
STATUTORY INSTRUMENTS

1992 No. 3218

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

PART II

RECOGNITION OF EUROPEAN INSTITUTIONS

Functions of Board

Limitations on Board's powers

17.—(1) This regulation applies where it appears to the Board that the situation is such that its power—

- (a) to impose a prohibition under regulation 15 above;
- (b) to publish a statement with respect to a European institution under section 60 of the Financial Services Act;
- (c) to make an application with respect to such an institution under section 61(1) of that Act;
- (d) to impose a prohibition or requirement on such an institution under Chapter VI of Part I of that Act;
- (e) to vary a prohibition or requirement imposed on such an institution under that Chapter; or
- (f) to refuse an application for the variation or rescission of such a prohibition or requirement,

is exercisable by virtue of any contravention of a requirement to furnish information for statistical purposes imposed under that Act.

(2) The Board 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 Board 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 concerned remedies the situation which has given rise to the issue of the notice; and
- (b) to inform the Board of the measures it proposes to take or has taken or the reasons for not taking such measures.

(4) Subject to paragraph (5) below, the Board shall not take any such action as is mentioned in sub-paragraphs (a) to (f) of paragraph (1) above with respect to a European 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 Board decides that it should take action as mentioned in any of subparagraphs (a) to (e) of paragraph (1) above with respect to a European institution as a matter of urgency in order to protect the interests of investors, it may take that action—

- (a) before complying with paragraphs (2) and (3) above; or
- (b) where it has complied with those requirements, before it is satisfied as mentioned in paragraph (4) above;

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

(6) In any case where—

- (a) by virtue of paragraph (5) above, the Board has—
 - (i) imposed a prohibition under regulation 15 above;
 - (ii) published a statement with respect to a European institution under section 60 of the Financial Services Act;
 - (iii) made an application under section 61(1) of that Act with respect to such an institution;
 - (iv) imposed on such an institution a prohibition or requirement under Chapter VI of Part I of that Act; or
 - (v) varied a prohibition or requirement imposed on such an institution under that Chapter,

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 Board must withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement,

the Board shall in accordance with the decision withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement.

(7) For the purposes of paragraph (6)(b) above the Board shall be taken to withdraw or amend a statement if it publishes a further statement retracting or, as the case may be, correcting it; and the Board shall after publication of the further statement send a copy of it to any person to whom a copy of the previous statement was sent under section 60(5) of the Financial Services Act.

(8) In any case where—

- (a) the Board has, by virtue of sub-paragraph (5) above, given notice to a European institution under subsection (2) of section 60 of the Financial Services Act before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above;
- (b) the statement to which the notice relates has not been published; and
- (c) the European Commission decides under the Second Council Directive that the Board must not publish the statement, or must publish a different statement under that section,

the Board shall in accordance with the decision withdraw the notice or give a different notice in substitution.