

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(87) 255 final

Brussels, 22 May 1987

Amended Proposal for a

COUNCIL DIRECTIVE

on the freedom of establishment and the free supply of services
in the field of mortgage credit

(presented by the Commission pursuant to the second paragraph
of Article 149 of the EEC Treaty)

COM(87) 255 final

Modified proposal for a Council Directive on the freedom of
establishment and the free supply of services
in the field of mortgage credit

1. Explanatory Memorandum

1. On 24 January 1985 the Commission sent the Council a proposal for a Directive on the freedom of establishment and the free supply of services in the field of mortgage credit.¹⁾
2. The Economic and Social Committee delivered its opinion²⁾ at its 231st plenary session held in Brussels on 27 November 1985, and Parliament delivered its opinion at its sitting of 19 February 1987.³⁾
3. An amended proposal has been drawn up to take account, as far as possible, of the opinion delivered by Parliament and suggestions made by the Economic and Social Committee.

The Parliament as well as the Economic and Social Committee have both endorsed the basic feature of the original proposal; the liberalisation of mortgage credit based on mutual recognition of financial techniques. Only a few of the amendments proposed by the European Parliament have been considered to be in conflict with the basic principles of the proposal or the EEC-Treaty and have therefore been unacceptable to the Commission.

4. The majority of the proposed amendments take the form of improvements in presentation or in drafting, whereas others have a more substantial impact on the provisions. It seems therefore appropriate to comment on the most important changes.

1) COM(84)730 final; OJ No C 42, 14.2.1985, p. 4

2) OJ No C 344, 31.12.1985, p. 11

3) OJ No C 76, 23.3.1987, p. 93

a) **Article 1**

The amendment makes it clear that the scope of the proposal covers all credit institutions, which are active in the field of mortgage credit, and not just specialised mortgage credit institutions.

b) **Article 2**

For the clarity of the whole proposal it is proposed to include three new definitions of "designated credit institutions", "mortgage credit activities" and "mortgage" especially. The new definitions have been inserted in the subsequent articles where appropriate.

c) **Article 2 A**

The new Article 2 A is inserted in order to provide that nothing in this Directive shall reduce any existing rights of designated credit institutions to undertake mortgage credit activities in their home Member State or any other Member State.

d) **Article 3**

A new subparagraph has been added to Article 3 which requests that a home Member State does not restrict the use in another Member State of any financial techniques permitted for mortgage credit activities in the home Member State.

The use of the term "techniques" in the original proposal Articles 4 and 5 has been criticised because it could be interpreted too widely. To achieve greater clarity it is proposed to replace "techniques" by "financial techniques" to make it clear that the techniques in question are the funding and lending techniques of the designated credit institutions.

e) **Article 4 and 5**

The two articles have been merged in order to improve the clarity of the proposal. One of the proposed modifica-

tions in paragraph (2) needs a comment. It is proposed to add "who are adversely affected" to make it clear that a Member State is only obliged to authorize those credit institutions who have had the conditions of competition distorted by the introduction (importation) of new financial techniques, to adopt similar techniques or to take equivalent measures. Nothing hinders a Member State from letting such an authorisation apply to all designated credit institutions but there might be cases where a Member State wants to exclude one or more groups of credit institutions not affected by the introduction of the new financial techniques.

f) **Article 6**

It is proposed to replace the original time-unlimited derogation concerning the choice of funding and lending currency and on matching with a maximum period of 7 years. After 7 years the financial integration should be so far developed that there will be no need for the derogation. The original proposed use of the ECU as an alternative remains unchanged.

g) **Article 9**

Most of the proposed changes are to clarify and strengthen the procedures for cooperations between supervisory authorities used when a designated credit institution wants to supply services to another Member State.

h) **Article 11**

It is proposed to change the period in which Member States may limit the supply of mortgage credit from a domestic credit institution to other Member States. It is proposed that the five years after notification of the directive is changed to a period of 7 years after the adoption of the directive. Furthermore it is proposed

that the limitation of 25% shall be 25% of the total domestic mortgage lending of the relevant credit institution in the previous year.

i) Article 12

Finally it is proposed that Member States shall comply with the Directive within 2 years of its adoption.

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Modified proposal for a Council Directive on the freedom of establishment and the free supply of services in the field of mortgage credit

II. Text of the proposal

Original Proposal

Modified Proposal

The title (1)

Proposal for a COUNCIL DIRECTIVE on the freedom of establishment and the free supply of services in the field of mortgage credit.

Proposal for a COUNCIL DIRECTIVE on the freedom of establishment and the freedom to supply services in the field of mortgage credit.

The preamble

The preamble

Whereas Nos 1 to 5 remain unchanged

Whereas No 6

Whereas the elimination of such obstacles can be achieved by making it possible to grant mortgage credit secured on real property situated in a Member State other than the home Member State and by making possible to operate mortgage credit in host Member State in accordance with the specific lending and funding techniques authorised in the home Member State;

Whereas No 6

Whereas the elimination of such obstacles can be achieved by making it possible to grant mortgage credit secured on real property situated in a Member State other than the home Member State and by making it possible to operate mortgage credit in a host Member State in accordance with the financial techniques permitted by the law of the home Member State;

Whereas Nos 7 and 8 remain unchanged

Whereas No 9

Whereas, pending the achievement of complete freedom of capital movements, Member States may require matching between assets and liabilities of the currencies related to mortgage credit operations; ~~whereas~~ they must at all events allow the possibility of conducting such operations in ECU;

Whereas No 9

Whereas, during a transition period, Member States may require matching between assets and liabilities of the currencies related to mortgage credit operations; whereas they must at all events allow the possibility of conducting such operations in ECU;

(1) This applies only to the English text

Original Proposal

Whereas No 10

Whereas, at all events the effective exercise of the activities mentioned in the Directive requires the removal of some of the existing restrictions on capital movements; whereas a specific directive will deal with such restrictions;

Whereas Nos 11 to 15 remain unchanged

Whereas No 16

TITLE I

Definitions and scope

ARTICLE 1

This Directive applies to the credit institutions falling within the ambit of Directive 77/780/EEC, the activities of which consist in receiving funds from the public collected in the form of deposits or the proceeds from mortgage

Modified Proposal

Whereas No 10

Deleted.

Whereas No 16

Whereas the provisions in the Directive apply without prejudice to the provisions relating to capital movements; whereas the effective exercise of certain activities mentioned in the Directive awaits the removal of existing restrictions on capital movements; whereas a Directive based on Article 69 of the Treaty will deal with these restrictions.

TITLE I

Definitions and scope

ARTICLE 1

This Directive applies to the credit institutions falling within the ambit of Directive 77/780/EEC all or part of whose activities consist of receiving funds from the public collected in the form of deposits or the proceeds from the issuing

Original Proposal

bonds or reimbursable shares and in granting loans to the public secured by mortgage on real property for the purpose of acquiring or retaining property rights in building land or in existing or projected buildings or for renovating or improving buildings.

ARTICLE 2

For the purposes of this Directive :

- "home Member State" shall mean the Member State where a credit institution as referred to in Article 1 has its head office,
- "host Member States" shall mean the Member State where a credit institution as referred to in Article 1 has a branch or into which it supplies services.

Modified Proposal

of mortgage bonds or other bonds or securities or reimbursable shares and in granting loans to the public secured by mortgage on real property for the purpose of acquiring or retaining property rights in building land or in existing or projected buildings or for renovating or improving buildings.

ARTICLE 2

For the purpose of this Directive :

- "home Member State" ¹ shall mean the Member State where a credit institution as referred to in Article 1 has its head office,
- "host Member States" shall mean the Member State where a credit institution as referred to in Article 1 has a branch or into which it supplies services,
- "designated credit institutions" shall mean the credit institutions referred to in Article 1,
- "mortgage credit activities" shall mean the activities referred to in Article 1,
- "mortgage" shall mean a mortgage or other legal instrument having equivalent legal effect.

¹ this applies only to the Dutch text

Original Proposal

Modified Proposal

ARTICLE 2A

Nothing in this Directive shall reduce any existing rights of designated credit institutions to undertake mortgage credit activities in their home Member State or in any other Member State.

TITLE II

TITLE II

General provisions to facilitate exercise of the right of establishment and the right to supply services

General provisions to facilitate exercise of the right of establishment and the right to supply services

ARTICLE 3

ARTICLE 3

Member States shall authorize credit institutions as referred to in Article 1 to grant mortgage credit secured by mortgages on real property situated in another Member State.

Home Member States shall authorize designated credit institutions to undertake mortgage credit activities in any other Member State in respect of real property situated anywhere in the Community.

Furthermore, they shall not restrict the use in another Member State of any financial technique permitted for mortgage credit activities in the home Member State.

Original Proposal

Modified Proposal

ARTICLE 4

ARTICLE 4

Member States shall repeal all legal or administrative provisions preventing or obstructing a credit institution, as referred to in Article 1, having its head office in their territory, from operating mortgage credit in another Member State in accordance with techniques specifically authorized within its home Member State, or shall so amend such provisions as to make the operation of such techniques possible.

1. Host Member States, subject to the exception contained in paragraph 3, shall repeal all legal or administrative provisions preventing or obstructing a designated credit institution having its head office in another Member State, from undertaking mortgage credit activities in their territory in accordance with financial techniques permitted under the law of its home Member State, or shall so amend such provisions as to make the operation of such techniques possible.

ARTICLE 5

ARTICLE 5

1. Each Member State shall allow within its territory a credit institution, as referred to in Article 1, having its head office in another Member State, to fund and, in particular, refinance itself subject to the provisions of paragraph 2, according to the techniques of financing which are authorized in its home Member State, in order to grant loans secured by mortgage for the purposes referred to in Article 1.

(delete article number and first subparagraph)

Where the introduction of such new techniques in a Member State gives rise to distortion of the conditions of competition in that Member State, that Member State shall authorize all credit institutions established in

2. Where the introduction of new financial techniques alters the conditions of competition in a Member State, that Member State shall authorize all designated credit institutions

Original Proposal

its territory to adopt similar techniques or take equivalent measures.

2. Pending co-ordination relating to bonds secured by mortgage, the host Member State may require that issues of such bonds on its territory shall be in conformity with the relevant provisions in force in that Member State.

ARTICLE 6

The host Member State may require that both funding and lending transactions be in its currency; the institution in question may however always use the ECU as an alternative. The home Member State may require matching between assets and liabilities in each national currency; the institution in question may however always choose to meet the matching requirement in ECU.

Modified Proposal

established in its territory who are adversely affected by the change to adopt similar techniques or take equivalent measures.

3. unchanged

ARTICLE 6

1. For a maximum period of 7 years after the adoption of this Directive, the host Member State may require that both funding and lending transactions be in its currency or, where it allows transactions to be in another national currency, that assets and liabilities in each national currency be matched; the institution in question may however always use the ECU as an alternative.
2. Paragraph 1 shall not apply to mortgage credit activities between a designated credit institution and a national of its home Member State.
3. For a maximum period of 7 years after the adoption of this Directive, the home Member State may require matching between assets and liabilities in each national currency; the institution in question may however always choose to meet the matching requirement in ECU.

Original Proposal

Modified Proposal

ARTICLE 7

ARTICLE 7

In cases of State intervention or other public assistance of any type in the field of mortgage credit related activities, including the saving of funds with and the granting of mortgage credits by credit as referred to in Article 1, similar measures shall apply to transactions undertaken within the scope of this Directive. Such measures shall be non-discriminatory as between nationals of Member States.

State or other public assistance measures of any type, including tax benefits, in the field of mortgage credit activities undertaken by designated credit institutions shall apply to transactions undertaken within the scope of this Directive. There shall be no discriminatory or restrictive treatment based either on nationality or on the fact that a designated credit institution is not established in the Member State where the services are provided.

TITLE III

TITLE III

Provisions relating to the freedom of establishment

Provisions relating to the freedom of establishment

ARTICLE 8

ARTICLE 8

Until the conditions for home country control are fulfilled, supervision of any form of establishment in another Member State of a credit institution as referred to in Article 1, shall be exercised by the supervisory authority of that host Member State in close cooperation with the supervisory authority of the home Member State.

Until other appropriate provision for control is made by a further directive, supervision of any form of establishment in another Member State of a designated credit institution shall be exercised by the supervisory authority of that host Member State in close cooperation with the supervisory authority of the home Member State and according to the legal provisions in the host Member State which are not inconsistent with this Directive.

Original Proposal

TITLE IV

Provisions relating to freedom to
supply services

ARTICLE 9

1. A credit institution, as referred to in Article 1, wishing to extend its activities by way of the exercise of freedom to supply services in the field of mortgage credit into the territory of another Member State, shall give notification thereof to the supervisory authority of the home Member State which has granted the authorization pursuant to Article 3 of Directive 77/780/EEC.
2. Member States shall require the notification to be accompanied by the following information from the credit institution concerned :
 - a) the Member State into whose territory it intends to supply services;
 - b) the types of business it intends to carry out on the territory of that host Member State;
 - c) the general and specific conditions under which funds will be received and loans granted.
3. Where the supervisory authority of the home Member State confirms the financial soundness of the credit institution concerned, it shall, within three months of the notification referred to in

Modified Proposal

TITLE IV

Provisions relating to the freedom to
supply services

ARTICLE 9

1. A designated credit institution wishing to exercise the freedom to supply services in the field of mortgage credit activities into the territory of another Member State for the first time shall give notification thereof to the supervisory authority of the home Member State which has granted the authorization pursuant to Article 3 of Directive 77/780/EEC.
2. Member States shall require the notification to be accompanied by the following information from the designated credit institution concerned :
 - a) the Member State into whose territory it intends to supply services;
 - b) the types of business it intends to carry out on the territory of that host Member State;
 - c) the general and specific conditions under which funds will be received and loans granted.
 - d) the address in the host Member State where documents may be served upon it.
3. Unless the supervisory authority of the home Member State has reason to doubt the financial soundness of the designated institution concerned on the basis of the information already in its

Original Proposal

paragraph 1, send the information mentioned in paragraph 2 to the supervisory authority of the host country, together with a declaration assessing the financial situation of the credit institution.

4. Where the supervisory authority of the home Member State refuses to confirm the financial soundness of a credit institution, reasons shall be given to the institution concerned within three months of receipt of the information mentioned in paragraph 2.

5. Before the credit institution commences its activities the supervisory authority of the host country shall, within a period of three months following receipt of the information and of the declaration mentioned in paragraph 3, prepare for the constant supervision of the credit institution pursuant to Article 10.

Modified Proposal

possession and/or any further information which it reasonably requires from the institution, or which it obtains from other sources, it shall, within three months of the notification referred to in paragraph 1, send the information mentioned in paragraph 2 to the supervisory authority of the host Member State.

4. Where the supervisory authority of the home Member State decides that there is reason to doubt the financial soundness of a designated credit institution it shall refuse to send the information mentioned in paragraph 2 to the supervisory authority of the host Member State and shall give reasons to the institution concerned within three months of receipt of the information mentioned in paragraph 2. Such refusal shall have the effect of suspending the right of the institution to supply services in the field of mortgage credit activities into the Member State named in the notification.

5. Before the designated credit institution commences its activities the supervisory authority of the host Member State shall, within a period of three months following receipt of the information mentioned in paragraph 2, prepare for the supervision of the institution pursuant to Article 10.

Original Proposal

Modified Proposal

6. A designated credit institution wishing to change any of the matters notified pursuant to paragraph 2 shall give written notice of the proposed change to the supervisory authorities in the relevant home and host Member States at least one month before making the change.

ARTICLE 10

ARTICLE 10

1. A credit institution exercising freedom to supply services into the territory of another Member State shall report quarterly on its operation in the host Member State to the supervisory authority of that Member State.
2. If the supervisory authority of a host Member State ascertains that an institution providing services into its territory is not complying with the legal provisions in force in that Member State which are justified on the grounds of the general good, that authority shall request the institution concerned to put an end to the irregular situation.

1. A designated credit institution exercising freedom to supply services into the territory of another Member State shall report quarterly on its operations in the host Member State to the supervisory authority of that Member State.
2. Unchanged

Original Proposal

Modified Proposal

3. If the institution concerned fails to take the necessary steps, the supervisory authority of the host Member State shall inform the home Member State accordingly. The authority of the home Member State shall take all appropriate measures to ensure that the institution concerned puts an end to the irregular situation. The nature of those measures shall be communicated to the authority of the host Member State.

4. If, despite the measures taken by the home Member State pursuant to paragraph 3, or because such measures prove inadequate or are lacking in the Member State in question, the institution persists in violating the legal rules referred to in paragraph 2 in force in the host Member State, the latter State may, after informing the supervisory authority of the home Member State, take appropriate measures to prevent further irregularities including, insofar as it is strictly necessary, the prevention of the further conclusion of mortgage contracts by that institution by way of provision of services within its territory. The Member States shall ensure that within their territory it is possible to serve the legal documents necessary for these measures.

5. Any measure adopted pursuant to paragraphs 2, 3 and 4 involving penalties or restrictions on the provision of services must be properly justified and communicated to the institution concerned. Every such measure shall be subject to the right to apply to the courts in the Member State in which the authorities adopted it.

3. Unchanged

4. If, despite the measures taken by the home Member State pursuant to paragraph 3 or because such measures prove inadequate or are lacking in the Member State in question, the institution persists in violating the legal provisions referred to in paragraph 2 in force in the host Member State, the latter State may, after informing the supervisory authority of the home Member State, take appropriate measures to prevent further irregularities including, insofar as it is necessary, the prevention of the further conclusion of mortgage contracts by that institution by way of provision of services within its territory. The Member States shall ensure that within their territory it is possible to serve the legal documents necessary for these measures.

5. Unchanged

Original Proposal

6. In the event of withdrawal of authorization the supervisory authority of the host Member State shall be informed of such action and shall take appropriate measures to prevent the institution concerned from continuing to conclude mortgage contracts by way of provision of services within the territory of that State.
7. Every two years the Commission shall submit to the Council a report summarising the number and type of cases in which in each Member State decisions recording non-confirmation of financial soundness have been communicated under Article 9 or measures have been taken in accordance with the provisions of paragraph 4. Member States shall co-operate with the Commission by providing it with the information required for this report.

TITLE V

Transitional and final provisions

ARTICLE 11

The home Member State may, for a maximum period of five years after notification of

Modified Proposal

6. In the event of withdrawal of authorization the supervisory authority of the host Member State shall be informed of such action and shall take appropriate measures to prevent the institution concerned from continuing to conclude mortgage contracts by way of provision of services within the territory of the relevant host Member State.
7. Every two years the Commission shall submit to the Council and to the European Parliament a report summarising the number and type of cases in each Member State in which there has been a refusal pursuant to Article 9 or measures have been taken in accordance with the provisions of paragraph 4. Member States shall co-operate with the Commission by providing it with the information required for this report.

TITLE V

Transitional and final provisions

ARTICLE 11

The home Member State may, for a maximum period of 7 years after the

Original Proposal

Modified Proposal

this Directive, limit the transactions of a credit institution in the field of mortgage credit carried on either through branches in other Member States or by way of the provision of services to 25% of the total mortgage lending of the relevant credit institution.

adoption of this Directive, limit the transactions of a designated credit institution in the field of mortgage credit activities carried on either through branches in other Member States or by way of the provision of services to 25% of the total domestic mortgage lending of the relevant credit institution in the previous year.

ARTICLE 12

ARTICLE 12

- 1. Member States shall bring into force the measures to comply with this Directive by They shall forthwith inform the Commission thereof.
- 2. Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

- 1. Member States shall bring into force the measures to comply with this Directive within 2 years of its adoption. They shall forthwith inform the Commission thereof.
- 2. Unchanged

ARTICLE 13

ARTICLE 13

This Directive is addressed to the Member States.

Unchanged