

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91)188 final-SYN 344

Brussels, 6 June 1991

Proposal for a
COUNCIL DIRECTIVE

amending Directive 89/299/EEC
on the own funds of credit institutions

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. General

The Council has adopted on 17.4.1989 the Directive 89/299/EEC on the own funds of credit institutions which defines the eligible elements. The definition of the own funds of credit institutions is a key element in the creation of an internal market in the banking sector since it is used as a yardstick to measure prudential standards and sets other limitations.

The Danish government recently has expressed a strong interest in having their few mortgage credit institutions, organized as cooperative or funds, transformed into public limited companies. As a consequence, they would, in principle, loose the possibility to count the joint and several commitments of their borrowers as capital under the Own Funds Directive and, thereby, would encounter serious difficulties in complying with different requirements under EC Directives. The Danish government has therefore asked for transitional arrangements in order to smoothly phase out the joint and several commitments. The Commission, in consultation with the Banking Advisory Committee, has examined the request and came to the conclusion that they should be allowed to include, on a temporary basis, part of their joint and several commitments to borrowers as own funds, thus facilitating their transformation.

This derogation should not adversely distort competition between credit institutions.

The Council, in adopting the Own Funds Directive in 1989, has reserved for itself the implementing powers for technical amendments. The Commission noted at that time that this should be only a provisional solution and undertook to make proposals for a definitive solution to this problem which should respect the general arrangements for the delegation of implementing powers provided in the Council Decision of 13.7.1987.

In the meantime, the Council has unanimously adopted two other Directives in the Banking field (Second Banking Coordination Directive, Solvency Ratio Directive) containing a different solution for the "Comitology procedure". However, this solution was also not acceptable to the Commission since it went beyond the "Comitology procedure" III (a) of the Council Decision of 13.7.1987 which is the utmost the Commission may offer.

II. Examination of the articles

Article 1: derogation from Article 4(1) by a new Article 4A

Article 4(1) of the Directive 89/299/EEC permits joint and several commitments of borrowers in the case of credit institutions organized as cooperative societies or funds to be treated as own funds items.

However, no provision of the said Directive deals with the treatment of such commitments in cases where a credit institutions organized as a cooperative society or a fund is transformed into a public limited company.

As the Danish government has expressed a strong interest in having their few mortgage credit institutions transformed into public limited companies and since this would be endangered, if the joint and several commitments would be phased out as own funds elements immediately, these banks shall be granted a transitional arrangement.

Therefore a new Article 4A shall be inserted after Article 4 of Directive 89/299/EEC which enables the Danish authorities to allow their mortgage credit institutions to include, on a temporary basis, part of their joint and several commitments of borrowers as own funds. Article 4A specifies the maximum basis for calculation and lays down the limits and the schedule for their temporary inclusion as own funds. After 1 January 2001 however, the Danish mortgage credit institutions are no longer allowed to include this category of own funds at all.

Without any transitional arrangements to phase smoothly out the eligibility of such commitments these credit institutions would be in a difficult position as to comply with supervisory requirements under the EC Directives.

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Article 2: replacement of Article 8

The Council has reserved for itself the implementing powers for technical amendments to the Own Funds Directive.

The Commission undertook to make a proposal for a definitive solution to this problem which takes account of the special characteristics of the banking sector and which permits the introduction of a more suitable procedure of the Directive.

In the meantime two other important EC Banking Directives (Second Banking Coordination and Solvency Ratio Directive) were adopted by the Council in which the Member States unanimously retained a "Comitology procedure" peculiar to the banking sector and which aimed at taking account of the declaration on the Council's minutes of the Council Decision B7/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission.

According to this declaration the Council and the Commission recognized the specific character of the Banking Advisory Committee and the need to seek appropriate solutions with regard to the tasks which it may be allotted so as to assist the Commission in the implementing powers which the Council delegates.

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The Council, when adopting the Second Banking Coordination and the Solvency Ratio Directive, retained a Regulatory Committee Procedure of the type III (b) with a representative of the Member States as chairman.

At the occasion of the adoption of both above-mentioned Directives the Commission noted that it is the unanimous view of the Council that the Banking Advisory Committee set up under Directive 77/780/EEC should act as the Committee which is to assist the Commission with any technical adaptations to be made under the committee procedures to EEC banking legislation.

However, the Commission's policy with regard to the use of implementing powers is to offer at utmost the Regulatory "Committee procedure" of the type III (a) according to the Council Decision 87/373/EEC of 13.7.1987 with a representative of the Commission as chairman.

Thus the amended Article 8 suggests that the Commission, after having consulted the Banking Advisory Committee within the limits of the implementing powers conferred on it by the Treaty, shall be enable to make technical amendments to the Own Funds Directive concerning the clarification of definitions and the alignment of terminology in general or resulting from subsequent EC acts on credit institutions and related matters.

Articles 3 and 4

These articles ask the Member States first to take the measures necessary to comply with the directive, second to make express reference to this directive in the provisions adopted and third to communicate such provisions to the Commission.

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Proposal for a
Council Directive
amending Directive 89/299/EEC on the
own funds of credit institutions.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Council Directive (89/299/EEC) of 17 April 1989 on the own funds of credit institutions⁽¹⁾, in which the eligible elements of the own funds of credit institutions and the way they are calculated are defined,

Having regard to the proposal from the Commission⁽²⁾,

in cooperation with the European Parliament⁽³⁾,

Having regard to the opinion of the Economic and Social Committee⁽⁴⁾,

(1) OJ No L 124, 5.5.1989, p. 16

(2) OJ No

(3) OJ No

(4) OJ No

Whereas Article 4 (1) of Directive 89/299/EEC permits joint and several commitments of borrowers in the case of credit institutions organized as cooperative societies or funds to be treated as Article 2 (1)(7) own funds items of the said Directive; Whereas no provision of the said Directive deals with the treatment of such commitments in cases where a credit institution organized as a cooperative society or a fund is transformed into a public limited company.

Whereas the Danish government has expressed a strong interest in having their few mortgage credit institutions organized as cooperatives or funds transformed into public limited companies; whereas in order to facilitate the transformation or to make possible a temporary derogation allowing them to include part of their joint and several commitments as own funds is required; whereas this temporary derogation should not adversely distort competition between credit institutions.

Whereas in adopting Directive 89/299/EEC the Council has reserved for itself the implementing powers to make technical adjustments; whereas the Commission undertook to make a proposal for a definitive solution to this problem which takes account of the special characteristics of the banking sector and which permits the introduction of a more suitable procedure for the implementation of the Directive.

Whereas implementing powers of the same nature as those the Council reserved for itself in Directive 89/299 of 17 April were granted to the Commission in the Second Banking Directive 89/646 of 15 December 1989.

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Whereas taking into account the specific characteristics of the banking sector it is appropriate to give the Committee provided for in Article 22 of the Second Banking Directive the role of assisting the Commission in exercising the responsibilities granted to it according to the rules of procedure laid down in Article 2, procedure III, variant (a), of the Council Decision 87/373/EEC of 13 July 1987 laying down the procedure for the exercise of implementing powers conferred on the Commission⁽¹⁾.

HAS ADOPTED THIS DIRECTIVE:

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

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Article 1

After Article 4 of Directive 89/299/EEC a new Article 4 A is inserted:

Article 4 A

Danemark may allow its mortgage credit institutions organized as cooperative societies or funds before 1 January 1990 and transformed into public limited companies to continue to include joint and several commitments of borrowers as mentioned in Article 4 (1) in their own funds subject to the following limits:

- (a) the "basis for calculation" of the part of joint and several commitments of borrowers is the total of items 1 plus 2 minus 9, 10 and 11 in Article 2 (1);
- (b) the "basis for calculation" on 1 January 1991 or, if transformed at a later date, on the date of transformation is the "maximum basis for calculation". The "basis of calculation" can never exceed the "maximum basis for calculation";
- (c) the "maximum basis for calculation" shall from 1 January 1997 be reduced by half of the proceeds from any issue of new capital, as defined in article 2 (1) item 1, made after that date, and

(d) the maximum amount of joint and several commitments of borrowers to be included as own funds must never exceed:

50% In 1991 and 1992,

45% In 1993 and 1994,

40% In 1995 and 1996,

35% In 1997,

30% In 1998,

20% In 1999,

10% In 2000 and

0% after 1 January 2001

of the "basis for calculation".

Article 2

Article 8 of Directive 89/299/EEC is hereby replaced by the following:

Article 8

1. Without prejudice to the report referred to in Article 2 (2), second subparagraph, technical adaptations to be made to this Directive in the following areas shall be adopted in accordance with the procedure laid down in paragraph 2:

- clarification of the definitions to ensure uniform application of this Directive throughout the Community,
- clarification of the definitions in order to take account in the implementation of this Directive of developments on financial markets,
- the alignment of terminology on and the framing of definitions in accordance with subsequent acts on credit institutions and related matters.

2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission as provided in Article 22(2) first paragraph of the Second Banking Directive 89/646 of 30 December 1989.

The Commission representative 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 concerning the measures to be taken. The Council shall act by a qualified majority.

If the Council does not act within three months of the referral to it, the proposed measures shall be adopted by the Commission.'

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Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1993.
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. Member States shall communicate to the Commission the text of provisions of national law which they adopt in the field governed by this Directive.

Article 4

This Directive is addressed to the Member States.

FINANCIAL STATEMENT

This proposal will not entail any cost to the budget of the European Communities.

IMPACT ON COMPETITIVENESS AND EMPLOYMENT

I. What is the main justification for the measure?

There are two reasons to amend the Own Funds Directive at this stage:

- (a) the temporary problem of capital endowment for Danish mortgage credit institutions due to their transformation into public limited companies;
- (b) a final solution for the "Comitology procedure" with the implementing powers to be conferred on the Commission.

II. Characteristics of the enterprises concerned

The enterprises concerned under this Directive are a small number of Danish mortgage credit institutions.

III. What are the obligations imposed directly on enterprises?

The proposal does not impose any direct obligation on enterprises.

The provisions of the new Article 4A may temporarily allow Danish mortgage credit institutions, which have to be transformed into public limited companies, to continue to include joint and several commitments of borrowers subject to certain limits.

The new Article 8 covering the amended "Comitology procedure" does not affect enterprises.

IV. What obligations are likely to be imposed indirectly on enterprises through local authorities?

None

V. Are there special measures for SMEs? If so, of what kind?

As the proposal is only designed to facilitate the transformation of a few Danish mortgage credit institutions into public limited companies and to find a final solution for the "Comitology procedure" in the Own Funds Directive, it has nothing to do with SMEs as a special category of enterprises.

VI. What is the anticipated effect on:

(a) the competitiveness of enterprises?

(b) employment?

- (a) By granting a temporary derogation the proposal only intends to prevent serious difficulties of a small number of Danish mortgage credit institutions to comply with supervisory requirements under the EC Directives.

This measure should, however, not adversely distort the overall competition between credit institutions.

- (b) This transitional solution aims at stabilising the Danish banking system and employment.

VII. Have the social partners been consulted? What are their views?

NO. The measures proposed have only a very limited impact.

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