers conferred by paragraph (2) of regulation 9 above would be exercisable if the institution were still a European authorised institution, the Bank may impose such restriction as appears to it desirable.

(4) Subsection (4) of section 12 of the Banking Act (examples of conditions that may be imposed) applies for the purposes of this regulation as it applies for the purposes of that section.

(5) Any restriction imposed under this regulation—

- (a) may be withdrawn; or
- (b) may be varied with the agreement of the institution concerned,

by written notice served by the Bank on the institution; and any such notice shall take effect on such date as is specified in the notice.

(6) An institution which fails to comply with a restriction shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) The fact that a restriction has not been complied with (whether or not constituting an offence under paragraph (6) above) shall not invalidate any transaction but, in the case of a European institution, shall be a ground for the imposition of a prohibition under regulation 9 above.

(8) In this regulation “former European authorised institution” means an institution which was formerly a European authorised institution and continues to have a liability in respect of any deposit for which it had a liability when it was a European authorised institution.

Limitations on Bank’s powers

11.—(1) This regulation applies where it appears to the Bank that the situation as respects a European institution is such that the Bank’s power—

- (a) to impose a prohibition or restriction on the institution; or
- (b) to vary otherwise than with the agreement of the institution any restriction imposed on the institution,

is exercisable by virtue of regulation 9(2)(a) above, or by virtue of any failure to comply with a requirement imposed under section 39 of the Banking Act (information and production of documents) for statistical purposes.

(2) The Bank shall require the institution in writing to remedy the situation.

(3) If the institution fails to comply with the requirement under paragraph (2) above within a reasonable time, the Bank shall give a notice to that effect to the relevant supervisory authority in the institution’s home State requesting that authority—

- (a) to take all appropriate measures for the purpose of ensuring that the institution remedies the situation; and
- (b) to inform the Bank of the measures it proposes to take or has taken or the reasons for not taking any such measures.

(4) Subject to paragraph (5) below, the Bank shall not take any steps to impose a prohibition or restriction on a European institution, or to vary otherwise than with the agreement of a European institution any restriction imposed on the institution, unless it is satisfied—

- (a) that the relevant supervisory authority has failed or refused to take measures for the purpose mentioned in sub-paragraph (a) of paragraph (3) above; or
- (b) that the measures taken by that authority have proved inadequate for that purpose.

(5) Where the Bank considers that the prohibition, restriction or variation should be imposed as a matter of urgency, it may take steps to impose the prohibition, restriction or variation—

- (a) before complying with paragraphs (2) and (3) above; or
- (b) where it has complied with those paragraphs, without being satisfied as mentioned in paragraph (4) above;

but in such a case the Bank shall, at the earliest opportunity, inform the relevant supervisory authority in the institution's home State and the European Commission of the steps taken.

(6) In any case where—

- (a) by virtue of paragraph (5) above, the Bank has imposed a prohibition or restriction on a European institution, or varied a restriction imposed on such an institution, before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above; and
- (b) the European Commission decides under the Second Council Directive that the Bank must withdraw or vary the prohibition, restriction or variation,

the Bank shall in accordance with the decision withdraw or vary the prohibition, restriction or variation.

(7) In any case where—

- (a) the Bank has given notice to a European institution under paragraph 2 of Schedule 3 to these Regulations of a proposal to impose a prohibition or restriction or vary a restriction;
- (b) the prohibition, restriction or variation has not taken effect; and
- (c) the European Commission decides under the Second Council Directive that the Bank must withdraw or vary the notice,

the Bank shall in accordance with the decision withdraw or vary the notice.

(8) This regulation shall not apply—

- (a) as respects the imposition of a restriction in pursuance of regulation 8(2) above; or
- (b) in any case where regulation 12 below applies.

Prohibition or restriction on information from supervisory authority

12.—(1) This regulation applies where in the case of a European institution—

- (a) the Bank is informed by the relevant supervisory authority in the institution's home State that it has failed to take any or sufficient steps to cover risks arising from its open positions on financial markets in the United Kingdom; or
- (b) the Bank is informed by a supervisory authority in that State that the institution is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.

(2) The Bank shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.

(3) The Bank shall also—

- (a) consider whether to exercise its powers under regulation 9 or 10 above; and
- (b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.

Obligation of Bank where institution ceases to be a European institution etc.

13. Where the Bank is informed that—

- (a) an institution has ceased to be a European institution; or
- (b) a European institution has ceased to carry on any particular home-regulated activity in the United Kingdom,

the Bank shall inform every other authority which it knows is a connected UK authority of that fact.