COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

SECOND COUNCIL DIRECTIVE

on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions and amending Directive 77/780/EEC

(presented by the Commission)

SUMMARY

The proposal for a Second Directive aims to establish the framework within which the internal market in banking will operate from 1993. The principle of mutual recognition of authorizations and supervisory systems is applied and is founded on the prior harmonisation of essential supervisory rules.

All credit institutions, duly authorised in the home country, will be able to establish or supply services throughout the Community without further authorisation. They will be able in this context to undertake all the banking activities figuring in a list annexed to the Directive, provided that those activities are not prohibited under the terms of their home country authorisation. The supervision of credit institutions, including their branches in other Member States, will henceforth be undertaken by the supervisory authorities of the home Member State (except in the case of measures resulting from monetary policy).

The benefits of the same provisions will be extended to financial institutions which are wholly or almost wholly owned by credit institutions and who meet a series of strict conditions.

The mutual recognition of authorisations and supervisory systems is made possible by the harmonization of essential rules: the establishment of a required level of initial capital, supervision of the major shareholders of credit institutions and limitation of the size of participations in non-financial undertakings. The harmonization of the solvency ratio, which is also a prerequisite requirement, will be the subject of a specific proposal of directive.

Finally, the proposal of directive arranges cooperation between supervisory authorities in the different Member States. It provides, notably, some necessary reciprocal rules governing consultation or information, in particular with regard to third countries. It further strengthens the harmonisation of professional secrecy binding on supervisory authorities.

TIMING

Suggested dates for

- opinion of the European Parliament:	30 June 1988
- opinion of the Economic and Social Committee:	30 June 1988
- Council's common position:	31 December 1988
- second reading of the European Parliament:	31 March 1989
- adoption by the Council of Ministers:	30 June 1989

The date indicated for the adoption by the Council is in accordance with the White Paper time schedule "Completion of the Internal Market".

BENEFITS FOR CITIZENS AND BUSINESSES

The aim of the proposal is to create a truly internal market in banking, in which any credit institution authorised in a Member State will be able to establish branches and to offer its services freely throughout the Community to citizens and businesses. It will have the following principal effects:

- cross-border financial operations will be easier and less expensive, whether they are foreign payments or investments or concerned with business finance, and particularly with the financing of international activities;

- the intensification of competition between credit institutions will produce a greater range of choice for citizens and businesses and will certainly lead to a reduction in the cost of banking services;

- the innovation resulting from the introduction of new financial techniques will allow citizens and businesses to chose financial products better suited to their requirements and needs, on the most favourable terms.

Taken as a whole, the consequences of the present proposal will be favourable.

PROPOSAL FOR A SECOND BANKING COORDINATION DIRECTIVE
EXPLANATORY MEMORANDUM

I. PRELIMINARY REMARKS

Main objectives of the Proposal

1. The proposal for a Second Banking Coordination Directive is the centre-piece of Commission proposals for the banking sector in the context of the completion of the Internal Market by 1992. Along with the liberalisation of capital movements and other accompanying Community instruments in the banking sector (on own funds, large exposures, harmonized solvency ratio, deposit guarantee system), it is intended to :

   - remove the remaining barriers to freedom of establishment in the banking sector;

   - provide for full freedom of services.

2. The approach in the Directive is firmly based on the White Paper concepts of harmonisation of essentials, mutual recognition and home country control. The aim is that there should be a single banking licence valid for both establishment and freedom of services no later than the end of 1992.

Freedom of Establishment

3. The main conditions for freedom of establishment were achieved by the First Banking Coordination Directive of 1977. Three obstacles still remain to freedom of establishment. First, a bank wishing to set up a branch in any Member State still has to be authorised by the supervisors of the host country; second, it remains subject to supervision by the host country and its range of activities may be constrained by host country laws. Third, in

most Member States, branches have to be provided with earmarked "endowment capital", as if they were new banks. All these restrictions will be removed by the new Directive; the endowment capital requirement in two phases.

Freedom of Services

4. At present there are no Community procedures for facilitating freedom of services in the banking sector. Such freedom is effectively only practised in those Member States which have fully liberalised capital movements. The recent proposal for a Directive on capital movements will by itself go a large part of the way to assuring freedom of most but not all banking services. But banks would still at present require a separate host country authorisation to market and advertise their services in most other Member States and would again be restricted only to those activities permitted to domestic banks and subject to host country supervision.

The Single Licence and The Agreed List of Banking Activities

5. The core of the proposed Directive is the single banking licence and, associated with it an agreed list of "banking activities" for which the single licence could be valid. This list is contained in the Annex to the proposed Directive. It has been drawn up on a liberal "universal banking" model. The most important and far-reaching aspect of the list is the inclusion of all forms of transactions in securities, specifically:

- trading for own account or account of customers in all forms of security (short and long-term);

- participation in share issues and the provision of services related to them.

- portfolio management and advice.

Harmonisation of Essential Supervisory Standards

6. In the view of the Commission, home country control is dependent on the harmonisation of essential supervisory standards. The standards to be harmonised in this Directive are:

   - minimum capital for authorisation and continuing business (Articles 3 and 8);

   - supervisory control of major shareholders and of banks' participations in the non-bank sector (Articles 9 and 10);

   - sound accounting and control mechanisms (Article 11).

   These provisions are not, however, enough to ensure either solvency or the protection of depositors. The provisions for mutual recognition and home country control in Articles 16-19 will accordingly only take effect (Article 22) when legislation is in place on:

   - own funds ;

   - a harmonised solvency ratio.

7. A draft Directive dealing with the solvency ratio will be submitted by the Commission at the beginning of 1988. The proposal for a Directive on own funds has received a favourable opinion from the European Parliament. An amended proposal will be submitted to the Council early in 1988 (1). It is also important to note that at the end of 1986 the Commission adopted two Recommendations, on large exposures and deposit guarantee schemes (2), which may in due course need to be transformed into Directives.

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(1) COM/88/15/EEC

(2) Commission Recommendation on large exposures of credit institutions (87/62/EEC) OJ No L 33, 4.2.1987, p. 10
Commission Recommendation on introduction of deposit-guarantee schemes (87/63/EEC) OJ No L 33, 4.2.1987, p. 16

Division between Home and Host Country Supervisors

8. Home country banking supervisors will be responsible for the application and monitoring of all the harmonised standards mentioned in the last section. The Directive, however, specifies (Article 12) that, pending further harmonisation, host country supervisors will retain primary responsibility for the supervision of liquidity and exclusive responsibility for monetary policy.

9. The Directive also provides for extensive cooperation between home country and host country supervisors.

10. Committee Procedure

The use of a Regulatory Committee version (a) is proposed in Article 20 in view of the sensitivity of the banking sector and the important role of national banking supervisory authorities in the operation of this Directive.

II. Comments on the articles

1. Definitions and scope

Articles 1 and 2

Article 1 provides a list of definitions, most of them based on directives previously adopted. Article 2 prescribes the scope of the present proposal for a directive, which in principle encompasses all credit institutions. At the same time it endorses some exceptions to the general rule which have already been introduced by the Directives 77/780 (1) and 86/524 (2).

(1) OJ No L 322, 17.12.1977, p. 30
(2) OJ No L 309, 4.11.1986, p. 15

2. Harmonisation of authorisation conditions

Directive 77/780 introduced a system of mandatory licencing for credit institutions. However, it was considered appropriate that the conditions of authorisation provided in that directive should be further harmonized, particularly in the light of the application of the concept of mutual recognition of supervisory standards.

a) Adequate initial capital

Article 3

The First Coordination Directive 77/780 stipulated that a credit institution should possess "adequate minimum own funds" when starting its business. Though this requirement has been embodied in the legislation of all the Member States, the prescribed levels of capital vary substantially.

For this reason the current proposal introduces the provision that in order for credit institutions to obtain authorization they must have initial capital of at least 5 mn ECU. This provision ensures that Community banks which undertake cross-border business should have sufficient initial capital. However, each Member State is free to apply higher levels for its own credit institutions.

In addition, given the fact that in certain Member States some categories of credit institution are limited in terms of their scope or authorized activities by virtue of legal or statutory provisions, this Article provides also that the Member States may derogate from the above mentioned general rule by proposing an inferior initial capital level for these institutions. It is also stipulated that the Commission will prescribe the list of the categories of the relative institutions and the necessary amounts pursuant to the appropriate procedure provided in the current proposal (Article 20).

b) Identity and participations of major shareholders

Article 4

The ownership and control of a credit institution by non-banking interests is an issue of concern for the Community supervisors, especially in a period when highly complex group structures are a wide-spread phenomenon. Thus the risks of cross-financing and conflicts of interest are particularly evident in an environment of vast changes in the structure of financial systems. For these reasons the current proposal stipulates that the competent authorities, before granting an authorization, should be informed of the identity of shareholders and members holding a qualified participation in the proposed credit institution as well as of the amount of such participations. This applies to direct or indirect shareholders or members and irrespective of whether they are physical or legal persons. This procedure enables the competent authority to appraise the suitability of the shareholders and members and eventually to reject any particular group structures as improper at the moment of the setting up of the institution. Closely linked with this provision is Article 9 of the present proposal which provides for an information procedure regarding the prospective acquisition of a credit institution which is already in operation.

c) Single banking licence and abolition of endowment capital

Article 5

This Article introduces two fundamental concepts which are the logical consequence of the approach of mutual recognition.

First the introduction of the single banking licence (Article 5 § 1). By the agreed date the host State should no longer require any authorization for the establishment of branches of institutions which are authorized in other Member States. This is consistent with the fundamental principle of home country control which is endorsed throughout the Community banking legislation and prescribes that the supervision of a credit institution and its activities provided through branches or provision of services will

be subject to the competent authorities of the country of origin. For the establishment of branches the present directive provides an appropriate procedure for cooperation between the home and host authorities of the Member States in Articles 17 and 19.

Second the abolition of initial endowment capital, which is currently required by the majority of Member States for the authorization of branches of credit institutions already authorized in other Member States. The directive also provides for a transitional period, which implies that until the entry into force of the Directive the Member States may not require for the establishment of Community branches an initial capital greater than 50% of the minimum capital which is required by national regulation for the authorization of credit institutions of the same nature (Article 5 § 2).

The credit institutions are allowed to recover the free use of funds which are no longer required as a consequence of the above stated provisions (Article 5 § 3).

d) Consultation procedures

Article 6

This Article provides for a previous consultation procedure with the competent authorities of the other Member States in the case of the setting up of a subsidiary of an institution authorized in another Member State. The same procedure applies in the case of a subsidiary of a parent company of credit institution licenced in another Member State as well as in the case of the licence of an undertaking controlled by the same physical or moral persons of a credit institution authorized in an other Member State.

e) Third country institutions

Article 7

As things stand in Community law, third country banks which establish their subsidiaries in any Community country are considered as Community undertakings as of the moment of their

incorporation (Article 58 of the Treaty) and therefore may benefit from the right of establishment and the free provision of services within its territory. However, the branches of third country credit institutions do not benefit from these rights. In this respect the 77/780 directive provides for certain procedures which apply to the authorization of third country branches (Art. 9).

As a matter of law and of fact the Community is one of the most open banking markets in the world. In this context the Commission believes that in a highly financially interdependent world its banks and other financial intermediaries should enjoy a fair access and equivalent treatment in other world markets. Thus while it focusses on the liberalisation of financial markets within the context of the internal market it does not lose sight of the efforts undertaken to liberalise financial services on a world scale as is the case in the ongoing negotiations in GATT for trade in services.

The Commission thinks that in the directive which constitutes the regulatory and supervisory framework of the banking sector there should be a common stance of the Member States' policies regarding the first establishment of a third country banking institution. In fact the granting of the single banking licence may have an automatic impact not only for the Member State of the first establishment but also for all the others. In this connection it is justified that a procedure of reciprocity could be activated if the situation arises.

Article 7 lays down a procedure of previous obligatory information between the competent authorities and the Commission regarding the request of authorization of a subsidiary of an undertaking governed by the laws of a third country and the acquisition of a participation. The competent authorities of the Member State concerned should suspend their decisions on such requests until the appropriate procedure is completed. The Commission shall within three months of receiving the information examine whether the credit institutions of all Member States enjoy reciprocal treatment. If it establishes that reciprocity is not ensured it may extend the suspension of the decision by virtue of the procedure provided for in Article 20 of this Directive. Finally the Commission will submit to the Council appropriate proposals in order to ensure that reciprocity is obtained.

3. Harmonisation of conditions relating to the pursuit of business of credit institutions

Article 8

This Article endorses a fundamental principle of prudential supervision by stipulating that the own funds of credit institutions must not fall below the initial capital required for their authorization. The own funds of the credit institutions authorised before the entry into force of this directive must by 31 December 1996, at the latest, be at least equal to the level of initial capital stipulated in Article 3. However, given the fact that in certain circumstances it will not be possible for this rule to be respected, the Article provides for a clause which will enable the competent authorities to allow an institution to restore its own funds to the agreed minimum within a given limited period.

a) Supervision of major shareholders

Article 9

Article 9 imposes a double information obligation. First upon the shareholders or members who are considering the acquisition, directly or indirectly, of a qualified participation in a credit institution; they should inform the competent authorities of the size of the intended participation. The same obligation applies in cases where these persons, natural or legal, intend to increase their qualified participation so that the credit institution falls under their full control or becomes a subsidiary (Article 9 § 1). This provision will enable the banking supervisory authorities to be duly informed about any forthcoming shareholdings and thus to be in a position to assess, and as they see fit reject, any inappropriate group structure which could be detrimental to safe and sound banking management.

Second, besides the obligation for information imposed upon the shareholders and members, the credit institutions themselves should each year provide the competent authorities with information covering the names and the size of the qualified participations of the shareholders and members of the credit institution. This information could be drawn either from the names which are registered at the annual general meeting or from the regulations relating to companies quoted on stock exchange (Article 9 § 2).

Whenever the competent authorities consider that the influence of shareholders or members is detrimental to safe and sound banking management Member States may take a series of measures to terminate the irregular situation (Article 9 § 3).

b) Credit institutions equity participations in the non-financial sector

Article 10

The Directive on Consolidated Supervision (83/350) provides that credit institutions' participations in other credit or financial institutions should fall under its scope and no new provision is

necessary for the time being in this field. However, the Commission considers that credit institutions' participations in non-credit and non-financial institutions also require particular treatment in the interests of the financial stability of the credit institutions. Because, first, participations in a subsidiary may affect the soundness of the credit institution if the former runs into financial difficulties (contagion risk). Second, since equity participations constitute a long-term freezing of the assets of credit institutions. The majority of the Member States have rules concerning prudential treatment of credit institutions' equity participations. However, given the differing national practices and the perspective of the completion of the common banking market, the Commission thinks that there should be a harmonisation of standards in this area.

The proposal for a Second Coordination Directive incorporates rules requiring banks to fulfil certain objective criteria if they wish to acquire or maintain participations in non-credit or non-financial institutions. In this respect the proposed directive provides for two limits: i) that a credit institution should not hold a participation exceeding a given percentage (e.g. 10%) of its own funds in an undertaking which is neither a credit nor a financial institution and ii) that the total value of such participations should not exceed a stated percentage (e.g. 50%) of own funds. These limits do not apply in case of stocks on shares temporarily held during a financial rescue operation or in the course of the underwriting process. If however the limits are exceeded in exceptional circumstances the competent authorities shall require either an increase in the volume of own funds or instruct the credit institution to take other equivalent remedial measures. A more stringent alternative solution is offered under which Member States may deduct qualified participations from the own funds of the relevant credit institutions; in this case, however, they could exceed the specific limits referred to above.

Article 11

The existence of good administrative, accounting and internal control mechanisms constitutes one of the fundamental guarantees of sound banking management. For this reason the current proposal

entrusts the authorities of the home country with the responsibility to ensure their smooth functioning. In addition, these authorities shall ensure that similar controls exist in the context of consolidated supervision (Directive 83/350).

c) Host country responsibilities

Article 12

As is stated in the introductory remarks and reiterated in Article 19 § 1, the guiding principle on which the Directive is based is that of home country control i.e. the supervision of a credit institution, even with regard to activities it provides on a cross-border basis, by the competent authorities of its country of origin.

However, given the current insufficient level of harmonisation of liquidity standards and of monetary cooperation in the Community it is proposed that the host Member State shall retain primary responsibility for the supervision of liquidity, pending further coordination, and exclusive responsibility for the implementation of monetary policy (Article 12 § 2).

Given current developments and the fragility of the securities markets as well as the lack in many Member States of adequate measures the directive provides that until further coordination the competent authorities of the host country may apply the necessary measures in order to ensure the control of the market risk assumed by institutions which are active in the securities markets. They shall cooperate for this purpose with the competent authorities of the home Member State. This arrangement is necessary in the light of the events of last October and particularly because the proposal for a solvency ratio directive will cover only credit risk (ie risk attaching to the particular type of counterparty in receipt of eg. a bank loan or guarantee). It is clear, however, that securities transactions (and most notably jobbing or market-making) involve market or position risk (ie the risk of a general fall in the market to which anyone who has taken an open position is exposed).

d) On-the-spot verification for branches

Article 13

The current proposal provides for the possibility of home country authorities undertaking, after first informing the host authorities, on-the-spot verifications in the branches of their credit institutions which are established in other Member States

(Article 13 § 1). In addition to this facility the competent authorities of the home country may continue to avail themselves of the procedures laid out in the Consolidated Supervision Directive (83/350) in order to verify the operations of branches of their credit institutions established in other Member States (Article 13 § 2). The same Article stipulates that the competent authorities of the host Member State retain their right to carry out on-the-spot verifications of the branches which are established in their territory.

e) Professional Secrecy

Article 14

Though the obligation of professional secrecy incumbent on supervisory authorities is embodied in Directive 77/780/EEC (Article 12) the Second Coordination Directive signficantly reinforces existing Community provisions. More particularly, the new obligations envisaged extend to:

- Persons who now or in the past were employed by the competent authorities. Thus, these persons are bound not to divulge any confidential information received in the course of their duties. An exception is made for cases covered by criminal law (Article 14 § 1).
- The exchange of information between the competent authorities of the Member States regarding matters of prudential supervision (Article 14 § 2).
- The exchange of information provided in the context of a cooperation agreement between a competent authority of a Member State and an authority of a third country (Article 14 § 3). Certain specific exceptions are provided to the obligation of professional secrecy: e.g. the exchange of information between several competent authorities in the same country or the exchange of information between banking supervisory authorities and authorities supervising other financial institutions and insurance undertakings in another country (Article 14 § 4).

f) Sanctions

Article 15

This article provides for the obligation for Member States to impose adequate sanctions on banks for any infringement of the supervisory rules.

4. Provisions relating to freedom of establishment and freedom to provide services

a) Scope of mutual recognition

Article 16

This Article constitutes the main mechanism regarding the implementation of mutual recognition in the banking sector. According to the system endorsed in the proposed directive, credit institutions (the definition of Art. 1 of Directive 77/780 remains unchanged) which comply with the two following cumulative requirements may benefit from mutual recognition:

- they are authorized and supervised by the competent authorities of their home Member States, according to the provisions of the banking Directives;
- they undertake activities which come within the agreed list in the annex.

This means that the following do not benefit from mutual recognition:

i) institutions which are not authorized and supervised as credit institutions, even if they undertake activities on the list;
ii) the activities which are not included in the list if they are regulated in the host country.

The agreed list which figures in the annex of the proposal encompasses all the activities which currently constitute the core of banking services. This list will be updated according to the flexible procedures introduced in the directive in order to take account of the development of new banking services.

b) Banking groups

In the course of the discussions for the preparation of the current proposal it was made evident that in some Member States credit institutions are not themselves authorized to undertake directly some of the activities of the above-mentioned agreed list (e.g. leasing, factoring, dealing in securities, mortgage credit), but are only allowed to operate through subsidiaries. These subsidiaries come within the ambit of consolidated supervision Directive 83/350, but do not qualify as credit institutions according to Directive 77/780. As a result, their operations included in the list should not benefit from mutual recognition. The countries which encounter this problem have suggested that, given the current approach endorsed in the proposal, it should be possible to accept that such subsidiaries could also benefit from mutual recognition. The present proposal endorses this view since it does not jeopardize the goals of the directive, provided that the following strict conditions are fulfilled:

i) the activities of these subsidiaries should be fully consolidated with those of the parent credit institutions;
ii) the parent credit institution should hold 90% or more of the shares in the subsidiary in the Member State whose law governs the subsidiary;
iii) the parent credit institutions accept full responsibility for their subsidiaries;

c) Requirements to be fulfilled for mutual recognition

c.1. the right of establishment - procedures with respect to the home country authorities and between home and host country authorities

Article 17

This Article contains a set of detailed provisions organising the cooperation between the competent authorities of the Member States in the context of the freedom of establishment.

In this context it is stipulated that a credit institution wishing to establish a branch in another Member State shall notify the authorities of its home country, providing at the same time the required information (e.g. programme of operations, amount of own funds and solvency ratio of the credit institution, address and names of managers) (Article 17 § 1 and 2).

After examining the notification the competent authority may if it has reason to doubt the viability of project or the adequacy of the structures of the credit institution, refuse to send the information to the prospective host authorities. In any case it should give reasons for its refusal to the institution within three months of the receipt of the notification (Article 17 § 3). The host authorities shall have three months from the moment of notification in which to organise the supervision of the branch.

c.2. the free provision of services - procedures with respect to the home country authorities

Article 18

With regard to the free provisions of services, it is deemed that notification of the intention of the interested institution to provide services in another Member State shall be sufficient for the home country authority.

c.3. for establishment and provision of services - requirements in the host country

Article 19

This Article prescribes that all credit institutions may be requested by the host country to provide a quarterly report of their activities for statistical purposes. The branches established in the host country should provide, if so required for the same purpose, the same amount of information required for national credit institutions for the monitoring of liquidity and the control of monetary policy (Article 19 § 1).

There is an understanding that the host Member State can impose adherence to specific provisions of its national laws or regulations on the part of institutions not authorised as credit institutions and with regard to activities not mentioned in the list, provided that such provisions are compatible with Community law and seek to protect the public good and that such institutions are not subject to equivalent legislation or regulation in their home Member State.

An enforcement mechanism is provided for in the cases where a credit institution having a branch or providing services is not in compliance with the legal provisions of the host State justified on the grounds of general good and the provisions stipulating the responsibilities of the host authority.

The provisions of Article 8c of the Treaty have already been met by specific provisions in the Act of Accession. These provide for establishment possibilities to be staggered and for the percentage of funds that can be raised to increase up to 1 January 1993. Furthermore, in the event of restrictions on capital movements being authorized in the Community framework, such restrictions might have as their corollary derogations from this directive which would be temporary and disturb the operation of the common market as little as possible.

5. Final provisions

a) Implementation powers of the Commission

Article 20

This provision stipulates the procedures and the Articles of the present proposed directive which can be reviewed when it is deemed appropriate.

b) Grandfathering provisions

Article 21

This Article contains a provision stipulating that the current directive will not impair existing rights acquired by authorised branches, for example in the field of the provision of services.

c) Implementation of the directive

Article 22

This Article contains the final provisions, and more particularly a special provision which stipulates the link between the present directive and the other Community measures concerning own funds and the solvency ratio. The mutual recognition provided for in Articles 16 to 19 will be effective only if all such measures come into force simultaneously, but not later than 1 January 1993.

Annex

The annex contains the list of the core banking activities mentioned in article 16. Any credit institution authorized in its home country may exercise such activities in the host country through mutual recognition, provided that its licence covers the relevant activities, even if the same activities are not permitted to similar credit institutions in the host country. On the contrary, an institution which has not been granted an authorization according to the provisions of the present directive, cannot benefit from mutual recognition in the host country, even if the activity it exercises is included in the list, and can be undertaken in the home country without prior authorization. Nonetheless such a non-licensed institution can operate in the host country by virtue of the rules of the Treaty concerning right of establishment and the free provision of services. This means that, if the relevant activities are subject to authorization in the host country, such authorization must be required for the branch of the interested institutions, but if even in the host country no

authorization is required the relevant institution will in practice be able to exercise the activity in question and benefit from the mutual recognition principle, as do authorized institutions.

Proposal for a

SECOND COUNCIL DIRECTIVE

on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions and amending Directive 77/780/EEC

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57(2), third sentence, thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas this Directive is to constitute an instrument which is essential for achieving the internal market, a course determined by the Single European Act and set out in timetable form in the Commission's White Paper, from the point of view of both the freedom of establishment and the freedom to provide financial services, in the field of credit institutions;

Whereas the approach which has been adopted is to achieve only the essential harmonization necessary and sufficient to secure mutual recognition of authorization and of supervisory systems, thus enabling the application of the principle of home country control and the granting of a single licence recognised throughout the Community;

Whereas, in this context, this Directive can be implemented only simultaneously with specific Community legislation dealing with the harmonization of technical matters relating to own funds, and a solvency ratio;

Whereas, moreover, work to harmonize the conditions relating to the reorganization and winding-up of credit institutions is also being undertaken;

Whereas harmonization will also have to be undertaken for the treatment of liquidity, market, interest rate and foreign exchange rate risks run by credit institutions;

Whereas the home Member State may establish stricter standards than those laid down in Articles 3, 4, 9, 10 and 14 in relation to credit institutions authorised by its competent authorities;

Whereas responsibility for the financial soundness of a credit institution, and in particular for its solvency, will rest with the competent authorities of its home Member State and whereas the host country authorities retain responsibility for matters relating to liquidity and the implementation of monetary policy; whereas supervision of market risk should be the subject of close cooperation between the competent authorities of the home and host countries;

Whereas this Directive will join the body of Community legislation already enacted in particular Council Directives 77/780/EEC (1), as last amended by Directive 86/524/EEC (2) on the coordination of banking legislation, 83/350/EEC (3) on supervision on a consolidated basis and 86/635/EEC (4) on the annual and consolidated accounts of banks and other financial institutions; whereas, moreover, the harmonization of certain financial and investment services is undertaken, where the need exists, in specific Community instruments, notably with the intention of protecting consumers and investors;

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(1) OJ No L 322, 17.12.1977, p. 30
(2) OJ No L 309, 4.11.1986, p. 15
(3) OJ No L 193, 18.7.1983, p. 18
(4) OJ No L 372, 31.12.1986, p. 1

Whereas the Commission has adopted recommendations on large exposures (87/62/EEC (1)) and on deposit guarantee schemes (87/63/EEC (2));

Whereas the chosen approach permits, by virtue of mutual recognition, credit institutions authorized in their home Member States freely to undertake, throughout the Community, all the activities shown in the annexed list either by the establishment of branches or by supplying services;

Whereas, as a result, the host Member State can, in relation to the exercise of the right of establishment and the freedom to provide services, require adherence to specific provisions of its own laws or national regulations on the part of institutions not authorized as credit institutions in their home Member State and with regard to activities not mentioned in the list, provided that, on the one hand, such provisions are compatible with Community law and seek to protect the public good and that, on the other, such institutions or such activities are not subject to equivalent legislation or regulation in their home Member State;

Whereas it is appropriate to extend the benefits of mutual recognition to the activities mentioned in the annexed list when they are undertaken by financial institutions which are subsidiaries of credit institutions, provided that such subsidiaries are included in the consolidated supervision of their parent undertakings and meet certain strict conditions;

Whereas the undertaking of activities which do not appear in the list shall continue to benefit from the rights of establishment and freedom to supply services under the general provisions of the Treaty;

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(1) JO No L 33, 4.2.1987, p. 10

(2) JO No L 33, 4.2.1987, p. 16

Whereas the Member States should ensure that there are no obstacles to the activities benefitting from mutual recognition being undertaken using the financial techniques of the home Member State, as long as the latter are not in violation of the legal provisions covering the public good in the host Member State;

Whereas the abolition of the authorization requirement with respect to branches of Community credit institutions, once the harmonization in progress has been completed, necessitates the abolition of endowment capital, and whereas Article 5(2) constitutes a first transitional step in this direction;

Whereas there is an intimate link between the objective of this Directive and the liberalisation of capital movements being achieved by other Community legislation; whereas in any case the measures regarding the liberalisation of banking activities should be in harmony with the measures regarding the liberalisation of capital movements; whereas in the event that the Member States may invoke by virtue of Council Directive .../.../EEC safeguard clauses in respect of the movement of capital, they may suspend the provision of banking services to the extent necessary to comply with above mentioned safeguard clauses;

Whereas the procedures established in Directive 77/780/EEC, notably in relation to the authorization of branches of credit institutions authorized in third countries, should continue to apply to such institutions; whereas those branches will not benefit from the freedom to supply services under the second paragraph of Article 59 of the Treaty; whereas however requests for authorization or for the acquisition of a participation from institutions governed by the laws of a third country are subject to a procedure intended to ensure that Community institutions are granted reciprocal treatment in the third countries in question;

Whereas the smooth running of the internal market in banking will require, in addition to common legislative standards, close and regular cooperation between the competent authorities of the Member States; whereas in the case of problems concerning credit

institutions the Contact Committee of bank supervisors of the Member States, referred to in the final recital of Directive 77/780/EEC, remains the appropriate forum for discussion and consultation; whereas that Committee is also the body best suited to deal with the reciprocal flows of information covered in Articles 6 and 7;

Whereas, at all events, that procedure does not replace the bilateral collaboration and cooperation established by Article 7 of Directive 77/780/EEC; whereas, in that context, the competent host country authorities can continue, either on their own initiative or following the initiative of the competent home country authorities, to verify that the activities of a credit institution established on their territory are in conformity with the relevant laws, with the principles of sound administrative and accounting procedures and adequate internal control;

Whereas it is necessary, in order to facilitate the achievement of the objectives of this Directive and to take account of the rapid development of national and international financial markets, to introduce a procedure for adaptation of certain technical features; whereas because of the important and sensitive nature of that adaptation, procedure III, type (a), as defined in Article 2 of Council Decision 87/373/EEC (1), is the most appropriate,

HAS ADOPTED THIS DIRECTIVE:

(1) OJ No L 197, 18.7.1987, p. 33

TITLE I

Definitions and scope

Article 1

For the purposes of this Directive :

- "credit institution" is defined in accordance with the first indent of Article 1 of Directive 77/780/EEC;

- "authorization" is defined in accordance with the second indent of Article 1 of Directive 77/780/EEC;

- "branch" is defined in accordance with the third indent of Article 1 of Directive 77/780/EEC;

- "own funds" is defined in accordance with Council Directive .../.../EEC (1);

- "competent authorities" is defined in accordance with Article 1 of Directive 83/350/EEC;

- "financial institution" is defined in accordance with Article 1 of Directive 83/350/EEC;

- "home Member State" shall mean the Member State where a credit institution is authorized in accordance with Article 3 of Directive 77/780/EEC;

- "host Member State" shall mean the Member State where a credit institution has a branch or into which it supplies services;

- "qualified participation" shall mean a holding, direct or indirect, in an undertaking which represents 10% or more of the capital or of the voting rights or which enables the exercise of a significant influence within the meaning of Article 33 of Council Directive 83/349/EEC (2);

(1) OJ No .....
(2) OJ No L 193, 18.7.1983, p. 1

- "initial capital" shall mean paid-up capital or items of a similar nature according to the national legislation of the home Member State;

- "parent undertaking" is defined in accordance with Article 1 of Directive 83/349/EEC;

- "subsidiary" shall mean a subsidiary undertaking in accordance with Article 1 of Directive 83/349/EEC.

Article 2

1. This Directive shall apply to all credit institutions.

2. It shall not apply to the institutions exempted under Directive 77/780/EEC and listed in Article 2(2) thereof.

3. The credit institutions which, as defined in Article 2(4)(a) of Directive 77/780/EEC, are affiliated to a central body in the same Member State may be exempted from the provisions of Articles 3, 8, and 10 of this Directive provided that, without prejudice to the application of those provisions to the central body, the whole - constituted by the central body and its affiliated institutions - must be the subject of consolidated supervision with regard to the above-mentioned provisions.

   In cases of exemption, Articles 5 and 16 to 19 shall apply to the whole, as constituted by the central body and its affiliated institutions.

TITLE II

Harmonization of authorization conditions

Article 3

1. The competent authorities shall not grant authorization in cases where initial capital is less than 5 million ECU.

2. Member States may propose that initial capital be fixed at an amount lower than that provided for in paragraph 1 in the case of institutions whose scope of authorised business is restricted by law or statute. They shall notify the Commission of the institutions concerned and the amounts proposed within six months of the adoption of this Directive. The Commission shall adopt the list of categories of institutions concerned and the relevant initial capital requirements, according to the procedure laid down in Article 20.

Article 4

Competent authorities shall not grant authorization permitting the taking-up of the business of a credit institution before they have been informed of the identity of shareholders or members, whether direct or indirect, be they physical or legal persons, holding a qualified participation and of the amount of such participations. The competent authorities shall appraise the suitability of the above-mentioned shareholders or members.

Article 5

1. Host Member States may no longer require, as provided for in Article 4 of Directive 77/780/EEC, authorization for branches of credit institutions authorized in other Member States. The establishment and supervision of such branches shall be subject to the provisions laid down in Articles 17 and 19 of this Directive.

2. Until the entry into force of the provisions in implementation of paragraph 1, host Member States may not require, as a condition for authorization to be granted to branches of credit institutions authorized in other Member States, an initial endowment capital greater than 50 % of the initial capital required by national rules for authorization to be granted to a credit institution of the same nature.

3. Credit institutions shall recover the free use of the funds no longer required as a consequence of the provisions of paragraphs 1 and 2.

Article 6

In the following cases there must be prior consultation with the competent authorities of the other Member State involved:

- the authorization of a subsidiary of a credit institution authorized in another Member State;

- the authorization of a subsidiary of the parent undertaking of a credit institution authorized in another Member State;

- the authorization of an undertaking controlled by persons, whether physical or legal, who control a credit institution authorized in another Member State.

Article 7

1. Requests for authorization of a subsidiary whose parent undertaking is governed by the laws of a third country or the acquisition of a participation therein as provided for in paragraph 3 shall be subject to the procedure laid down in this Article.

2. The competent authorities of the relevant Member State shall inform the competent authorities of the other Member States and the Commission of the request for authorization.

3. In the same manner, when informed, according to the provisions of Article 9, that an undertaking governed by the laws of a third country is considering the acquisition of a participation in a credit institution such that the latter would become its subsidiary, the competent authorities of the relevant Member State shall inform the competent authorities of the other Member States and the Commission.

4. The competent authorities of the Member State concerned must suspend their decision regarding requests as referred to in paragraphs 2 and 3 until the procedure provided for in paragraphs 5 and 6 is completed.

5. The Commission shall, within three months of receiving the information provided for in paragraphs 2 and 3, examine whether all credit institutions of the Community enjoy reciprocal treatment, in particular regarding the establishment of subsidiaries or the acquisition of participations in credit institutions in the third country in question.

6. If the Commission finds that reciprocity is not ensured it may extend suspension of the decision referred to in paragraph 4, using the procedure provided for in Article 20.

7. The Commission shall present suitable proposals to the Council with a view to achieving reciprocity with the third country in question.

TITLE III

Harmonization of conditions relating to the pursuit of the business of credit institutions

Article 8

1. The own funds of credit institutions must not fall below the initial capital required when they were authorized. In appropriate circumstances, the competent authorities may allow an institution a certain limited period in which to restore its own funds to the agreed minimum.

2. The own funds of credit institutions in existence at the time of the date of implementation of this Directive must by 31 December 1996 at the latest be at least equal to the level of initial capital stipulated in Article 3.

Article 9

1. Member States shall require any physical or legal person, who is considering the direct or indirect acquisition of a qualified participation in a credit institution, to first inform the competent authorities, telling them of the size of the intended participation. The above-mentioned persons must similarly inform the competent authorities if they propose to increase their qualified participation such that the credit institution would become a subsidiary. The competent authorities shall assess the suitability of the above-mentioned persons.

2. Credit institutions shall each year furnish the competent authorities with the names of major shareholders and members as referred to in paragraph 1 and the size of their qualified participations, in accordance with the names registered at the annual general meeting of shareholders and members or in accordance with information received as a result of compliance with the regulations relating to companies quoted on stock exchanges.

3. Member States shall require that in cases where the persons referred to in paragraph 1 exercise their influence in a way which is likely to be to the detriment of the prudent and sound management of the banking activities of the institution, the competent authorities shall take appropriate measures to bring such a situation to an end. Such measures may consist in particular in injunctions, sanctions against directors and managers, or the suspension of voting rights in respect of the shares held by the shareholders or members in question.

Article 10

1. A credit institution shall not hold a qualified participation of an amount greater than 10 % of its own funds in an undertaking which is neither a credit institution, nor a financial institution, nor an undertaking pursuing an activity as defined in Article 43(2)(f) of Directive 86/635/EEC.

2. The total amount of qualified participations in undertakings other than credit institutions, financial institutions or undertakings pursuing an activity as defined in Article 43(2)(f) of Directive 86/635/EEC shall not exceed 50 % of the own funds of the credit institution.

3. Shares held temporarily during a financial rescue or restructuring operation or during the normal course of the underwriting process or in an institution's own name on behalf of others shall not be included among qualified participations for the purposes of calculating the limits laid down in paragraphs 1 and 2. Shares not having the character of financial fixed assets as defined in Article 35(2) of Directive 86/635/EEC shall never be included.

4. The limits laid down in paragraphs 1 and 2 may be exceeded in exceptional circumstances. However, in such cases, the competent authorities shall require the credit institution either to increase the volume of own funds or take other remedial measures.

5. Compliance with the limits laid down in paragraphs 1 and 2 shall be ensured by means of supervision on a consolidated basis in accordance with the provisions of Directive 83/350/EEC.

6. Member States need not apply the limits laid down in paragraphs 1 and 2 if they provide that the qualified participations in question are to be deducted when calculating the own funds of a credit institution.

Article 11

1. The competent authorities of the home Member State shall ensure the existence within each credit institution of sound administrative and accounting procedures and adequate internal control mechanisms.

2. The competent authorities shall also ensure that such procedures and mechanisms exist in credit institutions included in the scope of consolidated supervision provided for in Directive 83/350/EEC.

Article 12

1. In Article 7(1) of Directive 77/780/EEC, the end of the second sentence is hereby replaced by the following: "and all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, control of large exposures, administrative and accounting procedures and mechanisms of internal control".

2. Host Member States shall retain primary responsibility for the supervision of the liquidity of credit institutions until further coordination. Without prejudice to the measures necessary for the reinforcement of the European Monetary System, host Member States shall retain complete responsibility for the measures resulting from the implementation of monetary policy. These measures shall not embody discriminatory or restrictive treatment based on the fact that the credit institution is authorized in another Member State.

3. Until further coordination of the risks arising out of open positions, the competent authorities of host Member States may take the necessary measures to require credit institutions authorized in other Member States to make sufficient provision against market risk in respect of operations on securities markets in their territory. They shall cooperate for this purpose with the competent authorities of home Member States.

Article 13

1. Host Member States shall ensure that, where a credit institution authorized in another Member State conducts its business there through a branch, the competent authorities of the home Member State are able, after having first informed the competent authorities of the host Member State, to carry out themselves on-the-spot verification of the information referred to in Article 7(1) of Directive 77/780/EEC.

2. The competent authorities of the home Member State may equally have recourse to one of the verification procedures for branches laid down in Article 5(4) of Directive 83/350/EEC, other than that referred to in paragraph 1.

3. This Article shall not affect the right of the competent authorities of the host Member State to carry out on-the-spot verification of branches established in their territory in the discharge of their responsibilities under this Directive.

Article 14

Article 12 of Directive 77/780/EEC is hereby replaced by the following text, paragraph 2 of which also applies to exchanges of information between competent authorities provided for in this Directive:

"Article 12

1. Member States shall ensure that all persons now or in the past employed by the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, are bound by the obligation of professional secrecy. This means that any confidential information which they may receive in the course of their duties may not be divulged to any person or authority, without prejudice to cases covered by criminal law.

2. Notwithstanding paragraph 1, the competent authorities of the various Member States shall exchange information in accordance with provisions of this Directive and Council Directive 83/350/EEC* as well as of the Annex to Commission Recommendation 87/62/EEC**. This information shall be subject to the same conditions of professional secrecy as those indicated in paragraph 1.

3. Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information communicated is subject to guarantees of professional secrecy equivalent to those referred to in this Article.

4. Competent authorities receiving information under paragraphs 1 or 2 shall use it only:

   - to examine the conditions for the taking-up of the business of credit institutions and to facilitate monitoring, on a non-consolidated or consolidated basis, of the pursuit of such business, especially with regard to the monitoring of liquidity, solvency, large exposures, and the administrative and accounting procedures and mechanisms of internal control, or

   - when the decisions of the competent authority are the subject of an administrative appeal, or

   - in court proceedings initiated pursuant to Article 13.

5. Paragraphs 1 and 4 shall not preclude within a Member State or between Member States:

   - where there are several competent authorities in the same Member State, the exchange of information between them;

   - the disclosure of information necessary to enable institutions which manage deposit guarantee schemes to exercise their functions;

   - the exchange of information between the competent authorities and public authorities responsible for the supervision of other financial institutions and insurance companies;

   - the exchange of information between the competent authorities and persons responsible for carrying out statutory audits of the accounts of credit institutions.

   The authorities and institutions to which such information is sent shall use it only in the discharge of their supervisory functions. The information received shall fall within the professional secrecy rules by which those authorities and institutions are bound.

6. Notwithstanding paragraph 1, Member States may authorize, by virtue of provisions laid down by law, the disclosure, when it is necessary for reasons of prudential control, of certain information to other departments of their central government administration. Member States shall ensure that information received in accordance with paragraph 2 is not disclosed in such cases, except where there is the explicit consent of the authorities which have communicated the information.

7. Member States shall ensure that the professional secrecy provisions laid down by this Article shall apply to information given by the competent authorities to persons responsible for carrying out statutory audits of the accounts of credit institutions.

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*OJ No L 193, 18.7.1983, p. 18.

**OJ No L 33, 4.2.1987, p. 10."

Article 15

Without prejudice to the procedures for withdrawal of authorizations and cases covered by criminal law, Member States shall ensure that their respective competent authorities may adopt, as against credit institutions, or those who effectively control the business of those credit institutions, which breach legislative, regulatory or administrative provisions concerning the control of their businesses or the pursuit of their activities, penalties or measures aimed specifically at ending observed breaches or the causes of such breaches.

TITLE IV

Provisions relating to freedom of establishment and freedom to provide services

Article 16

1. Member States shall ensure that at least the activities set out on the list in the Annex may be pursued in any Member State, in accordance with the provisions of Articles 17 to 19, either by the establishment of a branch or by way of the provision of services, by any credit institution authorized and supervised by the competent authorities of the home Member State, in accordance with the provisions of this Directive, whose authorization permits the pursuit of such activities.

2. Member States shall also provide that at least the activities set out on the list in the Annex may be pursued in any Member State in accordance with the provisions of Articles 17 to 19, either by the establishment of a branch or by way of the provision of services by any financial institution being a subsidiary of a credit institution, or such a subsidiary belonging to several credit institutions, whose articles of association do not prevent the pursuit of those activities and which meets each of the following conditions:

   - the parent undertaking or undertakings are authorized as credit institutions in the Member State by whose law the subsidiary is governed;
   - the parent undertaking or undertakings hold 90% or more of the shares in the subsidiary;
   - the parent undertaking or undertakings have declared that they jointly and severally guarantee the commitments entered into by the subsidiary;
   - the subsidiary is effectively included, in particular for the activities in question, in the consolidated supervision of its parent undertaking, or of each of its parent undertakings, in accordance with Directive 83/350/EEC, notably for the calculation of the solvency ratio, for the control of large exposures and for the purposes of limiting participations in accordance with Article 10 of this Directive.

Conformity with these conditions must be verified by the competent authority of the home Member State and the latter must supply the subsidiary with a certificate of compliance which must form part of the notification envisaged in Articles 17 and 18.

The competent authority of the home Member State must ensure the supervision of the subsidiary in accordance with the provisions of Articles 8(1), 9, 11, 12(2), 13, 14 and 15 of this Directive, as well as those of Article 7(1) of Directive 77/780/EEC.

The provisions mentioned in this paragraph shall be applicable to subsidiaries subject to the necessary modifications. In particular, the words "credit institution" should be read as "financial institution conforming to the conditions laid down in Article 16(2)", the word "authorization" as "articles of association". In Article 17(2), point (c) should be read as "the amount of own funds of the subsidiary financial institution and the consolidated solvency ratio of the credit institution which is the parent undertaking".

If the financial institutions benefitting from the provisions of this paragraph should cease to meet any of the requisite conditions, the host Member State may bring an end to the pursuit, under the provisions of this Directive, of the activities in question on its territory.

Article 17

1. A credit institution wishing to establish a branch in the territory of another Member State shall give notification thereof to the competent authority of its home Member State.

2. Member States shall require the notification mentioned in paragraph 1 to be accompanied by the following information from the credit institution wishing to establish a branch in another Member State:

   (a) the Member State in whose territory it intends to establish a branch;

   (b) a programme of operations setting out inter alia the types of business envisaged and the structural organization of the establishment;

   (c) the amount of own funds and the solvency ratio of the credit institution;

   (d) the address in the host Member State from which documents may be obtained;

   (e) the names of those responsible for controlling the activities of the branch.

3. Unless the competent authority of the home Member State has reason to doubt the adequacy of the organizational structure of the credit institution, taking into account the envisaged operations, it shall, within three months of the notification referred to in paragraph 1, communicate the information mentioned in paragraph 2 to the competent authority of the host Member State.

   Where the competent authority of the home Member State refuses to send the information mentioned in paragraph 2 to the competent authority of the host Member State it shall give reasons to the institution concerned within three months of receipt of the notification. This refusal shall be subject to a right of appeal to the courts in the home Member State.

4. Before the branch of the credit institution commences its activities the competent authority of the host Member State shall, within a period of three months following receipt of the information mentioned in paragraph 3, prepare for the supervision of the institution pursuant to Article 19 and if necessary may decide, in the interest of the public good, to prohibit the credit institution from engaging in some of the activities envisaged, where the conditions of authorization in its home country do not preclude such activities, but those activities are not contained on the list in the Annex.

5. On receipt of notice from the competent authority of the host Member State, or in the event of the expiry of the three-month period referred to in paragraph 4 without receipt of any communication from the latter, the branch may be established and commence business.

6. A credit institution wishing to change any of the matters notified pursuant to paragraph 2 shall give written notice of the proposed change to the competent authorities in the relevant home and host Member States at least one month before making the change. If necessary, those authorities may decide whether it will not be possible, in the interest of the public good, for the credit institution to engage in any additional activities which it may envisage which are not precluded under the conditions of authorization in its home country and which are not contained on the list in the Annex.

Article 18

1. Any credit institution wishing to exercise the freedom to supply services in the territory of another Member State for the first time shall notify the competent authorities of the home Member State of the activities included on the list in the Annex which it intends to undertake.

2. The competent authorities of the home Member State shall, within one month of receipt of the notification mentioned in paragraph 1, send that notification to the competent authorities of the host Member State.

Article 19

1. Responsibility for the supervision of a credit institution, including supervision of activities undertaken according to the provisions of Article 16, shall rest with the competent authorities of the home Member State.

2. Host Member States may require, for statistical purposes, that all credit institutions having branches in their territories shall report quarterly on their operations in the host Member State to the competent authority of that host Member State.

   In order to conform with the responsibilities laid down in Article 12 (2) and (3), host Member States may require that branches of credit institutions from other Member States provide the same information as they require from their national credit institutions for that purpose.

3. If the competent authority of the host Member State ascertains that an institution having a branch or providing services in its territory is not complying with the legal provisions in force in that Member State which are justified on the grounds of the public good, or pursuant to the provisions of this Directive on the powers of the host Member State, that authority shall request the institution concerned to put an end to the irregular situation.

4. If the institution concerned fails to take the necessary steps, the competent authority of the host Member State shall inform the home Member State accordingly. The authority of the home Member State shall take, in the shortest time possible, 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 competent authority of the host Member State.

5. If, despite the measures taken by the home Member State pursuant to paragraph 4, or because such measures prove inadequate or are not taken by the Member State in question, the

institution persists in violating the legal rules referred to in paragraph 3 in force in the host Member State, the latter State may, after informing the competent authority of the home Member State, take appropriate measures to prevent further irregularities including, insofar as is necessary, the prevention of the initiation of further transactions by that institution within its territory. The Member States shall ensure that within their territory it is possible to serve the legal documents necessary for these measures on credit institutions.

6. Any measure adopted pursuant to paragraphs 3, 4 and 5 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 a right of appeal to the courts in the Member State whose authorities adopted it.

7. Before following the procedure set in paragraphs 3, 4 and 5, the competent authorities of the host Member State may, in exceptional circumstances, take measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission and the other Member States shall be informed of such measures in the shortest possible time. In this event the Commission may, after consulting the Member States concerned, decide that the Member State in question shall amend or abolish the measures.

8. In the event of withdrawal of authorization the competent authority of the host Member State shall be informed and shall take appropriate measures to prevent the institution concerned from undertaking further transactions in its territory.

9. Member States shall inform the Commission of the number and type of cases in each Member State in which there has been a refusal pursuant to Article 17 or in which measures have been taken in accordance with the provisions of paragraph 5 of this Article. Every two years, the Commission shall submit a report summarizing such cases to the Advisory Committee set up under Article 11 of Directive 77/780/EEC.

5. Final provisions

Article 20

1. Technical amendments to this Directive in the following areas:

   - extension of the activities on the list mentioned in Article 16 and set out in the Annex;

   - the amount of initial capital laid down in Article 3(1);

   - the list of categories of institution referred to in Article 3(2);

   - the thresholds set in Article 10;

   - the fields in which the competent authorities must exchange information, as enumerated in Article 7(1) of Directive 77/780/EEC,

   shall be made according to the procedure set out in paragraph 2.

2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.

   The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States in the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

   The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period to be laid down in each act to be adopted by the Council under this paragraph but which may in no case exceed three months from the day of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 21

1. Branches which have commenced their activities, in accordance with the provisions in force in the host Member State, before the entry into force of the provisions adopted in implementation of this Directive are presumed to have been subject to the procedures envisaged in Article 17(1) to (5). They shall be governed, from the date of entry into force of the provisions adopted in implementation of this Directive, by the provisions of Articles 16, 17(6) and 19. They shall benefit from the provisions of Article 5(3).

2. Article 18 shall not adversely affect rights acquired before the entry into force of the provisions adopted in implementation of this Directive by credit institutions operating through the supply of services.

Article 22

1. Subject to paragraph 2, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on the later of the two dates laid down for the adoption of measures to comply with the Council Directives on the harmonization of own funds and solvency ratios of credit institutions and at the latest by 1 January 1993. They shall forthwith inform the Commission thereof.

2. Member States shall adopt the measures necessary to comply with the provisions laid down in Article 5(2) of this Directive by 1 January 1990.

3. 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.

Article 23

This Directive is addressed to the Member States.

ANNEX

Business which is integral to banking and shall be included within the scope of mutual recognition

1. Deposit-taking and other forms of borrowing
2. Lending*
3. Financial leasing
4. Money transmission services
5. Issuing and administering means of payment (credit cards, travellers cheques and bankers drafts)
6. Guarantees and commitments
7. Trading for own account or for account of the customers in:
   (a) Money market instruments (cheques, bills, CDs, etc)
   (b) Foreign exchange
   (c) Financial futures and options
   (d) Exchange and interest rate instruments
   (e) Securities
8. Participation in share issues and the provision of services related to such issues
9. Money broking
10. Portfolio management and advice
11. Safekeeping of securities
12. Credit reference services
13. Safe custody services

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* including in particular:
  - consumer credit
  - mortgage lending
  - factoring and invoice discounting
  - trade finance (including forfaiting)

EFFECT OF THE PROPOSAL OF DIRECTIVE ON SMALL AND MEDIUM SIZE ENTERPRISES AND THE LEVEL OF EMPLOYMENT

1. New administrative requirements for the enterprises arising from the application of the legislation:
   None.

2. Advantages for the enterprise:
   The Directive aims to establish the conditions of the Internal Market in the banking sector. The complete freedom with respect to establishment and supply of services which will be available to Community credit institutions will intensify competition in the sector and play an important role in promoting innovation. The enterprises will accordingly benefit from wider choice, more favourable terms and financial products better suited to their needs. The harmonisation measures contained in this Directive will further strengthen the financial basis of credit institutions, which is an important element in overall economic stability.

3. Disadvantages for the enterprise (additional costs):
   None.

4. Effects on the level of employment:
   One can expect favourable effects in the banking sector as a result of the rapid growth of credit institutions' cross-border activities (in particular arising from the freedom to establish branches throughout the Community). Positive developments in the cost and quality of financial services will equally have favourable effects on the profitability of enterprises in other sectors and thus on employment.

5. Will there be prior consultations with social partners?
   Yes.
   Opinions of social partners:
   Favourable.

6. Might there be a less stringent alternative approach?
   No. The directive aims at facilitating the exercise of the freedoms of establishment and provision of services.