EUROPEAN COMMISSION

CREDIT INSTITUTIONS

Community measures adopted or proposed

UPDATED MAY 1996

XV/1081/96

EUROPEAN COMMISSION

Directorate General
Internal Market and Financial Services

Directorate "Financial Institutions"

CREDIT INSTITUTIONS

Community measures adopted or proposed

(Situation as at May 1996)

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CONTENTS

h) **91/308/EEC** 149
Council Directive of 10 June 1991 on the prevention of use of the financial system for the purpose of money laundering
OJ L 166 28.06.1991 p. 77-83

II. PRUDENTIAL SUPERVISION DIRECTIVES

3.a) **92/30/EEC** 161
Council Directive of 6 April 1992 on the supervision of credit institutions on a consolidated basis
OJ L 110 28.04.1992 p. 52-58
Corrigendum:
OJ L 280 of 24.09.1992, p. 54

b) **89/299/EEC** 171
Council Directive of 17 April 1989 on the own funds of credit institutions
OJ L 124 05.05.1989 p. 16-20

91/633/EEC 179
Council Directive of 3 December 1991 implementing Directive 89/299/EEC on the own funds of credit institutions
OJ L 339, 11.12.1991, p. 33-34

92/16/EEC 181
Council Directive of 16 March 1992 implementing Directive 89/299/EEC on the credit institution's own funds
OJ L 75, 21.03.1992, p. 48-50

c) **89/647/EEC** 185
Council Directive of 18 December 1989 on a solvency ratio for credit institutions
OJ L 386 30.12.1989 p. 14-22

91/31/EEC 197
Commission Directive of 19 December 1990 adapting the technical definition of "mutual development banks" in Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions
OJ L 17, 23.01.1991 p. 20

94/7/EC 199
Commission Directive of 15 March 1994 adapting Council Directive 89/647/EEC on a solvency ratio for credit institutions as regards the technical definition of "mutual development banks"
OJ L 89, 06.04.1994 p. 17

95/15/EC 200
Commission Directive of 31 May 1995 adapting Council Directive 89/647/EEC on a solvency ratio for credit institutions , as regards the technical definition of "Zone A" and in respect of the weighting of asset items constituting claims carrying the explicit guarantee of the European Communities
OJ L 125, 8.6.95 p.23-24

95/67/EC 200 b)
Commission Directive of 15 December 1995 making a technical amendment to Council Directive 89/647/EEC on a solvency ratio for credit institutions as regards the definition of multilateral development banks
OJ L 314, 28.12.1995, p. 72

IV ACTS IN THE FIELD OF PAYMENTS

NUMERICAL LIST OF ACTS ADOPTED OR PROPOSED

Adopted

Proposed

I BASE DIRECTIVES

I .a) 73/183/EEC

Council Directive of 28 June 1973 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of self-employed activities of banks and other financial institutions

(OJ No L 194, 16.07.1973, p. 1-10; corrigenda : OJ No L 320, 21.11.1973, p. 26, OJ No L 17, 22.01.1974, p. 22)

Art. 1-9

Annex I (to Art. 1(2)) : Banking services linked with the capital movements referred to in lists A and B in Annex I to the first Directive of 11 May 1960, as supplemented and amended by the second Directive of 18 December 1962

List A : - Direct investments
- Liquidation of direct investments
- Investments in real estate and liquidation thereof
- Personal capital movements
- The granting and repayment of short-term and medium-term credits in respect of commercial transactions or provision of services in which a resident is participating
- Sureties, other guarantees and rights of pledge and transfers connected with them
- Death duties
- Other capital transactions in list A

List B : Operations in securities dealt in on a stock exchange excluding units of unit trusts

Annex II (to Art. 2(1)) : Regrouped headings of ISIC Group 620 referred to in Article 2

Banks and other financial institutions such as :

- Category 1 : Banks
- Category 2 : Savings and loan undertakings
- Category 3 : Syndicates
- Category 4 : Brokers
- Category 5 : Intermediaries or middlemen
- Category 6 : Miscellaneous

Corrigendum: OJ L 320, 21.11.1973, p. 26
OJ L 22, 21.01.1974, p. 22

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 28 June 1973

on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of self-employed activities of banks and other financial institutions

(73/183/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (2) and (3), Article 61 (2) and Article 63 (2) and (3) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment (1), and in particular Title IV A thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services (2), and in particular Title V C 2 (b) thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (3);

Having regard to the Opinion of the Economic and Social Committee (4);

Having regard to the Opinion of the Monetary Committee;

Whereas, as regards banks and other financial institutions, the General Programmes provide for the abolition, before the end of the second year of the second stage, of restrictions on freedom of establishment and freedom to provide services not linked with capital movements and the abolition, at the same rate as the liberalization of capital movements, of restrictions on banking services linked with such capital movements;

Whereas, as regards services linked with capital movements, a series of closely specified activities should be liberalized in an initial stage, having regard to the Opinion of the Monetary Committee; whereas the list of such activities will be supplemented, particularly on the basis of progress in liberalizing capital movements;

Whereas the provider of a service may, in order to provide his service, temporarily pursue his activity in the country in which the service is supplied under the same conditions as those applied by that country to its own nationals;

Whereas the activities of brokers pose particular problems because of the rules governing the taking-up and pursuit of such activity in the various countries; whereas the liberalization of this activity should be the subject of a future Directive;

(1) OJ No 2, 15. 1. 1962, p. 36/62.
(2) OJ No 2, 15. 1. 1962, p. 32/62.
(3) OJ No 201, 5. 11. 1966, p. 3472/66.
(4) OJ No 224, 5. 12. 1966, p. 3799/66.

Whereas the activities of self-employed intermediaries in the sector of banks and other financial institutions is not covered by the Council Directive of 25 February 1964 relating to the achievement of freedom of establishment and the freedom to provide services in respect of the activities of intermediaries in commerce, industry and small craft industries (1); whereas such activities should therefore be included in this Directive;

Whereas, however, in the present state of the various bodies of legislation, the activities of intermediaries moving to another Member State in order to provide services there would pose problems difficult to resolve; whereas there should therefore be a further Directive on the liberalization of the provision of services by such intermediaries;

Whereas, pending coordination, this Directive does not alter the provisions of the Member States laid down by law, regulation or administrative action which, applicable without condition as to nationality, forbid natural persons and companies or firms constituted in certain forms to pursue any one of the activities covered by this Directive;

Whereas the General Programme for the abolition of restrictions on freedom of establishment provides that restrictions on the right to join professional or trade organizations must be abolished where the professional activities of the person concerned necessarily involve the exercise of this right;

Whereas, although the provisions laid down by law, regulation or administrative action relating to the taking-up and pursuit of the activities covered by this Directive should be coordinated as soon as possible, restrictions can be abolished without prior or simultaneous reference to this coordination;

Whereas it should be guaranteed that there is joint examination of the problems which will face the authorities responsible in the Community and the Member States for implementing banking regulations, concerning supervision of the activities covered by this Directive and to this end close cooperation should be established between the Commission and the Member States and among the latter;

Whereas measures that a Member State might take in order to implement joint decisions taken in the framework of monetary cooperation between the Member States do not constitute restrictions within the meaning of this Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall abolish, in respect of the natural persons and companies or firms covered by Title I of the General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services (hereinafter called 'beneficiaries'), the restrictions referred to in Title III of those General Programmes affecting the right to take up and pursue the activities specified in Article 2 of this Directive.

As regards the provision of services linked with capital movements, this Directive shall only apply to the services listed in Annex I excluding those provided by the managers and trustees of unit trusts.

The following services connected with securities and involving the transfer of the provider of the service to the country of the beneficiary shall not be liberalized:

— receipt of orders to buy or to sell,

— participation as intermediary in transfers outside the market and the recording of such transfers,

— information or advice given following a public offer,

— payment of coupons.

Article 2

This Directive shall apply to activities of self-employed persons falling within Group 620 of Annex I of the General Programme for the abolition of restrictions on freedom of establishment, as set out in Annex II to this Directive, except for the activity of brokers (Category 4 of Annex II).

This Directive shall not apply to the provision of services, in connection with banks and other financial institutions, by self-employed intermediaries who move to a Member State other than that in which they are established.

Article 3

1. Member States shall in particular abolish the following restrictions:

(1) OJ No 56, 4. 4. 1964, p. 869/64.

(a) those which prevent beneficiaries from establishing themselves or from providing services in the host country under the same conditions and with the same rights as nationals of that country;

(b) those existing by reason of administrative practices which result in treatment being applied to beneficiaries that is discriminatory by comparison with that applied to nationals.

2. The restrictions to be abolished shall include in particular those arising out of measures which prohibit or limit establishment or the provision of services by beneficiaries by the following means:

(a) *in Belgium:*

— the obligation imposed by Article 10 of arrêté royale No 185 of 9 July 1935 for foreign banks belonging to private individuals or constituted in the form of a partnership to operate in Belgium with a capital of at least 10 million francs required for Belgian banks of the same type is only 2 million francs,

— the reciprocity requirement referred to in Article 8 of the provisions for the control of private savings banks, coordinated by the Law of 23 June 1967, and in Article 8 of arrêté royale No 43 of 15 December 1934, as regards private savings banks and financing companies respectively, and in Articles 38 and 44 of arrêté royale No 225 of 7 January 1936 as regards mortgage undertakings;

(b) *in Denmark:*

— necessity for a special authorization for foreign banks stipulated by Law No 122 of 15 April 1930, amended by Laws No 163 of 13 April 1938 and No 134 of 29 May 1956,

— the nationality requirement demanded of members of the board of directors and managers of banks and branches located in Denmark, by Article 8 (2) of the abovementioned Law,

— the nationality requirement demanded of members of the supervisory board, by Article 8 (3) of the abovementioned Law,

— the nationality requirement demanded of the supervisory board and managers of savings banks and branch savings banks by Article 7 (6) of Law No 159 of 18 May 1937, in conjunction with Law No 327 of 3 July 1950, which were amended by Article 18 of Law No 286 of 18 June 1951, and by Law No 343 of 23 December 1959;

(c) *in France:*

— the obligation to hold a carte d'identité de commerçant pour les étrangers, imposed by the décret-loi of 12 November 1938 and the décret of 2 February 1939, as amended by the Law of 8 October 1940,

— the nationality requirement for persons who carry out banking operations, direct, administer or manage a company or firm or an agency for a company or firm which carries out these operations, who sign, on behalf of a bank, with power of attorney, the papers relating to the said operations, laid down by Article 7 of the Law of 13 June 1941, as amended by Article 49 of Law No 51-592 of 24 May 1951, and by Article 2 of the décret of 28 May 1946,

— the nationality requirement laid down for the undertakings referred to in Articles 1 and 2 of the Law of 14 June 1941 by Articles 7 and 11 of the same Law which refer to the requirements laid down in banking matters,

— the nationality requirement laid down for auxiliaries of the banking professions, referred to in Article 13 of the Law of 14 June 1941, as amended by the ordonnance of 16 October 1958,

— the nationality requirement laid down for démarcheurs en valeurs mobilières by Article 8 of the Law No 72-6, 3 January 1972,

— the nationality requirement laid down for auxiliaries of the stock market professions referred to in Article 5 of Law No 72-1128 of 21 December 1972,

— the nationality requirement laid down by Article 11 of ordonnance No 45-2710 of 2 November 1945 for the Chairman of the Board of Directors, the Managing Director and at least two-thirds of the board of any investment company,

— the registration of foreign banks on a special list, referred to in Article 15 of the Law of 13 June 1941;

(d) *in Ireland:*

— the requirement to be constituted in Ireland for any company which requests approval for access to banking activity and stipulated by the instructions of the Central Bank in the setting of the powers conferred upon it by Article 9 of Law No 24 of 28 July 1971, and published in the autumn 1972 number of the 'Quarterly Bulletin' of the said Bank,

— the nationality requirement laid down for the majority of the members to the board of directors, stipulated by the same instructions as above,

— the nationality requirement and, for companies, the requirement that they be constituted in Ireland, imposed on those who intend to exercise a professional activity as a loan enterprise, by Article 6 (3) of Law No 36 of 2 October 1933,

— the obligation to be constituted in Ireland required of any company which intends to exercise the activity of manager and trustee of a unit trust, stipulated by Article 3 (1) (b) and (c) of Law No 23 of 18 July 1972;

(e) *in Italy:*

— the reciprocity requirement, referred to in Article 2 of regio decreto No 1620 of 4 September 1919 concerning banks, and the discriminatory requirements regarding foreigners, which are imposed individually by ministerial decree when the said Article is implemented;

(f) *in the Grand Duchy of Luxembourg:*

— the limited duration of authorizations granted to foreigners, laid down in Article 21 of the Law of 2 June 1962;

(g) *in the Netherlands:*

— the nationality requirement for members of the 'Vereniging voor den Effectenhandel te Amsterdam', the 'Vereniging van Effectenhandelaren te Rotterdam' and the 'Bond voor de Geld- en Effectenhandel in de Provincie te 's-Gravenhage' laid down by their statutes, approved by the Ministerial authorities;

(h) *in the United Kingdom:*

— the obligation to be constituted in the United Kingdom imposed on any company which intends to exercise the activity of manager and trustee of a unit trust, stipulated by Article 17 (1) (a), of Title 45 of the Law of 23 July 1958, known as the 'Prevention of Fraud (Investments) Act', and by Article 15 (1) (a), of Title 9 of the Law of 28 May 1940, known as the 'Prevention of Fraud (Investments) Act (Northern Ireland)'.

Article 4

1. Member States shall ensure that beneficiaries have the right to join professional or trade organizations under the same conditions and with the same rights and obligations as their own nationals.

2. The right to join professional or trade organizations shall, in the case of establishment, entail eligibility for election or appointment to high office in such organizations. However, such posts may be reserved for nationals where, in pursuance of any provision laid down by law or regulation, the organization concerned is involved in the exercise of official authority.

3. In the Grand Duchy of Luxembourg, membership of the Chambre de Commerce shall not give beneficiaries the right to take part in the election of the administrative organs of that Chamber.

Article 5

1. Where a Member State requires of its own nationals, who wish to pursue one of the activities referred to in Article 2, either an extract from the 'judicial records' or the production of a specific document, it shall accept, in respect of nationals of other Member States, the production of the document required for the same purpose in the Member State of origin or the State from which the foreign national comes or, failing this, an equivalent document issued by a competent judicial or administrative authority in the State of origin or in the State from which the foreign national comes.

2. Where a Member State takes other information into account in respect of its own nationals, account may also be taken of facts other than those which may appear in the documents referred to in paragraph 1 if they can be substantiated and if they show that the person concerned does not fulfil all the requirements as to good repute necessary in order to pursue his activity.

Member States shall accord to certificates issued by the competent judicial or administrative authorities of the country of origin or country from which the foreign national comes and relating to the existence

or non-existence of certain facts the same recognition as they accord to certificates issued by their own authorities.

3. Where a Member State requires of its own nationals wishing to take up or pursue any activity referred to in Article 2 proof of no previous bankruptcy, that State shall accept, in respect of nationals of other Member States, the production of the certificate usually issued for this purpose by the authorities of the Member State of origin or country from which the foreign national comes.

4. Where the country of origin or the country from which the foreign national comes does not issue one of the documents referred to in paragraphs 1 and 3, such proof may be replaced by a declaration on oath — or, in States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority, or, where appropriate, a notary, in the country from which the person comes; such authority or notary will issue a certificate attesting the authority of the declaration on oath or solemn declaration. A declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

5. Documents issued in accordance with paragraphs 1, 2 and 3 may not be produced more than three months after their date of issue.

6. Member States shall, within the time limit laid down in Article 8, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

Article 6

Pending coordination of the provisions laid down by law, regulation or administrative action relating to legal protection of the title 'bank', 'banker', 'savings bank' or any other equivalent term, unestablished foreign undertakings may provide services under names including such words provided such names are their original ones and that such undertakings leave no doubt as to their status under the national law to which they are subject.

To this end, Member States may require prior registration on a special list of unestablished foreign providers of services. Such registration may be subject to production of a certificate issued by the authority of the country of origin specifying the status of the undertaking in question under the national legislation applicable.

For public information, the competent authority may publish the list and require foreign providers of services to inform their clients of their legal status and the chief characteristics of and facts about their activity and their financial position.

Article 7

The Commission and the representatives of the authorities responsible in the Member States for the supervision of banks and other financial institutions shall meet regularly so that they may facilitate, for the purpose of implementing the Directive, the solution of problems which the authorities might face regarding supervision of the activities covered by this Directive, and shall ensure all appropriate cooperation among themselves within the limits of their respective powers.

Article 8

Member States shall adopt the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

However, as regards the abolition of the restriction referred to in Article 3 (2) (g), the Netherlands shall be allowed a period of four years as from the date of the said notification.

Article 9

This Directive is addressed to the Member States.

Done at Luxembourg, 28 June 1973.

For the Council

The President

W. DE CLERCQ

ANNEX I

Banking services linked with the capital movements referred to in lists A and B in Annex I to the first Directive of 11 May 1960, as supplemented and amended by the second Directive of 18 December 1962 (1)

LIST A

Direct investments

— Commercial and financial information (soliciting custom, information on solvency of client, statistics, forwarding of accountancy data)

— Assistance and representation before the (administrative and judicial) authorities and other competent bodies

— Advice and assistance to undertakings with a view to their possible merger (seeking of foreign partners, expert advice etc.)

— Aid in large-scale share buying (particularly for take-over bids) in order to obtain a controlling interest in an undertaking (stock exchange formalities, capital financial assessment, ect.)

— Physical exchange of securities

— Custody of securities

— Delivery of securities allotted to the shareholders of a company.

Liquidation of direct investments

— Commercial and financial information (soliciting custom etc.)

— Assistance and representation before the (administrative and judicial) authorities and other competent bodies

— Advice and assistance to undertakings with a view to facilitating liquidation operations

— Aid in the large-scale sale of shares

— Physical exchange of securities

— Custody of securities.

Investments in real estate and liquidation thereof

— Commercial and financial information

— Assistance and representation before the (administrative and judicial) authorities and other competent bodies

— Advice and assistance concerning investments and the liquidation thereof

— Administration of estates (assistance and representation in connection with the upkeep of the property, letting, etc.)

— Assistance for the building-up and possible liquidation of sureties and guarantees of all kinds not issued by banks.

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(1) The headings are defined in the explanatory notes annexed to the First Directive for the implementation of Article 67 These definitions have been adopted in this table.
The services listed in this Annex are not liberalized if they relate to capital movements other than those in lists A and B.
The headings underlined correspond to those in lists A and B of the Directives on the capital movements in question.

Personal capital movements

— Estate management on the occasion of succession (payment of taxes, search for missing persons, etc.).

The granting and repayment of short-term and medium-term credits in respect of commercial transactions or provision of services in which a resident is participating

— Commercial and financial information (soliciting custom, etc.)

— Assistance and representation before the (administrative and judicial) authorities and other competent bodies

— Advice on the financial management of an undertaking

— Recovery of claims

— Collection of bills

— Domiciling of bills

— Management of documentary credits

— Assistance for the building-up and possible liquidation of sureties and guarantees of all kinds not issued by banks

— Blocking of cash, bonds or securities belonging to a client and guaranteeing his obligation towards a third party

— Canvassing on behalf of third parties

— Services in connection with factoring operations.

Sureties, other guarantees and rights of pledge and transfers connected with them

(sureties and guarantees issued by banks)

Death duties

— Tax information,

— Tax deposits.

Other capital transactions in list A

From a banking point of view these other transactions only involve transfers.

LIST B

Operations in securities dealt in on a stock exchange excluding units of unit trusts

— Receipt of orders to buy and sell

— Assistance in the issue of bearer certificates representing securities previously issued and dealt in on a stock exchange

— Servicing of securities (stamping, renewal of coupons, exchange, renewal, regrouping, splitting up, destruction)

— Financial services (payment of coupons, redemption of securities, aid in exercizing allotment and subscription rights, etc.)

— Financial information (current information, analyses, etc.)

— Advice on investments in stocks and shares dealt in on a stock exchange

— Management of a portfolio of securities dealt in on a stock exchange (1)

— Acceptance and implementation of powers of attorney for exercizing the rights of holders of securities dealt in on a stock exchange (particularly representation at shareholders' meetings and in court)

— Custody of securities

— Conversion of securities

— Assistance for entry on the official list of securities assigned to the holders of securities dealt in on a stock exchange

— Canvassing on behalf of third parties in connection with securities dealt in on a stock exchange

— Search for another party with a view to buying or selling securities dealt in on a stock exchange

— Acting as a clearing house.

(1) These services concern both private and corporate investors.

ANNEX II

Regrouped headings of Isic Group 620 (1) referred to in Article 2

Banks and other financial institutions such as:

Category 1: Banks

Banks
Merchant banks
Discounting banks

Category 2: Savings and loan undertakings

Instalment sales finance undertakings
Retail sales finance undertakings
Commodity sales finance undertakings
Building and loan associations
Real estate credit agencies
Urban mortgage undertakings
Farm mortgage undertakings
Mortgage guarantee undertakings
Credit undertakings
Short-term-credit undertakings
Agricultural loan institutions
Commercial credit undertakings
Industrial credit undertakings
Personal credit undertakings
Development finance undertakings
Savings banks
Savings and loan banks
Discount and loan
Financial institutions
Rediscount undertakings
Finance companies
Financiers for their own account
Holding companies
Investment companies
Finance-raising holding companies. Financial trustees
Pawnbroking

Category 3: Syndicates

Underwriting syndicates
Surety syndicates
Guarantee syndicates

Category 4: Brokers

Stock-exchange brokers
Outside brokers
Stock jobbers
Brokers in transferable securities

(1) Indexes to the International Standard Industrial Classification of all Economic Activities (ISIC) — United Nations — Statistical Papers Series M, No 4, rev. 1 add.

Category 5: Intermediaries or middlemen

Discount brokers operating on their own account
Bank brokers *(courtiers en banque)*
Financial intermediaries or middlemen

Category 6: Miscellaneous

Foreign exchange offices
Stock exchanges
Precious metals markets
Financial consultancy (1)
Clearing houses
Trust companies (2)

(1) For the activities covered by this Directive.
(2) Excluding the activities of companies covered by other Directives.

CORRIGENDA

Corrigendum to Council Regulation (EEC) No 1764/73 of 28 June 1973 temporarily suspending the autonomous Common Customs Tariff duties on certain products

(Official Journal of the European Communities, No L 177, of 30 June 1973)

Page 6, Table II, 7th heading :

instead of :

'ex 39.02 C XIV (a) Polyacrylic acid, slightly cross-linked of which an ammoniacal aqeous solution containing 3 grammes per litre has a dynamic viscosity of 15 pascal seconds at 20° centigrade'

read :

'ex 39.02 C XIV (a) Copolymers of ethylene and maleic anhydride, slightly cross-linked and with molecular ration of 1 : 1 (viscosity 15/20,000 op)'.

Corrigendum to Commission Regulation (EEC) No 2930/73 of 26 October 1973 altering the monetary compensatory amounts

(Official Journal of the European Communities, No L 300 of 29 October 1973)

Page 8, Annex I, part 3, column 2, CCT heading No 02.06 C I (a) 1 :

instead of : '57,07'

read : '67,07'.

Corrigendum to the Council Directive of 28 June 1973 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of self-employed activities of banks and other financial institutions

(Official Journal of the European Communities, No L 194 of 16 July 1973)

Page 2, Article 1, paragraph 3 :

instead of : 'The following services connected with securities and involving the transfer of the provider of the service to the country of the beneficiary shall not be liberalized'

read : 'The following services connected with securities and involving the movement of the provider of the service to the country of the recipient of the service shall not be liberalized :'

Page 4, Article 3 (2) (h) :

instead of : '(h) *in the United Kingdom :*

— the obligation to be constituted in the United Kingdom imposed on any company which intends to exercise the activity of manager and trustee of a unit trust, stipulated by Article 17 (1) (a), of Title 45 of the Law of

23 July 1958, known as the "Prevention of Fraud (Investments) Act", and by Article 15 (1) (a), of Title 9 of the Law of 28 May 1940, known as the "Prevention of Fraud (Investments) Act (Northern Ireland)".'

read : '(h) *in the United Kingdom :*

— the obligation to be constituted in the United Kingdom imposed on any company which intends to exercise the activity of manager and trustee of a unit trust, stipulated by Sub-section 1 (a) of Section 17 of the Prevention of Fraud (Investments) Act 1958, and by sub-section 1 (a) of Section 16 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940'.

Page 6, Annex I, footnote 1, line 4 :

instead of : 'The headings underlined correspond . . .'

read : 'The headings in bold type correspond . . .'.

CORRIGENDA

Corrigendum to Council Regulation (EEC) No 225/72 of 31 January 1972 supplementing Regulation (EEC) No 206/68 laying down outline provisions for contracts and inter-trade agreements on the purchase of beet

(Official Journal of the European Communities No L 28 of 1 February 1972 : OJ Special Edition 1972 (I))

Page 69, Article 1, first and third lines :

instead of 'Article 8a'

read 'Article 8b'.

Corrigendum to Council Directive of 28 June 1973 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of self-employed activities of banks and other financial institutions

(Official Journal of the European Communities No L 194 of 16 July 1973)

Page 4, Article 3 (2) (d) :

instead of :

'(d) *in Ireland*

— the requirement to be constituted in Ireland for any company which requests approval for access to banking activity and stipulated by the instructions of the Central Bank in the setting of the powers conferred upon it by Article 9 of Law No 24 of 28 July 1971, and published in the autumn 1972 number of the "Quarterly Bulletin" of the said Bank ;

— the nationality requirement laid down for the majority of the members of the board of directors, stipulated by the same instructions as above ;

— the nationality requirement and, for companies, the requirement that they be constituted in Ireland, imposed on those who intend to exercise a professional activity as a loan enterprise, by Article 6 (3) of Law No 36 of 2 October 1933 ;

— the obligation to be constituted in Ireland required of any company which intends to exercise the activity of manager and trustee of a unit trust, stipulated by Article 3 (1) (b) and (c) of Law No 23 of 18 July 1972) ;'

read

'd) *in Ireland*

— the requirement to be constituted in Ireland for any company which requests approval for access to banking activity and stipulated by the instructions of the Central Bank by virtue of the powers conferred upon it by Section 9 of the Central Bank Act, 1971 (No 24 of 1971), and published in the autumn 1972 number of the "Quarterly Bulletin" of the said Bank ;

— the nationality requirement laid down for the majority of the members of the board of directors, stipulated by the same instructions as above ;

— the nationality requirement and, for companies, the requirement that they be Irish-owned, imposed by Section 6 (3) of the Moneylenders Act, 1933 (No 36 of 1933), on those who intend to become moneylenders ;

— the obligation to be constituted in Ireland required of any company which intends to exercise the activity of manager and trustee of a unit trust, stipulated by Section 3 (1) (b) and (c) of the Unit Trusts Act, 1972 (No 23 of 1972) ;'

Page 5, Article 3 (4) eleventh line :

instead of 'such authority or notary will issue a certificate attesting the authority of the declaration.'

read such authority or notary will issue a certificate attesting the authenticity of the declaration.'

I) **77/780/EEC**

First Council Directive of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions
(OJ No L 322, 17.12.1977, p. 30-37)

Title I : Definitions and scope (Art. 1 and 2)

Title II : Credit institutions having their head office in a Member State and their branches in other Member States (Art. 3-8)

Title III : Branches of credit institutions having their head offices outside the Community (Art. 9)

Titel IV : General and transitional provisions (Art. 10-13)

Titel V : Final provisions (Art. 14 and 15)

Modified by :

Act of adhesion of Greece (modification Art. 2)	(OJ No L 291, 19.11.1979, p. 90)	(see p. 45)
Act of adhesion of Spain and Portugal (modification Art. 2,3,4)	(OJ No L 302, 15.11.1985, p. 157, 380-381, 489-490)	(see p.46-50)
Directive 85/345/EEC (modification Art. 3)	(OJ No L 183, 16.07.1985, p. 19-20)	(see p. 51)
Directive 86/137/EEC (modification Art. 2)	(OJ No L 106, 23.04.1986, p. 35)	(see p. 53)
Directive 86/524/EEC (modification Art. 2)	(OJ No L 309, 04.11.1986, p. 15-16)	(see p. 55)

List of credit institutions provided for in Articles 3 (7) and 10 (2) of Directive 77/780/EEC (situation as at 31 December 1992 - 14th version (introduction only)
(OJ No C C 156. 07.06.1994. p. 1 14 (see p. 45)

FIRST COUNCIL DIRECTIVE

of 12 December 1977

on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions

(77/780/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas, pursuant to the Treaty, any discriminatory treatment with regard to establishment and to the provision of services, based either on nationality or on the fact that an undertaking is not established in the Member States where the services are provided, is prohibited from the end of the transitional period;

Whereas, in order to make it easier to take up and pursue the business of credit institutions, it is necessary to eliminate the most obstructive differences between the laws of the Member States as regards the rules to which these institutions are subject;

Whereas, however, given the extent of these differences, the conditions required for a common market for credit institutions cannot be created by means of a single Directive; whereas it is therefore necessary to proceed by successive stages; whereas the result of this process should be to provide for overall supervision of a credit institution operating in several Member States by the competent authorities in the Member State where it has its head office, in consultation, as appropriate, with the competent authorities of the other Member States concerned;

Whereas measures to coordinate credit institutions must, both in order to protect savings and to create equal conditions of competition between these institutions, apply to all of them; whereas due regard must be had, where applicable, to the objective differences in their statutes and their proper aims as laid down by national laws;

Whereas the scope of those measures should therefore be as broad as possible, covering all institutions whose business is to receive repayable funds from the public whether in the form of deposits or in other forms such as the continuing issue of bonds and other comparable securities and to grant credits for their own account; whereas exceptions must be provided for in the case of certain credit institutions to which this Directive cannot apply;

Whereas the provisions of this Directive shall not prejudice the application of national laws which provide for special supplementary authorizations permitting credit institutions to carry on specific activities or undertake specific kinds of operations;

Whereas the same system of supervision cannot always be applied to all types of credit institution; whereas provision should therefore be made for application of this Directive to be deferred in the case of certain groups or types of credit institutions to which its immediate application might cause technical problems; whereas more specific provisions for such institutions may prove necessary in the future; whereas these specific provisions should nonetheless be based on a number of common principles;

Whereas the eventual aim is to introduce uniform authorization requirements throughout the Community for comparable types of credit institution; whereas at the initial stage it is necessary, however, to specify only certain minimum requirements to be imposed by all Member States;

Whereas this aim can be achieved only if the particularly wide discretionary powers which certain supervisory authorities have for authorizing credit establishments are progressively reduced; whereas the requirement that a programme of operations must be produced should therefore be seen merely as a factor enabling the competent authorities to decide on the basis of more precise information using objective criteria;

(1) OJ No C 128, 9. 6. 1975, p. 25.
(2) OJ No C 263, 17. 11. 1975, p. 25.

Whereas the purpose of coordination is to achieve a system whereby credit institutions having their head office in one of the Member States are exempt from any national authorization requirement when setting up branches in other Member States;

Whereas a measure of flexibility may nonetheless be possible in the initial stage as regards the requirements on the legal form of credit institutions and the protection of banking names;

Whereas equivalent financial requirements for credit institutions will be necessary to ensure similar safeguards for savers and fair conditions of competition between comparable groups of credit institutions; whereas, pending further coordination, appropriate structural ratios should be formulated that will make it possible within the framework of cooperation between national authorities to observe, in accordance with standard methods, the position of comparable types of credit institutions; whereas this procedure should help to bring about the gradual approximation of the systems of coefficients established and applied by the Member States; whereas it is necessary, however, to make a distinction between coefficients intended to ensure the sound management of credit institutions and those established for the purposes of economic and monetary policy; whereas, for the purpose of formulating structural ratios and of more general cooperation between supervisory authorities, standardization of the layout of credit institutions' accounts will have to begin as soon as possible;

Whereas the rules governing branches of credit institutions having their head office outside the Community should be analogous in all Member States; whereas it is important at the present time to provide that such rules may not be more favourable than those for branches of institutions from another Member State; whereas it should be specified that the Community may conclude agreements with third countries providing for the application of rules which accord such branches the same treatment throughout its territory, account being taken of the principle of reciprocity;

Whereas the examination of problems connected with matters covered by Council Directives on the business of credit institutions requires cooperation between the competent authorities and the Commission within an Advisory Committee, particularly when conducted with a view to closer coordination;

Whereas the establishment of an Advisory Committee of the competent authorities of the Member States does not rule out other forms of cooperation between authorities which supervise the taking up and pursuit of the business of credit institutions and, in particular, cooperation within the Contact Committee set up between the banking supervisory authorities,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Definitions and scope

Article 1

For the purposes of this Directive:

— 'credit institution' means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account,

— 'authorization' means an instrument issued in any form by the authorities by which the right to carry on the business of a credit institution is granted,

— 'branch' means a place of business which forms a legally dependent part of a credit institution and which conducts directly all or some of the operations inherent in the business of credit institutions; any number of branches set up in the same Member State by a credit institution having its head office in another Member State shall be regarded as a single branch, without prejudice to Article 4 (1),

— 'own funds' means the credit institution's own capital, including items which may be treated as capital under national rules.

Article 2

1. This Directive shall apply to the taking up and pursuit of the business of credit institutions.

2. It shall not apply to:

— the central banks of Member States,

— post office giro institutions,

— in Belgium, the communal savings banks ('caisses d'épargne communales — gemeentelijke spaarkassen'), the 'Institut de Réescompte et de Garantie — Herdisconterings- en Waarborginstituut', the 'Société nationale d'Investissement — Nationale Investeringsmaatschappij', the regional development companies ('sociétés de développement régional — gewestelijke ontwikkelingsmaatschappijen'), the 'Société nationale du Logement — Nationale Maatschappij voor de Huisvesting' and its authorized companies and the 'Société nationale terrienne — Nationale Landmaatschappij' and its authorized companies,

— in Denmark, the 'Dansk Eksportfinansieringsfond' and 'Danmarks Skibskreditfond',

— in Germany, the 'Kreditanstalt für Wiederaufbau', undertakings which are recognized under the 'Wohnungsgemeinnützigkeitsgesetz' (non-profit housing law) as bodies of state housing policy and are not mainly engaged in banking transactions and undertakings recognized under that law as non-profit housing undertakings,

— in France, the 'Caisse des Dépôts et Consignations', the 'Crédit Foncier' and the 'Crédit National',

— in Ireland, credit unions,

— in Italy, the 'Cassa Depositi e Prestiti',

— in the Netherlands, the 'NV Export-Financieringsmaatschappij', the 'Netherlandse Financieringsmaatschappij voor Ontwikkelingslanden NV', the 'Nederlandse Investeringsbank voor Ontwikkelingslanden NV', the 'Nationale Investeringsbank NV', the 'NV Bank van Nederlandse Gemeenten', the 'Nederlandse Waterschapsbank NV', the 'Financieringsmaatschappij Industrieel Garantiefonds Amsterdam NV', the 'Financieringsmaatschappij Industrieel Garantiefonds 's-Gravenhage NV', the 'NV Noordelijke Ontwikkelings Maatschappij', the 'NV Industriebank Limburgs Instituut voor ontwikkeling en financiering' and the 'Overijsselse Ontwikkelingsmaatschappij NV',

— in the United Kingdom, the National Savings Bank, the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, the Scottish Agricultural Securities Corporation Ltd, the Crown Agents for overseas governments and administrations, credit unions, and municipal banks.

3. The Council, acting on a proposal from the Commission, which, for this purpose, shall consult the Committee referred to in Article 11 (hereinafter referred to as 'the Advisory Committee') shall decide on any amendments to the list in paragraph 2.

4 (a) Credit institutions existing in the same Member State at the time of the notification of this Directive and permanently affiliated at that time to a central body which supervises them and which is established in that same Member State, may be exempted from the requirements listed in the first, second and third indents of the first subparagraph of Article 3 (2), the second subparagraph of Article 3 (2), Article 3 (4) and Article 6, if, no later than the date when the national authorities take the measures necessary to translate this Directive into national law, that law provides that:

— the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body,

— the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts,

— the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

(b) Credit institutions operating locally which are affiliated, subsequent to notification of this Directive, to a central body within the meaning of subparagraph (a) may benefit from the conditions laid down in subparagraph (a) if they constitute normal additions to the network belonging to that central body.

(c) In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or have resulted from scission or mergers of existing institutions dependent or answerable to the central body, the Council, acting on a proposal from the Commission, which shall, for this purpose, consult the Advisory Committee, may lay down additional rules for the application of subparagraph (b) including the repeal of exemptions provided for in subparagraph (a), where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in subparagraph (b) might have an adverse effect on competition. The Council shall decide by a qualified majority.

5. Member States may defer in whole or in part the application of this Directive to certain types or groups of credit institutions where such immediate application would cause technical problems which cannot be overcome in the short-term. The problems may result either from the fact that these institutions are subject to supervision by an authority different from that normally responsible for the supervision of banks, or from the fact that they are subject to a special system of supervision. In any event, such deferment cannot be justified by the public law statutes, by the smallness of size or by the limited scope of activity of the particular institutions concerned.

Deferment can apply only to groups or types of institutions already existing at the time of notification of this Directive.

6. Pursuant to paragraph 5, a Member State may decide to defer application of this Directive for a maximum period of five years from the notification thereof and, after consulting the Advisory Committee may extend deferment once only for a maximum period of three years.

The Member State shall inform the Commission of its decision and the reasons therefor not later than six months following the notification of this Directive. It shall also notify the Commission of any extension or repeal of this decision. The Commission shall publish any decision regarding deferment in the *Official Journal of the European Communities*.

Not later than seven years following the notification of this Directive, the Commission shall, after consulting the Advisory Committee, submit a report to the Council on the situation regarding deferment. Where appropriate, the Commission shall submit to the Council, not later than six months following the submission of its report, proposals for either the inclusion of the institutions in question in the list in paragraph 2 or for the authorization of a further extension of deferment. The Council shall act on these proposals not later than six months after their submission.

TITLE II

Credit institutions having their head office in a Member State and their branches in other Member States

Article 3

1. Member States shall require credit institutions subject to this Directive to obtain authorization before commencing their activities. They shall lay down the requirements for such authorization subject to paragraphs 2, 3 and 4 and notify them to both the Commission and the Advisory Committee.

2. Without prejudice to other conditions of general application laid down by national laws, the competent authorities shall grant authorization only when the following conditions are complied with :

— the credit institution must possess separate own funds,

— the credit institution must possess adequate minimum own funds,

— there shall be at least two persons who effectively direct the business of the credit institution.

Moreover, the authorities concerned shall not grant authorization if the persons referred to in the third indent of the first subparagraph are not of sufficiently good repute or lack sufficient experience to perform such duties.

3. (a) The provisions referred to in paragraphs 1 and 2 may not require the application for authorization to be examined in terms of the economic needs of the market.

(b) Where the laws, regulations or administrative provisions of a Member State provide, at the time of notification of the present Directive, that the economic needs of the market shall be a condition of authorization and where technical or structural difficulties in its banking system do not allow it to give up the criterion within the period laid down in Article 14 (1), the State in question may continue to apply the criterion for a period of seven years from notification.

It shall notify its decision and the reasons therefor to the Commission within six months of notification.

(c) Within six years of the notification of this Directive the Commission shall submit to the Council, after consulting the Advisory Committee, a report on the application of the criterion of economic need. If appropriate, the Commission shall submit to the Council proposals to terminate the application of that criterion. The period referred to in subparagraph (b) shall be extended for one further period of five years, unless, in the meantime, the Council, acting unanimously on proposals from the Commission, adopts a Decision to terminate the application of that criterion.

(d) The criterion of economic need shall be applied only on the basis of general predetermined criteria, published and notified to both the Commission and the Advisory Committee and aimed at promoting :

— security of savings,

— higher productivity in the banking system

— greater uniformity of competition between the various banking networks,

— a broader range of banking services in relation to population and economic activity

Specification of the above objectives shall be determined within the Advisory Committee, which shall begin its work as from its initial meetings.

4. Member States shall also require applications for authorization to be accompanied by a programme of operations setting out *inter alia* the types of business envisaged and the structural organization of the institution.

5. The Advisory Committee shall examine the content given by the competent authorities to requirements listed in paragraph 2, any other requirements which the Member States apply and the information which must be included in the programme of operations, and shall, where appropriate, make suggestions to the Commission with a view to a more detailed coordination.

6. Reasons shall be given whenever an authorization is refused and the applicant shall be notified thereof within six months of receipt of the application or, should the latter be incomplete, within six months of the applicant's sending the information required for the decision. A decision shall, in any case, be taken within 12 months of the receipt of the application.

7. Every authorization shall be notified to the Commission. Each credit institution shall be entered in a list which the Commission shall publish in the *Official Journal of the European Communities* and shall keep up to date.

Article 4

1. Member States may make the commencement of business in their territory by branches of credit institutions covered by this Directive which have their head office in another Member State subject to authorization according to the law and procedure applicable to credit institutions established on their territory.

2. However, authorization may not be refused to a branch of a credit institution on the sole ground that it is established in another Member State in a legal form which is not allowed in the case of a credit institution carrying out similar activities in the host country. This provision shall not apply, however, to credit institutions which possess no separate own funds.

3. The competent authorities shall inform the Commission of any authorizations which they grant to the branches referred to in paragraph 1.

4. This Article shall not affect the rules applied by Member States to branches set up on their territory by credit institutions which have their head office there. Notwithstanding the second part of the third indent of Article 1, the laws of Member States requiring a separate authorization for each branch of a credit institution having its head office in their territory shall apply equally to the branches of credit institutions the head offices of which are in other Member States.

Article 5

For the purpose of exercising their activities, credit institutions to which this Directive applies may, notwithstanding any provisions concerning the use of the words 'bank', 'saving bank' or other banking names which may exist in the host Member State, use throughout the territory of the Community the same name as they use in the Member States in which their head office is situated. In the event of there being any danger of confusion, the host Member State may, for the purposes of clarification, require that the name be accompanied by certain explanatory particulars.

Article 6

1. Pending subsequent coordination, the competent authorities shall, for the purposes of observation and, if necessary, in addition to such coefficients as may be applied by them, establish ratios between the various assets and/or liabilities of credit institutions with a view to monitoring their solvency and liquidity and the other measures which may serve to ensure that savings are protected.

To this end, the Advisory Committee shall decide on the content of the various factors of the observation ratios referred to in the first subparagraph and lay down the method to be applied in calculating them.

Where appropriate, the Advisory Committee shall be guided by technical consultations between the supervisory authorities of the categories of institutions concerned.

2. The observation ratios established in pursuance of paragraph 1 shall be calculated at least every six months.

3. The Advisory Committee shall examine the results of analyses carried out by the supervisory authorities referred to in the third subparagraph of paragraph 1 on the basis of the calculations referred to in paragraph 2.

4. The Advisory Committee may make suggestions to the Commission with a view to coordinating the coefficients applicable in the Member States.

Article 7

1. The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of credit institutions operating, in particular by having established branches there, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such credit institutions that is likely to facilitate their supervision and the examination of the conditions for their authorization and all information likely to facilitate the monitoring of their liquidity and solvency.

2. The competent authorities may also, for the purposes and within the meaning of Article 6, lay

down ratios applicable to the branches referred to in this Article by reference to the factors laid down in Article 6.

3. The Advisory Committee shall take account of the adjustments necessitated by the specific situation of the branches in relation to national regulations.

Article 8

1. The competent authorities may withdraw the authorization issued to a credit institution subject to this Directive or to a branch authorized under Article 4 only where such an institution or branch:

(a) does not make use of the authorization within 12 months, expressly renounces the authorization or has ceased to engage in business for more than six months, if the Member State concerned has made no provision for the authorization to lapse in such cases;

(b) has obtained the authorization through false statements or any other irregular means;

(c) no longer fulfils the conditions under which authorization was granted, with the exception of those in respect of own funds;

(d) no longer possesses sufficient own funds or can no longer be relied upon to fulfil its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it;

(e) falls within one of the other cases where national law provides for withdrawal of authorization.

2. In addition, the authorization issued to a branch under Article 4 shall be withdrawn if the competent authority of the country in which the credit institution which established the branch has its head office has withdrawn authorization from that institution.

3. Member States which grant the authorizations referred to in Articles 3 (1) and 4 (1) only if, economically, the market situation requires it may not invoke the disappearance of such a need as grounds for withdrawing such authorizations.

4. Before withdrawal from a branch of an authorization granted under Article 4, the competent authority of the Member State in which its head office is situated shall be consulted. Where immediate action is called for, notification may take the place of such consultation. The same procedure shall be followed, by analogy, in cases of withdrawal of authorization from a credit institution which has branches in other Member States.

5. Reasons must be given for any withdrawal of authorization and those concerned informed thereof; such withdrawal shall be notified to the Commission.

TITLE III

Branches of credit institutions having their head offices outside the Community

Article 9

1. Member States shall not apply to branches of credit institutions having their head office outside the Community, when commencing or carrying on their business, provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Community.

2. The competent authorities shall notify the Commission and the Advisory Committee of all authorizations for branches granted to credit institutions having their head office outside the Community.

3. Without prejudice to paragraph 1, the Community may, through agreements concluded in accordance with the Treaty with one or more third countries, agree to apply provisions which, on the basis of the principle of reciprocity, accord to branches of a credit institution having its head office outside the Community identical treatment throughout the territory of the Community.

TITLE IV

General and transitional provisions

Article 10

1. Credit institutions subject to this Directive, which took up their business in accordance with the provisions of the Member States in which they have their head offices before the entry into force of the provisions implementing this Directive shall be deemed to be authorized. They shall be subject to the provisions of this Directive concerning the carrying on of the business of credit institutions and to the requirements set out in the first and third indents of the first subparagraph and in the second subparagraph of Article 3 (2).

Member States may allow credit institutions which at the time of notification of this Directive do not comply with the requirement laid down in the third indent of the first subparagraph of Article 3 (2), no more than five years in which to do so.

Member States may decide that undertakings which do not fulfil the requirements set out in the first indent of the first subparagraph of Article 3 (2) and

which are in existence at the time this Directive enters into force may continue to carry on their business. They may exempt such undertakings from complying with the requirement contained in the third indent of the first subparagraph of Article 3 (2).

2. All the credit institutions referred to in paragraph 1 shall be given in the list referred to in Article 3 (7).

3. If a credit institution deemed to be authorized under paragraph 1 has not undergone any authorization procedure prior to commencing business, a prohibition on the carrying on of its business shall take the place of withdrawal of authorization.

Subject to the first subparagraph, Article 8 shall apply by analogy.

4. By way of derogation from paragraph 1, credit institutions established in a Member State without having undergone an authorization procedure in that Member State prior to commencing business may be required to obtain authorization from the competent authorities of the Member State concerned in accordance with the provisions implementing this Directive. Such institutions may be required to comply with the requirement in the second indent of Article 3 (2) and with such other conditions of general application as may be laid down by the Member State concerned.

Article 11

1. An 'Advisory Committee of the Competent Authorities of the Member States of the European Economic Community' shall be set up alongside the Commission.

2. The tasks of the Advisory Committee shall be to assist the Commission in ensuring the proper implementation of both this Directive and Council Directive 73/183/EEC of 28 June 1973 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of self-employed activities of banks and other financial institutions (1) in so far as it relates to credit institutions. Further it shall carry out the other tasks prescribed by this Directive and shall assist the Commission in the preparation of new proposals to the Council concerning further coordination in the sphere of credit institutions.

3. The Advisory Committee shall not concern itself with concrete problems relating to individual credit institutions.

4. The Advisory Committee shall be composed of not more than three representatives from each Member State and from the Commission. These representatives may be accompanied by advisers from time and subject to the prior agreement of the Committee. The Committee may also invite qualified persons and experts to participate in its meetings. The secretariat shall be provided by the Commission.

5. The first meeting of the Advisory Committee shall be convened by the Commission under the chairmanship of one of its representatives. The Advisory Committee shall then adopt its rules of procedure and shall elect a chairman from among the representatives of Member States. Thereafter it shall meet at regular intervals and whenever the situation demands. The Commission may ask the Committee to hold an emergency meeting if it considers that the situation so requires.

6. The Advisory Committee's discussions and the outcome thereof shall be confidential except when the Committee decides otherwise.

Article 12

1. Member States shall ensure that all persons now or in the past employed by 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 except by virtue of provisions laid down by law.

2. Paragraph 1 shall not, however, preclude communications between the competent authorities of the various Member States, as provided for in this Directive. Information thus exchanged shall be covered by the obligation of professional secrecy applying to the persons now or in the past employed by the competent authorities receiving the information.

3. Without prejudice to cases covered by criminal law, the authorities receiving such information shall use it only to examine the conditions for the taking up and pursuit of the business of credit institutions, to facilitate monitoring of the liquidity and solvency of these institutions or when the decisions of the competent authority are the subject of an administrative appeal or in court proceedings initiated pursuant to Article 13.

Article 13

Member States shall ensure that decisions taken in respect of a credit institution in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts. The same shall apply

(1) OJ No L 194, 16. 7. 1973, p. 1

where no decision is taken within six months of its submission in respect of an application for authorization which contains all the information required under the provisions in force.

TITLE V

Final provisions

Article 14

1. Member States shall bring into force the measures necessary to comply with this Directive within 24 months of its notification and shall forthwith inform the Commission thereof.

2. As from the notification of this Directive, 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 15

This Directive is addressed to the Member States.

Done at Brussels, 12 December 1977.

For the Council

The President

A. HUMBLET

The following is added at the end of Article 1:

— in Greece:
ἡ ἀνώνυμη ἑταιρία
ἡ ἑταιρία περιορισμένης εὐθύνης
ἡ ἑτερόρρυθμη κατά μετοχές ἑταιρία'.

(d) Public works contracts

Council Directive 71/305/EEC of 26 July 1971 (OJ No L 185, 16. 8. 1971, p. 5).

At the end of Article 24, the full stop is replaced by semi-colon and the following is added:

'In Greece:

a certificate delivered under oath by a notary regarding the exercise of the profession of public works contractor may be requested'.

In Annex I, the following is added:

'VIII. In Greece:

other legal persons governed by public law whose public works contracts are subject to control by the State'.

(e) Banks and other financial establishments

1. First Council Directive 73/239/EEC of 24 July 1973 (OJ No L 228, 16. 8. 1973, p. 3).

In Article 8 (1) (a), the following is added:

'in the case of the Hellenic Republic:
— ἀνώνυμη ἑταιρία
— ἀλληλοασφαλιστικός συνεταιρισμός'.

2. Council Directive 77/92/EEC of 13 December 1976 (OJ No L 26, 31. 1. 1977, p. 14).

In Article 2 (2) (b), the following is added:

'— in Greece:
Γενικός πράκτωρ
Πράκτωρ'.

3. First Council Directive 77/780/EEC of 12 December 1977 (OJ No L 322, 17. 12. 1977, p. 30).

In Article 2 (2), an additional indent is added (between the indents concerning Germany and France respectively) as follows:

'— in Greece:
τῆς Ἑλληνικῆς Τραπέζης Βιομηχανικῆς Ἀναπτύξεως, τοῦ Ταμείου Παρακαταθηκῶν καὶ Δανείων, τῆς Τραπέζης Ὑποθηκῶν, τοῦ Ταχυδρομικοῦ Ταμιευτηρίου καὶ τῆς "Ἑλληνικαὶ Ἐξαγωγαὶ Α.Ε."'

4. First Council Directive 79/267/EEC of 5 March 1979 (OJ No L 63, 13. 3. 1979, p. 1).

The following indent is added after the third indent of Article 8 (1) (a):

'— in the case of the Hellenic Republic:
ἀνώνυμη ἑταιρία'.

5. Council Directive 79/279/EEC of 5 March 1979 (OJ No L 66, 16. 3. 1979, p. 1)

In Article 21 (1), 'forty-one' is replaced by 'forty-five'.

(f) Doctors

Council Directive 75/362/EEC of 16 June 1975 (OJ No L 167, 30. 6. 1975, p. 1).

(a) The following is added to the end of Article 3:

'(j) in Greece:
πτυχίο ἰατρικῆς Σχολῆς (degree awarded by the Faculty of Medicine) awarded by a University Faculty of Medicine, and πιστοποιητικό πρακτικῆς ἀσκήσεως (certificate of practical training) issued by the Ministry for Social Services.'

(b) Article 5 (2).

An additional subparagraph is added to paragraph 2:

'in Greece:
τίτλος ἰατρικῆς εἰδικότητος (certificate of specialization in medicine) issued by the Ministry for Social Services'.

(c) Article 5 (3)

The following references are added to each of the subparagraphs of paragraph 3

— anaesthetics:
'Greece: ἀναισθησιολογία',

— general surgery:
'Greece: χειρουργική',

— neurological surgery:
'Greece: νευροχειρουργική',

— obstetrics and gynaecology:
'Greece: μαιευτική — γυναικολογία',

— general (internal) medicine:
'Greece: παθολογία',

— *in Portugal:*

— Agente de seguros

(c) — *in Spain*.

— Subagentes de seguros;

— *in Portugal:*

— Submediador.'

X 3. First Council Directive 77/780/EEC of 12 December 1977 (OJ No L 322, 17. 12. 1977, p. 30), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

The following is added to Article 2 (2):

'— in Spain, the Instituto de Crédito Oficial, with the exception of its subsidiaries,

— in Portugal, Caixas Económicas existing on 1 January 1986 and which are not incorporated as limited companies.'

4. First Council Directive 79/267/EEC of 5 March 1979 (OJ No L 63, 13. 3. 1979, p. 1), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17)

The following is added to Article 8 (1) (a):

'— in the case of the Kingdom of Spain:

sociedad anonima, sociedad mutua,

— in the case of the Portuguese Republic:

sociedade anónima.'

5. Council Directive 79/279/EEC of 5 March 1979 (OJ No L 66, 16. 3. 1979, p. 21), as amended by:

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17)

Council Directive 82/148/EEC of 3 March 1982 (OJ No L 62, 5. 3. 1982, p. 22):

In Article 21 (1), 'forty-five' is replaced by 'fifty-four'.

(d) **Company law**

1. First Council Directive 68/151/EEC of 9 March 1968 (OJ No L 65, 14. 3. 1968, p. 8), as amended by

— the 1972 Act of Accession (OJ No L 73, 27. 3. 1972, p. 14),

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17)

(a) The following is added to Article 1:

'— *in Spain*

la sociedad anónima, la sociedad comanditaria por acciones, la sociedad de responsabilidad limitada;

— *in Portugal:*

a sociedade anónima de responsabilidade limitada, a sociedade em comandita por acçoes, a sociedade por quotas de responsabilidade limitada.'

(b) Article 2 (1) (f) is replaced by the following:

'(f) The balance sheet and the profit and loss account for each financial year. The document containing the balance sheet must give details of the persons who are required by law to certify it. However, in respect of the Gesellschaft mit beschränkter Haftung, société de personnes à responsabilité limitée, personenvennootschap met beperkte aansprakelijkheid, société à responsabilité limitée, εταιρία περιορισμένης ευθύνης, società a responsabilità limitata and sociedade em comandita por acçoes under German, Belgian, French, Greek, Italian, Luxembourg or Portuguese law referred to in Article 1, the besloten naamloze vennootschap under Netherlands law, the private company under the law of Ireland and the private company under the law of Northern Ireland, the compulsory application of this provision shall be postponed until the date of implementation of a Directive concerning coordination of the contents of balance sheets and of profit and loss accounts and concerning exemption of such of those companies whose balance sheet total is less than that specified in the Directive from the obligation to make disclosure in full or in part of the said documents. The Council will adopt such a Directive within two years following adoption of the present Directive.'

2. Second Council Directive 77/91/EEC of 13 December 1976 (OJ No L 26, 31. 1. 1977, p. 1), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

The following is added to Article 1 (1):

'— *in Spain:*

la sociedad anónima,

— *in Portugal:*

a sociedade anónima de responsabilidade limitada.'

3. Third Council Directive 78/885/EEC of 9 October 1978 (OJ No L 295, 20. 10. 1978, p. 36), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17).

The following is added to Article 1 (1):

— *in Spain:*

la sociedad anónima;

— *in Portugal:*

a sociedade anónima de responsabilidade limitada.'

4. Fourth Council Directive 78/660/EEC of 25 July 1978 (OJ No L 222, 14. 8. 1978, p. 11), as amended by:

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17),

previously exported from a Member State of that Community;

(b) with regard to Spain and Portugal, unless the returned goods were previously exported from the Member State into which they have been reimported. Where an export drawback has been granted on these goods, the arrangements for returned goods shall apply to them only when the drawback has been refunded.

5. Council Regulation (EEC) No 2102/77 of 20 September 1977 (OJ No L 246, 27. 9. 1977, p. 1)

The Kingdom of Spain and the Portuguese Republic are authorized to use their national export declaration forms until the implementation of Council Regulations (EEC) No 678/85 and (EEC) No 679/85 of 18 February 1985 (OJ No L 79, 21. 3. 1985), it being understood that those declaration forms furnish the same details as those provided for in the forms annexed to Regulation (EEC) No 2102/77.

6. Council Regulation (EEC) No 3599/82 of 21 December 1982 (OJ No L 376, 31. 12. 1982, p. 1).

The Kingdom of Spain is authorized to retain authorizations for temporary entry issued before accession under the conditions subject to which they are granted until the expiry of their validity but not later than 31 December 1987.

II. RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

X 1. Council Directive 77/780/EEC of 12 December 1977 (OJ No L 322, 17. 12. 1977, p. 30), as amended by the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17)

(a) Until 31 December 1992, the new Member States may continue to apply the criterion of economic need referred to in Article 3 (3) (b), in accordance with the provisions laid down by the Directive concerned, due regard being paid to the rule of non-discrimination.

(b) During a period expiring on 31 December 1992, the Kingdom of Spain shall progressively implement the measures necessary to conform to Article 3 and 4 of the Directive concerned, under the conditions defined below:

— The present arrangements, under which authorization on the basis of economic need is given in respect of one subsidiary plus two other places of business or one branch plus two other places of business shall be retained.

— Credit institutions having their principal place of business in another Member State and having at least one subsidiary or branch, set up in Spain before accession or the setting up of which will be authorized after accession, irrespective of the date of such authorization, shall be authorized to set up:

— as from 1 January 1990, one additional branch,

— as from 1 January 1991, two additional branches,

— as from 1 January 1992, two additional branches,

— as from 1 January 1993, as many branches as they wish, on the same footing as the Spanish credit institutions, due regard being paid to the rule of non-discrimination.

— The percentage of the resources taken up by the credit institutions referred to above, on the domestic Spanish market outside banking circles, as compared with the assets achieved on the same market, shall be laid down as follows:

— as from accession, 40 %,

— as from 1 January 1988, 50 %,

— as from 1 January 1989, 60 %

— as from 1 January 1990, 70 %

— as from 1 January 1991, 80 %,

— as from 1 January 1992, 90 %,

— as from 1 January 1993, 100 %, to the exclusion of all discrimination between Spanish credit institutions and the subsidiaries or branches in Spain of credit institutions having their principal place of business in another Member State.

— Throughout the period of the temporary derogations referred to above, the general or special facilities which result from Spanish legislative provisions or agreements existing before accession between Spain and one or more of the other Member States will be maintained and applied on a non-discriminatory basis with regard to all the other Member States. The treatment which Spain will grant to credit institutions of third countries may not be more favourable than that applicable to credit institutions of the other Member States.

(c) During a period expiring on 31 December 1992, the Portuguese Republic shall progressively implement the measures necessary for it to conform to Articles 3 and 4 of the Directive concerned, under the following conditions:

— Credit institutions having their principal place of business in another Member State and having at least one subsidiary or

branch set up in Portugal before accession, or the setting up of which will be authorized after accession, irrespective of the date of such authorization, shall be authorized to set up:

— as from 1 January 1988, one additional branch,

— as from 1 January 1990, two additional branches,

— as from 1 January 1993, as many branches as they wish, on the same footing as Portuguese credit institutions, due regard being paid to the rule of non-discrimination.

— The percentage of the resources taken by the credit institutions referred to above on the domestic Portuguese market outside banking circles, as compared with the assets achieved on the same market, shall be laid down as follows:

— as from accession, 40 %,

— as from 1 January 1990, 70 %

— as from 1 January 1991, 80 %

— as from 1 January 1993, 100 %, to the exclusion of all discrimination between Portuguese credit institutions and the subsidiaries and branches in Portugal of credit institutions having their principal place of business in another Member State.

(d) With a view to the application in Portugal of Article 2 (4) (a) of the Directive concerned, the 'Caixas de Crédito Agrícola Mútuo' may be exempted from the conditions laid down in the said Article to the extent that they are affiliated on a permanent basis, and at the latest by 1 January 1993, to a central body which controls them and that before that date the Portuguese authorities have introduced into their national law the amendments necessary to enable the central body to meet the characteristics set out in Article 2 (4) (a)

(e) For the purposes of applying Article 2 (6) of the Directive concerned, the Portuguese Republic may, within six months of accession, give notification of those credit institutions which may qualify for a temporary derogation from the application of the said Directive. The period of that temporary derogation may not extend beyond 1 January 1993./

2. Council Directive 78/473/EEC of 30 May 1978 (OJ No L 151, 7. 6. 1978, p. 25).

(a) The Kingdom of Spain may reserve, for insurers established in Spain, for a period expiring on 31 December 1991 and for risks situated on its territory, a share of the co-insurance contracts referred to by the Directive concerned, up to the following percentages, which are on a downward sliding scale, and according to the following timetable:

— until 31 December 1988, 100 %,

— as from 1 January 1989, 75 %,

— as from 1 January 1990, 40 %,

— as from 1 January 1991, 20 %.

(b) Throughout the period of the temporary derogations referred to above, the general or special facilities which result from Spanish legislative provisions or Conventions existing before accession between Spain and one or more other Member States will be maintained and applied on a non-discriminatory basis with regard to all the other Member States. The treatment which Spain will grant to insurers of third countries may not be more favourable than that applicable to insurers of the other Member States.

3. Council Directive 78/686/EEC of 25 July 1978 (OJ No L 233, 24. 8. 1978, p. 1).

Until such time as the training of dental practitioners in Spain under the conditions laid down pursuant to Directive 78/687/EEC is completed and until 31 December 1990 at the latest, freedom of establishment and freedom to provide services shall be deferred for qualified dental practitioners from the other Member States in Spain and for qualified Spanish doctors practising dentistry in the other Member States.

During the temporary derogation provided for above, general or special facilities concerning the right of establishment and the freedom to provide services which would exist pursuant to Spanish provisions or Conventions governing relations between the Kingdom of Spain and any other Member State will be maintained and applied on a non-discriminatory basis with regard to all other Member States.

III. TRANSPORT

1. Council Regulation No 11 of 27 June 1960 (OJ No 52, 18. 6. 1960, p. 1121/60), as amended by Council Regulation (EEC) No 3626/84 of 19 December 1984. (OJ No L 335, 22. 12. 1984, p. 4).

Within six months of their accession the new Member States shall, after consulting the Commission take the measures stipulated pursuant to the last subparagraph of Article 14 (2).

2. Council Regulation (EEC) No 1017/68 of 19 July 1968 (OJ No L 175, 23. 7. 1968, p. 1), as amended by:

— the 1972 Act of Accession (OJ No L 73, 27. 3. 1972, p. 14),

— the 1979 Act of Accession (OJ No L 291, 19. 11. 1979, p. 17),

Within six months of their accession, the new Member States shall, after consulting the Commission, take the measures stipulated pursuant to the last sentence of Article 21 (6).

Joint declaration

concerning the First Council Directive of 12 December 1977 on the coordination of the laws, regulations, and administrative provisions relating to the taking up and pursuit of the business of credit institutions

Pursuant to Article 2 (3) of Council Directive 77/780/EEC of 12 December 1977, the Council shall take a decision, at the latest at the end of a period of seven years following accession, on the inclusion in the list referred to in paragraph 2 of the said Article, of the following institutions in Portugal under the conditions laid down below:

(a) the 'Caixa Geral de Depósitos', as regards on the one hand its operations for the administration of the social security of state officials, and on the other hand, its operations as a State credit institution with respect to the following transactions:

— the receipt and management of compulsory deposits,

— Treasury financing on more favourable conditions than those of the market,

— financing which is integrated into regional policy or into national housing policy and

enjoys interest-rate subsidy or other special conditions as compared with those practised by credit institutions as a whole;

(b) the 'Crédito Predial Português', as regards its operations relating to financing integrated into regional policy or into national housing policy and enjoying interest-rate subsidy or other special conditions as compared with those practised by credit institutions as a whole.

The decision taken shall be subject to the condition that, before the expiry of a period of seven years from the date of accession, the rules of the institutions referred to in (a) and (b) above have been amended in such a way as to establish separate management between the operations listed above, which would be excluded from the application of Directive 77/780/EEC, and the other operations of the said institutions to which that Directive will have to apply.

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.04.1996
COM(96) 183 final

96/0121 (COD)

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

AMENDING ARTICLE 12 OF DIRECTIVE 77/780/EEC ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO THE TAKING UP AND PURSUIT OF THE BUSINESS OF CREDIT INSTITUTIONS,

ARTICLES 2, 6, 7, 8 AND ANNEXES II AND III OF DIRECTIVE 89/647/EEC ON A SOLVENCY RATIO FOR CREDIT INSTITUTIONS

AND

ARTICLE 2 AND ANNEX II OF DIRECTIVE 93/6/EEC ON THE CAPITAL ADEQUACY OF INVESTMENT FIRMS AND CREDIT INSTITUTIONS

(Presented by the Commission)

PROPOSAL FOR A
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
AMENDING ARTICLE 12 OF DIRECTIVE 77/780/EEC
ON THE COORDINATION OF LAWS, REGULATIONS AND
ADMINISTRATIVE PROVISIONS RELATING TO THE TAKING UP AND
PURSUIT OF THE BUSINESS OF CREDIT INSTITUTIONS,

ARTICLES 2, 6, 7, 8 AND ANNEXES II AND III OF DIRECTIVE 89/647/EEC
ON A SOLVENCY RATIO
FOR CREDIT INSTITUTIONS

AND

ARTICLE 2 AND ANNEX II OF DIRECTIVE 93/6/EEC
ON THE CAPITAL ADEQUACY
OF INVESTMENT FIRMS AND CREDIT INSTITUTIONS

The European Parliament and the Council of the European Union,

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

Having regard to the proposal from the Commission,[1]

Having regard to the opinion of the Economic and Social Committee,[2]

Acting in accordance with the procedure referred to in Article 189B of the Treaty,[3]

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1 OJ No C ..., ...

2 OJ No C ..., ...

3 Opinion of the European Parliament of ... (OJ No C...., ...), common position of the Council of .... (OJ No C...., ...) and decision of the European Parliament of ... (OJ No C ..., ...).

Whereas Article 12(1) of Council Directive 77/780/EEC[4] provides that the competent authorities are bound by the obligation of professional secrecy; whereas Article 12(2) allows the competent authorities of the Member States to exchange information in accordance with the directives applicable to credit institutions, any information thus exchanged being covered by professional secrecy; whereas Article 12(5) provides for the exchange of information within a Member State, or between Member States, between competent authorities and other types of authorities or bodies defined in the same paragraph, any information thus exchanged being subject to professional secrecy;

Whereas Article 12(3) allows Member States to conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 12;

Whereas Article 12 does not allow Member States to conclude cooperation agreements, providing for exchanges of information, with the non-banking supervisory authorities of third countries; whereas, on grounds of consistency, it should be possible to conclude cooperation agreements with the non-banking supervisory authorities of third countries as defined in the first indent of Article 12(5) of Directive 77/780/EEC, provided that the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 12;

Whereas Directive 89/647/EEC on a solvency ratio for credit institutions[5] weights assets and off-balance-sheet items according to their degree of credit risk;

Whereas churches and religious communities which, constituted in the form of a legal person under public law, raise taxes in accordance with the laws conferring such a right on them represent a credit risk similar to that of regional governments and local authorities; whereas, accordingly, it is consistent to afford the competent authorities the possibility of treating claims on churches and religious communities, including non-profit-making bodies and undertakings controlled by them, in the same way as claims on regional governments and local authorities where these churches and religious communities raise taxes;

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4 OJ No L 322, 17.12.1977, p. 30.
Last amended by Directive 95/26/EC (OJ No L 168, 18.7.95, p. 7).

5 OJ No L 386, 30.12.1989 p. 14. Directive last amended by Directive 96/10/EC (OJ No L 85, 3.4.1996, p. 17).

Whereas Article 6(1)(c)(2) of Directive 89/647/EEC lays down, with regard to prepayments and accrued income, that "these assets shall be subject to the weighting corresponding to the counterparty where a credit institution is able to determine it in accordance with Directive 86/635/EEC. Otherwise, where it is unable to determine the counterparty, it shall apply a flat-rate weighting of 50%";

Whereas this treatment is inappropriate where the asset items shown under prepayments and accrued income are of a purely accounting nature, carry no risk and do not have a counterparty, and consequently are simply the expression in accounting terms of a liability; whereas, in view of the absence of risk, these assets should have a weighting of 0% under prepayments and accrued income;

Whereas Commission Directive 94/7/EC adapting Council Directive 89/647/EEC on a solvency ratio for credit institutions as regards the technical definition of "multilateral development banks"[6] included the European Investment Fund in that definition; whereas the Fund constitutes a new and unique structure of cooperation in Europe in order to contribute to the strengthening of the internal market, the promotion of economic recovery in Europe and the furthering of economic and social cohesion;

Whereas, under Article 6(1)(d)(7) of Directive 89/647/EEC, a weighting of 100% should be applied to the unpaid portion of capital subscribed to the European Investment Fund by credit institutions;

Whereas the capital of the European Investment Fund reserved for subscription by financial institutions is limited to 30%, of which 20% would be paid up at the outset in four annual payments of 5% each; whereas, accordingly, 80% would not be paid up, remaining a contingent liability on the members of the Fund; whereas, having regard to the European Council's stated objective when creating the Fund of encouraging commercial banks to participate, such participation should not be penalised and whereas, accordingly, it would be more appropriate to apply a 20% weighting to the unpaid portion of subscribed capital;

Whereas Annex I to Directive 89/647/EEC, which deals with the classification of off-balance-sheet items, classifies certain items as full risk and, accordingly, applies a 100% weighting; whereas Article 6(4) of that Directive lays down that "Where off-balance-sheet items carry explicit guarantees, they shall be weighted as if they had been incurred on behalf of the guarantor rather than the counterparty. Where the potential

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[6] OJ No L 89, 6.4.1994, p. 17.

exposure arising from off-balance-sheet transactions is fully and completely secured, to the satisfaction of the competent authorities, by any of the asset items recognised as collateral in paragraph 1(a)(7) or (b)(11), weightings of 0% or 20% shall apply, depending on the collateral in question.";

Whereas account should also be taken of the case where the guarantee is secured by real collateral within the meaning of Article 6(1)(c)(1) in respect of off-balance-sheet items which are sureties or guarantees having the character of credit substitutes;

Whereas, under points 2, 4 and 7 of Article 6(1)(a) of Directive 89/647/EEC, a zero weighting is applied to assets constituting claims on Zone A central governments and central banks or explicitly guaranteed by them and to assets secured by collateral in the form of Zone A central government or central bank securities; whereas, under Article 7(1) of that Directive, the Member States may, under certain conditions, apply a zero weighting to assets constituting claims on their own regional governments and local authorities and to claims on third parties and off-balance-sheet items held on behalf of third parties and secured by those regional governments or local authorities;

Whereas Article 8(1) of Directive 89/647/EEC lays down that the Member States may apply a weighting of 20% to asset items which are secured, to the satisfaction of the competent authorities, by collateral in the form of securities issued by Zone A regional governments or local authorities; whereas collateral in the form of securities issued by regional governments or local authorities of the Member States should be regarded as being guaranteed by those regional governments and local authorities within the meaning of Article 7(1) with a view to allowing the competent authorities to apply a zero weighting to assets and off-balance-sheet items secured by such collateral, again subject to the conditions laid down in that paragraph;

Whereas Annex II to Council Directive 89/647/EEC lays down the treatment of off-balance-sheet items commonly referred to as over-the-counter derivative instruments concerning interest and foreign exchange rates in the context of the calculation of credit institutions' capital requirements;

Whereas Articles 5, 8, 9, 10, 11 as well as Annex 1 and 2 of this Directive are in accordance with the work of another international forum of banking supervisors on a refined and in some aspects more stringent supervisory treatment of the credit risks inherent in over-the-counter derivative instruments, in particular the extension of compulsory capital cover to over-the-counter derivative instruments concerning underlyings other than interest and foreign exchange rates and the possibility of taking

into account the risk reducing effects of contractual netting agreements recognised by competent authorities when calculating the capital requirements for the potential future credit risks inherent in over-the-counter derivative instruments;

Whereas for internationally active credit institutions and groups of credit institutions in a wide range of countries, which compete with Community credit institutions, the rules adopted on the wider international level will result in a refined supervisory treatment of over-the-counter derivative instruments; whereas this refinement results in a more appropriate compulsory capital cover taking into account the risk reducing effects of supervisorily recognised contractual netting agreements on the potential future credit risks;

Whereas for Community credit institutions a similar refinement of the supervisory treatment of over-the-counter derivative instruments including the possibility of taking into account the risk reducing effects of supervisory recognised contractual netting agreements on the potential future credit risks can only be achieved by an amendment of Directive 89/647/EEC;

Whereas to ensure a level playing field between credit institutions and investments firms competing in the Community consistency in the supervisory treatment of their respective activities in the area of over-the-counter derivative instruments is necessary and can only be achieved by adaptations of the Council Directive 93/6/EEC[7];

Whereas adoption of this Directive constitutes the most appropriate means of attaining the desired objectives; whereas this Directive is limited to the minimum necessary to attain these objectives and does not go beyond what is needed for this purpose;

Whereas this Directive concerns the European Economic Area (EEA) and whereas the procedure under Article 99 of the Treaty on the European Economic Area has been complied with;

Whereas adoption of this Directive has been the subject of consultations with the Banking Advisory Committee, which was set up by Council Directive 77/780/EEC,

HAVE ADOPTED THIS DIRECTIVE:

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[7] OJ No L 141, 11.6.1993 p. 1-26.

TITLE I - AMENDMENTS TO DIRECTIVE 77/780/EEC

Article 1
Amendment to Article 12

Article 12(3) of Directive 77/780/EEC is replaced by the following:

"3. Member States may conclude cooperation agreements, providing for exchange of information, with the competent authorities of third countries or with the non-banking supervisory authorities of third countries as defined in the first indent of paragraph 5 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article."

TITLE II - AMENDMENTS TO DIRECTIVE 89/647/EEC

Article 2
Amendment to Article 2

The following subparagraph is added to Article 2(2):

"The competent authorities may also include within the concept of regional governments and local authorities churches and religious communities constituted in the form of a legal person under public law, including non-profit-making bodies and undertakings controlled by them, in so far as they are empowered to raise taxes in accordance with legislation conferring on them the right to do so."

Article 3
New point 8 in Article 6(1)(a) and amendments to Article 6(1)(c)(2)

1. The following point 8 is added to Article 6(1)(a):

   "8. asset items included under prepayments and accrued income that are of a purely accounting nature, carry no risk and have no counterparty;".

2. The following is added to Article 6(1)(c)(2) after the words "flat-rate weighting of 50%":

   "...subject to the provisions of point (a)(8) of this paragraph;".

Article 4
Amendment to Article 6(2)

The following is added to the end of Article 6(2):

"The portion of unpaid capital subscribed to the European Investment Fund may be weighted at 20%."

Article 5
Amendment to Article 6(3)

Article 6(3) of the Directive 89/647/EEC is replaced by the following:

"3. The methods set out in Annex II shall be applied to the off-balance-sheet items listed in Annex III. They do not apply to contracts traded on recognised exchanges where they are subject to daily margin requirements and to foreign exchange contracts (except contracts concerning gold) with an original maturity of fourteen calendar days or less.

Article 6
Amendment to Article 6(4)

The following subparagraph is added to Article 6(4):

"The Member States may apply a 50% weighting to off-balance-sheet items which are sureties or guarantees having the character of credit substitutes and which are fully guaranteed, to the satisfaction of the competent authorities, by mortgages meeting the conditions set out in paragraph 1 (c)(1), subject to the guarantor having a direct right to such collateral."

Article 7
Amendments to Articles 7(1) and (2) and 8(1)

1. The following is added at the end of Article 7(1):

   "... or secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by those regional governments or local authorities."

2. The following is added at the end of Article 7(2):

   "..., including collateral in the form of securities."

3. Article 8(1) of Directive 89/647/EEC is replaced by the following:

   "The Member States may apply a weighting of 20% to asset items which are secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by Zone A regional governments or local authorities other than those of the Member States, by deposits placed with Zone A credit institutions other than the lending institution, or by certificates of deposit or similar instruments issued by those credit institutions."

Article 8
Amendment to Annex II

Annex II to Directive 89/647/EEC shall be amended as laid down in Annex 1 hereto.

Article 9
Amendment to Annex III

Annex III to Directive 89/647/EEC is replaced by the Annex 2 hereto.

TITLE III - AMENDMENTS TO DIRECTIVE 93/6/EEC

Article 10
Amendment to Article 2 (10)

Article 2(10) of Directive 93/6/EEC is replaced by the following:

"10. over-the-counter (OTC) derivative instruments shall mean the off-balance-sheet items to which according to Article 6(3) of Directive 89/647/EEC the methods set out in Annex II of the said Directive shall be applied."

Article 11
Amendment to Annex II

Annex II, point 5. to Directive 93/6/EEC is replaced by the following:

"5. In order to calculate the capital requirement on their OTC derivative instruments, institutions shall apply Annex II to Directive 89/647/EEC.

The risk weightings to be applied to the relevant counter-parties shall be determined in accordance with Article 2 (9) of this Directive."

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 31st December 1997. They shall forthwith inform the Commission thereof.

2. The provisions adopted pursuant to this paragraph shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

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 13

This Directive shall enter into force on the date of its publication in the Official Journal of the European Communities.

Article 14

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

1. The heading of Annex II to Directive 89/647/EEC shall be replaced by the following:

"ANNEX II"

2. Annex II, point 1 to Directive 89/647/EEC shall be replaced by the following text:

"1. Choice of the method

To measure the credit risks associated with the contracts listed in Annex III point 1 and 2 credit institutions may choose, subject to the consent of the competent authorities, one of the methods set out below. Credit institutions which have to comply with Article 6 (1) of the Directive 93/6/EEC have to use method 1 set out below. To measure the credit risks associated with the contracts listed in Annex III point 3. all credit institutions have to use method 1 set out below."

3. Table 1 is replaced by the following table:

"TABLE 1(a) (b)

Residual maturity(c)	Interest-rate contracts	Contracts concerning foreign-exchange rates and gold	Contracts concerning equities	Contracts concerning precious metals except gold	Contracts concerning commodities other than precious metals
One year or less	0 %	1 %	6 %	7 %	10 %
Over one year to five years	0,5 %	5 %	8 %	7 %	12 %
Over five years	1,5 %	7,5 %	10 %	8 %	15 %

(a) Contracts which do not fall within one of the five categories indicated in this table shall be treated as contracts concerning commodities other than precious metals.

(b) For contracts with multiple exchanges of principal, the percentages have to be multiplied by the number of remaining payments still to be made according to the contract.

(c) For contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the residual maturity would be equal to the time until the next reset date. In the case of interest rate contracts that meet these criteria and have a remaining maturity of over one year, the percentage shall be no lower than 0,5%."

4. In Table 2 the heading in the first row third column is replaced by:

"Contracts concerning foreign-exchanged rates and gold"

5. At the end of point 2. the following paragraph is inserted:

"For both methods the supervisory authorities have to ensure that the notional amount to be taken into account is an appropriate yardstick for the risk inherent in the contract. Where, for instance, the contract provides for a multiplication of cash flows, the notional amount has to be adjusted in order to take into account the effects of the multiplication on the risk structure of that contract."

6. At the end of point 3. (b) the following paragraph is inserted:

"The competent authorities may recognise as risk reducing contractual netting agreements covering foreign exchange contracts with an original maturity of fourteen calendar days or less, written options or similar off-balance-sheet items to which this Annex does not apply because they bear only a negligible or no credit risk. If, depending on the positive or negative market value of these contracts, their inclusion in an other netting agreement can result in an increase or decrease of the capital requirements, competent authorities must oblige their credit institution to use a consistent treatment."

7. The first paragraph and the first indent of the second paragraph of point 3. (c) (ii) is replaced by the following:

"(ii) Other netting agreements

In application of **Method 1** in Step (a) the current replacement cost for the contracts included in a netting agreement may be obtained by taking account of the actual hypothetical net replacement cost which results from the agreement; in the case that netting leads to a net obligation for the credit institution calculating the net replacement cost, the current replacement cost is calculated as "0";

In Step (b) the figure for potential credit exposure for all contracts included in a netting agreement may be reduced according to the following equation:

$$PCE_{red} = 0{,}4 * PCE_{gross} + 0{,}6 * NGR * PCE_{gross}$$

where:

- PCE_{red} = the reduced figure for potential future credit exposure for all contracts with a given counterparty included in a legally valid bilateral netting agreement

- PCE_{gross} = the sum of the figures for potential future credit exposures for all contracts with a given counterparty that are included in a legally valid bilateral netting agreement and that are calculated by multiplying their notional principal amounts by the percentages set out in table 1

NGR = "Net-to-gross ratio": at the discretion of the supervisory authorities either:

(i) separate calculation: the quotient of the net replacement cost for all contracts included in a legally valid bilateral netting agreement with a given counterparty (numerator) and the gross replacement cost for all contracts included in a legally valid bilateral netting agreement with that counterparty (denominator) or

(ii) aggregate calculation: the quotient of the sum of the net replacement cost calculated on a bilateral basis for all counterparties taking into account the contracts included in legally valid netting agreements (numerator) and the gross replacement cost for all contracts included in legally valid netting agreements (denominator)"

If Member States permit credit institutions a choice of methods, the method chosen is to be used consistently.

For the calculation of the potential future credit exposure according to the above formula perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts. Perfectly matching contracts are forward foreign exchange contracts or similar contracts in which notional principal is equivalent to cash flows if the cash flows fall due on the same value date and fully or partly in the same currency.

In the application of Method 2, in Step (a)

- perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts; the notional principal amounts are multiplied by the percentages given in Table 2.

"ANNEX III

TYPES OF OFF-BALANCE-SHEET ITEMS

1. Interest-rate contracts

a) Single-currency interest rate swaps,
b) Basis swaps,
c) Forward-rate agreements,
d) Interest-rate futures,
e) Interest-rate options purchased,
f) Other contracts of a similar nature.

2. Foreign-exchange contracts and contracts concerning gold

a) Cross-currency interest-rate swaps,
b) Forward foreign-exchange contracts,
c) Currency futures,
d) Currency options purchased,
e) Other contracts of a similar nature,
f) Contracts concerning gold of a nature similar to a) to e).

3. Contracts of a nature similar to those in points 1 (a) to (e) and 2 (a) to (d) concerning other reference items or indices concerning:

a) Equities,
b) Precious metals except gold,
c) Commodities other than precious metals,
d) Other contracts of a similar nature."

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 8 July 1985

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

(85/345/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Whereas the first subparagraph of Article 3 (3) (b) of Directive 77/780/EEC (3) provides that where the laws, regulations or administrative provisions of a Member State provide, at the time of notification of the Directive, that the economic needs of the market shall be a condition of authorization for the setting up of new credit institutions and the opening of branches of credit institutions the head of which is in the territory of such Member State or in the territory of another Member State, the State in question may continue to apply that criterion for seven years after notification;

Whereas, since the 1979 Act of Accession contains no provision relating to economic need in the banking sector, the various notification deadlines laid down in Directive 77/780/EEC were therefore also applicable to the Hellenic Republic;

Whereas, by virtue of Article 143 of the 1979 Act of Accession and of the second subparagraph of Article 3 (3) (b) of Directive 77/780/EEC, the Hellenic Republic had until 30 June 1981 to notify the Commission of its intention to maintain the criteria of economic need;

Whereas by 30 June 1981 the Commission had received no such notification;

Whereas in November 1981 the Greek Government expressed its intention of maintaining the criterion of economic need for the setting up of new credit institutions and for the opening of branches of credit institutions the head offices of which are either in Greece or in another Member State;

Whreas there is a justified case for the maintenance of the criterion of economic need, given the structural problems facing the Greek banking industry; whereas it is necessary to amend Directive 77/780/EEC as a result,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following subparagraphs are hereby added to Article 3 (3) (b) of Directive 77/780/EEC:

'The Hellenic Republic may continue to apply the criterion of economic need. On a request from the Hellenic Republic, the Commission shall, if appropriate, submit to the Council by 15 June 1989 proposals authorizing the Hellenic Republic to continue to apply the criterion of economic need until 15 December 1992.

The Council shall act within six months of the submission of those proposals.'

(1) OJ No C 153, 13. 6. 1984, p. 4.
(2) OJ No C 12, 14. 1. 1985, p. 125.
(3) OJ No L 322, 17. 12. 1977, p. 30.

Article 2

1. The Member States shall take the measures necessary for them to comply with this Directive as from its notification (1). They shall forthwith inform the Commission thereof.

2 The Member States shall communicate to the Commission the provisions of national law they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 3

This Directive is addressed to the Member States

Done at Brussels, 8 July 1985.

For the Council

The President

J. SANTER

(1) This Directive was notified to Member States on 15 July 1985.

COUNCIL DIRECTIVE

of 17 April 1986

authorizing certain Member States to defer further the application of Directive 77/780/EEC as regards certain credit institutions

(86/137/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulaions and administrative provisions relating to the taking up and pursuit of the business of credit institutions (1) and in particular Article 2 (6) thereof,

Having regard to the proposal from the Commission,

Whereas the third subparagraph of Article 2 (6) of Directive 77/780/EEC provides that not later than seven years following the notification of the Directive, the Commission shall, after consulting the Banking Advisory Committee, submit a report to the Council on the situation regarding deferment of application of the Directive to certain specialized credit institutions;

Whereas the Commission consulted the Banking Advisory Committee on 12 December 1984 and submitted to the Council a report on 15 March 1985 informing it of the situation with regard to such deferment;

Whereas the said third subparagraph of Article 2 (6) also provides that, where appropriate, the Commission shall submit to the Council, not later than six months following the submission of its report, proposals for authorization of a further extension of such deferment and that the Council shall act on these proposals not later than six months after their submission;

Whereas some Member States after having been invited by the Commission have submitted to it a fully substantiated request for further deferment with regard to certain credit institutions;

Whereas the Commission deemed it appropriate to propose to the Council that application of the Directive to the abovementioned credit institutions be deferred for a further three years,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following Member States are hereby authorized to defer the application of Directive 77/780/EEC until 15 December 1988, with regard to the following credit institutions:

Denmark

— Bankiervirksomhed, der udøves af en fondsbørsvekselerer (Banking activity of the stock exchange Brokers);

Greece

— Agrotiki Trapeza Ellados A.E. (Agricultural Bank of Greece Ltd),

— Ethniki Ktimatiki Trapeza Ellados (National Mortgage Bank of Greece);

Ireland

— Trustee Savings Banks;

Netherlands

— Rijkspostspaarbank (State savings bank);

United Kingdom

— Trustee Savings Banks.

Article 2

The Member States shall inform the Commission forthwith of the measures taken to comply with this Directive.

Directive *Article 3*

This Directive is addressed to the Kingdom of Denmark, the Hellenic Republic, Ireland, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland.

Done at Luxembourg, 17 April 1986

For the Council

The President

E. M. SCHOO

(1) OJ No L 322, 17. 12. 1977, p. 30.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 27 October 1986

amending Directive 77/780/EEC in respect of the list of permanent exclusions of certain credit institutions

(86/524/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the First Council Directive (77/780/EEC) of 12 December 1977 on the coordination of laws, regulations and adminsitrative provisions relating to the taking up and pursuit of the business of credit institutions (1), as last amended by the Act of Accession of Spain and Portugal, and in particular to Article 2 (3) and (3) thereof,

Having regard to the proposal from the Commission,

Whereas Article 2 (2) of Directive 77/780/EEC provides that certain credit institutions of some Member States shall be permanently excluded from its scope;

Whereas Article 2 (3) of the said Directive provides that the Council, acting on a proposal from the Commission, which, for this purpose, shall consult the Advisory Committee, shall decide on any amendments to the list in paragraph 2;

Whereas, following the discussions which took place at the meeting of the Advisory Committee on 12 December 1984, and on the occasion of the Commission's report to the Council on the deferred application of the said Directive, some Member States have forwarded to the Commission requests asking for permanent exclusion of certain of their credit institutions;

Whereas, in reviewing in this context the list of permanent exclusions, the Commission has taken into account recent developments in the banking legislation of certain Member States which have resulted in changes to the supervisory status of some credit institutions which were previously so excluded;

Whereas the Commission consulted the Advisory Committee on 4 December 1985 and 5 August 1986 regarding updating the list of permanent exclusions,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 2 (2) of Directive 77/780/EEC is hereby replaced by the following:

'2. It shall not apply to:

— the central banks of Member States;

— post office giro institutions;

— in Belgium, the "Institut de Réescompte et de Garantie — Herdiscontering — en Waarborginstituut", the "sociétés nationale et régionales d'investissement — nationale en gewestelijke investeringsmaatschappijen", the regional development companies ("sociétés développement régionales — gewestelijke ontwikkelingsmaatschappijen"), the "Société Nationale du Logement — Nationale Maatschappij voor de Huisvesting" and its authorized companies and the "Société Nationale Terrienne — Nationale Landmaatschappij" and its authorized companies;

— in Denmark, the "Dansk Eksportfinansieringsfond", "Danmarks Skibskreditfond", "Industriens Realkreditfond" and "Dansk Landbrugs Realkreditfond";

(1) OJ No L 322, 17. 12. 1977, p. 30.

— in Germany, the "Kreditanstalt für Wiederaufbau", undertakings which are recognized under the "Wohnungsgemeinnützigkeitsgesetz" as bodies of State housing policy and are not mainly engaged in banking transactions and undertakings recognized under that law as non-profit housing undertakings;

— in Greece, the "Ελληνική Τράπεζα Βιομηχανικής Αναπτύξεως", the "Ταμείο Παρακαταθηκών και Δανείων", the "Τράπεζα Υποθηκών", the "Ταχυδρομικό Ταμιευτήριο" and the "Ελληνικαί Εξαγωγαί ΑΕ";

— in Spain, the "Instituto de Crédito Oficial", with the exception of its subsidiaries;

— in France, the "Caisse des dépôts et consignations";

— in Ireland, credit unions and the friendly societies;

— in Italy, the "Cassa Depositi et Prestiti";

— in the Netherlands, the "NV Export-Financieringsmaatschappij", the "Nederlandse Financieringsmaatschappij voor Ontwikkelingslanden NV", the "Nederlandse Investeringsbank voor Ontwikkelingslanden NV", the "Nederlandse Waterschapsbank NV", the "Financieringsmaatschappij Industrieel Garantiefonds Amsterdam NV", the "Financieringsmaatschappij Industrieel Garantiefonds 's-Gravenhage NV", the "NV Noordelijke Ontwikkelings maatschappij", the "NV Industriebank Limburgs Instituut voor ontwikkeling en financiering" and the "Overijsselse Ontwikkelingsmaatschappij NV";

— in Portugal, Caixas Económicas existing on 1 January 1986 which are not incorporated as limited companies;

— in the United Kingdom, the National Savings Bank, the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, the Scottish Agricultural Securities Corporation Ltd, the Crown Agents for overseas governments and adminsitrations, credit unions, and municipal banks.'

Article 2

1. Member States shall, if necessary, take the measures required to comply with this Directive not later than 31 December 1986. They shall forthwith inform the Commission thereof.

2. Within one year of the notification (1) of this Directive, Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 27 October 1986.

For the Council

The President

G. HOWE

(1) This Directive was notified to the Member States on 30 October 1986.

COUNCIL DIRECTIVE 96/13/EC

of 11 March 1996

amending Article 2 (2) of Directive 77/780/EEC in respect of the list of permanent exclusions of certain credit institutions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the First Council Directive (77/780/EEC) of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (1), and in particular Article 2 (2) and (3) thereof,

Having regard to the proposal from the Commission,

Whereas Article 2 (2) of Directive 77/780/EEC provides that specific credit institutions of some Member States are permanently excluded from the scope of that Directive;

Whereas Article 2 (3) of that Directive provides that the Council, acting on a proposal from the Commission, which, for this purpose, must consult the Banking Advisory Committee, is to decide on any amendments to the list in paragraph 2; whereas certain Member States have asked for the list to be revised;

Whereas adoption of this Directive constitutes the most appropriate means of attaining the desired objectives; whereas this Directive is limited to the minimum necessary to attain these objectives and does not go beyond what is needed for this purpose;

Whereas this Directive concerns the European Economic Area (EEA) and whereas the procedure under Article 99 of the Agreement on the European Economic Area has been complied with;

Whereas adoption of this Directive has been the subject of consultations with the Banking Advisory Committee,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 2 (2) of Directive 77/780/EEC shall be replaced by the following:

'2. It shall not apply to:

— the central banks of Member States,

— post office giro institutions,

— in Belgium, the "Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstituut",

— in Denmark, the "Dansk Eksportfinansieringsfond", the "Danmarks Skibskreditfond" and the "Dansk Landbrugs Realkreditfond",

— in Germany, the "Kreditanstalt für Wiederaufbau", undertakings which are recognized under the "Wohnungsgemeinnützigkeitsgesetz" as bodies of state housing policy and are not mainly engaged in banking transactions and undertakings recognized under that law as non-profit housing undertakings,

— in Greece, the "Ελληνική Τράπεζα Βιομηχανικής Αναπτύξεως" (Elliniki Trapeza Viomichanikis Anaptyxeos), the "Ταμείο Παρακαταθηκών και Δανείων" (Tameio Parakatathikon kai Danion) and the "Ταχυδρομικό Ταμιευτήριο" (Tahidromiko Tamieftirio),

— in Spain, the "Instituto de Crédito Oficial",

— in France, the "Caisse des dépôts et consignations",

— in Ireland, credit unions and friendly societies,

— in Italy, the "Cassa Depositi et Prestiti",

— in the Netherlands, the "Nederlandse Investingsbank voor Ontwikkelingslanden NV", the "NV Noordelijke Ontwikkelingsmaatschappij", the "NV Industriebank Limburgs Instituut voor Ontwikkeling en Finaniering" and the "Overijsselse Ontwikkelingsmaatschappij NV",

— in Austria, undertakings recognized as housing associations in the public interest and the "Österreichische Kontrollbank AG",

— in Portugal, "Caixas Económicas" existing on 1 January 1986 with the exception of those incorporated as limited companies and of the "Caixa Económica Montepio Geral",

— in Finland, the "Teollisen yhteistyön rahasto Oy/Fonden för industriellt samarbete Ab" and the "Kera Oy/Kera Ab",

— in Sweden, the "Svenska Skeppshypotekskassan",

— in the United Kingdom, the National Savings Bank, the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, the Scottish Agricultural Securities Corporation Ltd, the Crown Agents for overseas governments and administrations, credit unions and municipal banks.'

(1) OJ No L 322, 17. 12. 1977, p. 30. Directive as last amended by Directive 95/26/EC (OJ No L 168, 18. 7. 1995, p. 7).

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 16 April 1996. They shall forthwith inform the Commission thereof.

When the 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 reference shall be laid down by the Member States.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 11 March 1996.

For the Council

The President

L. DINI

I

(Information)

COMMISSION

List of credit institutions provided for in Articles 3 (7) and 10 (2) of Directive 77/780/EEC

(94/C 156/01)

I. General

Articles 3 (7) and 10 (2) of First Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions [1] require the Commission to draw up and publish a list of all credit institutions authorized to do business in Member States.

This is the fourteenth occasion on which the Commission has complied with the above requirement. The list published in the Annex to this communication reflects the situation as at 31 December 1992.

As a general rule, the list comprises all the credit institutions falling within the scope of the First Coordinating Directive that were engaged in business in a Member State on the date indicated. It does not include institutions excluded from the scope of the Directive pursuant to Article 2 (2) [2] thereof, institutions in respect of which application of the Directive has been deferred pursuant to paragraphs 5 and 6 of that Article or credit institutions in the process of liquidation. There are, however, a number of other exceptions. First, it does not include institutions which, although subject to the Directive, are exempt from some of its provisions pursuant to Article 2 (4) thereof, which introduces special arrangements for institutions which belong to a network controlled by a central body to which the Directive applies in its entirety. There is no doubt that this Article applies to credit cooperatives belonging to the network of Rabobanken in the Netherlands and to the caisses agricoles in Luxembourg (although, in the latter case, application of the Directive has anyway been deferred pursuant to Article 2 (5) and (6)).

The list is updated each year. New authorizations and closures of credit institutions will, however, in principle be published twice yearly in the *Official Journal of the European Communities*, in the form of special communications [3].

The present list was drawn up by the Commission on the basis of information supplied by the Member States. Unlike the registers of banks kept in some Member States, the list has no legal significance and confers no rights in law. If an unauthorized institution is inadvertently included in the list, its legal status is in no way altered; similarly, if an institution has inadvertently been omitted from the list, the validity of its authorization will not be affected. The Commission is responsible only for the accurate reproduction of information received on individual credit institutions, while responsibility for the respective sections of the list, and especially the spelling of the style and location of the institutions and their classification in a given group, lies with the Member States in question.

For this fourteenth version of the list, the breakdown into country sections has had to be retained, as an integrated European-wide list consisting solely of groups of institutions could not be drawn up. This was mainly because of the differences in banking structures between the Member States.

An attempt has been made to classify banks by groups that are as homogeneous as possible, so that each country section is in most cases broken down into four or five sub-sections:

[1] OJ No L 322, 17. 12. 1977, p. 30.

[2] Except where indicated, the Articles referred to in the following text relate to Directive 77/780/EEC.

[3] For 1992, see introductory note.

— As a general rule, the first group comprises those credit institutions which cover the entire range of commercial bank activities and which (with the exception of those in Denmark) do not form part of either the savings bank sector or the cooperative banking sector. This group for the most part also includes the (legally dependent) branches of foreign credit institutions.

— The second group comprises those credit institutions that belong to the savings bank sector, i.e. those which, at least by tradition, receive deposits primarily in the form of savings deposits from broad sections of the public. Because application of the Directive has been deferred in respect of trustee savings banks in Ireland and the United Kingdom (Article 2 (5) and (6)), this group is not yet complete.

— The third group is made up of cooperative credit institutions. It differs from the first two groups in that the credit institutions in the group normally have a special — cooperative — legal status and have tailored their business activities primarily to the needs of local small businessmen, farmers and self-employed people. This group too is incomplete; i.e. credit unions in Ireland and the United Kingdom are not covered by the Directive (Article 2 (2)).

— A fourth group consists of specialized credit institutions engaged primarily in long-term lending. A number of exceptions have also been allowed here for some Member States pursuant to Article 2 (2) or 2 (5) and (6). As a result, this group too does not contain all the relevant institutions. For the rest, it should be mentioned that banking structures in this field vary widely, owing to the particularly strong role usually played by the public authorities.

— The remaining groups are set aside for institutions which do not fall within any of the above four categories and these groups are not, therefore, comparable between different countries.

II. National characteristics

In view of the more or less marked differences between Member States, it was decided, in the interests of greater clarity, to add explanatory comments to the individual country sections. This was also considered necessary because the list, on account of its great length, must be published in a single edition comprising all language versions. As a result there is only limited scope for including explanatory footnotes in the list proper. With regard to entries in the column headed 'Legal form', which are, by their very nature, in most cases untranslatable, it should be pointed out that terminological similarities are not to be taken to indicate that the legal status is the same.

BELGIUM

1. **Banks** (listed under the heading 'Commercial banks: Banques commerciales/Handelsbanken')

   Undertakings other than those referred to in 2, 3 and 4 'which habitually receive deposits of funds repayable on demand or with maturities not exceeding two years and which use such funds, for their own account, for banking, credit or investment operations' (Article 1 of Royal Decree No 185 of 9 July 1935). Such undertakings rank as commercial banks.

2. **Private savings banks** (Caisses d'épargne privées/Privé-spaarkassen)

   Undertakings other than those referred to in 1, 3 and 4 'which, against the payment of interest, habitually receive repayable funds, in any form, and which in their business name or in the designation given to the documents issued against the funds received, use the terms "savings bank" or any other designation in which the word "savings" appears or make use of savings books to record such deposits' (Article 1 of the Royal Decree of 23 June 1967 coordinating the provisions relating to the supervision of private savings banks).

   The private savings banks category includes the cooperative society CERA, also called CERA-Siège Central/CERA-Hoofdkantoor, Centrale des caisses rurales du Boerenbond belge/Centrale Raiffeisenkas van de Belgische Boerenbond, Centrale des caisses rurales/Centrale Raiffeisenkas or Caisse centrale/Centrale Kas.

   As at 31 December 1992, 395 authorized savings banks covered by Article 2 (4) (a) of Directive 77/780/EEC were affiliated to this central body.

3. **Public-law credit institutions**

   This category comprises six public credit institutions set up under a special law and the credit associations and funds authorized by two of them.

4. The undertakings governed by Chapter I of the Law of 10 June 1964 on the raising of funds from the public (Loi sur les appels publics à l'épargne)

   Undertakings other than those referred to in 1, 2 and 3 'which receive from the public, in any form or under any description, funds repayable with maturities or at periods of notice exceeding six months' (Article 1 (1) of the Law of 10 June 1964). This category of undertakings is the only one appearing in the Belgian list under the heading 'other credit institutions'.

DENMARK

1. **Commercial banks and savings banks** (Banker og sparekasser)

   Commercial banks are public limited companies and savings banks non-profit, self-governing institutions both engaging in banking activities.

   Public limited companies (aktieselskaber) are those defined as such in the Public Limited Companies Act; non-profit, self-governing institutions (selvejende institutioner) are undertakings which are so organized that neither founders, guarantors nor other participants own the assets or surplus.

   'Banking activities' means functions in connection with transactions in money, credit and securities, and related services. Commercial banks and savings banks may not engage in any other activities.

   Commercial banks and savings banks are obliged to include the words 'bank' (bank) or 'savings bank' (sparekasse) in their names; no one else may do so. The main legislation applying in this sphere is the Commercial Banks and Savings Bank Act, Statute No 199 of 2 April 1974, with later amendments.

2. **Mortgage credit institutions** (Realkreditinstitutter)

Mortgage credit institutions are institutions which have the right to grant loans secured by mortgages on real property and involving the issue of publicly-quoted bonds. The institutions are under public supervision, and rules regarding their management and the size and duration of loans are laid down. These institutions may be organized in the form of non-profit, self-governing institutions in which no one owns the assets, or as associations of borrowers, in which case all the borrowers are members and are jointly liable to the extent of their mortgaged property for the association's commitments.

3. **Cooperative credit institutions** (Andelskasser)

These institutions henceforth fall within the scope of Directive 77/780/EEC (see Article 2 (5) and (6) thereof).

4. **Certain credit institutions** (Visse kreditinstitutter)

The description 'certain credit institutions' comprises companies which receive from the public loans or other funds which are repayable, and make loans on their own account, and are not included under 1.

The business of a credit institution may be carried on only by a limited company or a limited liability company.

By Law No 178 of 14 May 1980 on certain credit institutions, with subsequent amendments, a system of public inspection of such institutions was established.

GERMANY

Following the unification of Germany, this list now contains the credit institutions of the former German Democratic Republic.

1. **Commercial banks** (Kreditbanken)

The commercial banks are without exception 'universal' (i.e. all-purpose) banks formed under private law, i.e. apart from branches of foreign banks, they are:

— 'Aktiengesellschaften' (public limited companies) or 'Kommanditgesellschaften auf Aktien' (companies limited by shares but having one or more general partners), to which the 'Aktiengesetz' (Companies Law; BGBl. III 4121 — 1) applies,

— 'Gesellschaften mit beschränkter Haftung' (private limited liability companies) in accordance with the provisions of the Law concerning private limited liability companies (BGBl. III 4123 — 1), or

— 'offene Handelsgesellschaften' (general partnerships) or 'Kommanditgesellschaften' (limited partnerships), whose legal bases are covered by the Commercial Code (BGBl. III 4100 — 1).

The institutions belonging to this group vary widely in size and business structures. Their activities are mainly concentrated on short and medium-term credit business and security business.

2. **Saving bank sector** (Sparkassensektor)

The savings bank sector comprises the local savings banks, their regional central institutions ('Girozentralen' or 'Landesbanken') and the latters' central institution at national level (the 'Deutsche Girozentrale' or the 'Deutsche Kommunalbank'). With a few exceptions, credit institutions in the savings bank sector have public-law status.

The guarantors of the savings banks are usually local authorities or specific-purpose associations formed by them. The framework for the business activities of savings banks is provided by the savings banks' laws of the 'Länder' in conjunction with the savings banks' by-laws. Nowadays, savings banks are all-purpose credit institutions, but their activities are still based mainly on savings business and the granting of credit in their local area.

The central institutions, which are guaranteed by the 'Länder' and by the regional savings bank and giro associations, handle payments at supralocal level on behalf of the savings banks and administer the savings banks' liquidity reserves; they also engage in mortgage lending and lending to local authorities and to some extent operate as universal banks on a world-wide basis.

3. Credit cooperatives sector (Genossenschaftssektor)

The credit cooperatives sector comprises local credit cooperatives, their regional central banks and their central institution (the 'Deutsche Genossenschaftsbank').

The legal status of these institutions is usually that of registered cooperatives in accordance with the Law concerning commercial and industrial cooperatives (BGBl. III 4125 — 1). Credit cooperatives traditionally offer a full range of banking services to small businessmen, farmers, and, more recently, to many employees (wage and salary earners); however, a key aspect of their activities continues to be the acceptance of sight and savings deposits and the granting of loans to members.

The central banks, which with one exception are 'Aktiengesellschaften', handle payments between the credit cooperatives, look after their liquidity equalization and provide a number of services for them and their customers.

The 'Deutsche Genossenschaftsbank', which is a public-law entity, carries out as a central institution banking activities of all types on a world-wide basis in the interests of the cooperative movement.

4. Mortgage credit institutions (Realkreditinstitute)

The group entitled mortgage credit institutions comprises specialized banks which grant long-term loans for housing or shipbuilding, long-term agricultural loans and long-term loans to the public authorities and which raise the necessary funds primarily through mortgage bonds and communal bonds. This group also includes the 'Bausparkassen' (building societies).

The main types of credit institutions included in this group are:

— the private mortgage banks and ship mortgage banks, whose legal status is that of 'Aktiengesellschaft' or 'Kommanditgesellschaft auf Aktien',

— the public-law mortgage banks, which include the housing and agricultural credit institutions; the type of business they may pursue is laid down in the relevant constitutive laws. In addition to the Banking Law, which applies to all credit institutions, these credit institutions are governed by the Private Mortgage Banks Law (BGBl. III 7628 — 1), the Ship Mortgage Banks Law (BGBl. III 7628 — 2) and the Law concerning mortgage bonds and cognate bonds of public credit institutions (BGBl. III 4135 — 1),

— the 'Bausparkassen' (building societies), which operate either as limited companies or in public-law form or as legally independent parts of 'Girozentralen/Landesbanken'; they accept deposits from savers and, from these deposits, grant savers very low-interest loans, usually secured by a second or subsequent charge, for house-building purposes. They are governed by the Law on building societies (BGBl. III 7691 — 2).

5. Other credit institutions

In addition to credit institutions with special functions, the group entitled 'other credit institutions' includes central securities depositories ('Wertpapiersammelbanken').

GREECE

The Greek credit institutions which come within the scope of Directive 77/780/EEC can be divided into two categories for the purposes of the list.

1. Commercial banks

Under Article 10 of Law No 5076/1931 on limited companies and banks, banks are enterprises which, independently of any other aim, have the task of receiving deposits of money or other assets. Furthermore, under Article 11 of the same Law, banks may be set up and operate only in the form of

limited companies. This means that banks are obliged to observe the requirements, formalities and procedures laid down chiefly in the law on limited companies and in related provisions of other legislation.

2. **Private credit institutions**

Private credit institutions are subject to a private regime and their financial activity consists mainly of granting long term loans and participation in the share capital of newly established or expanding enterprises.

This category does not include those private credit institutions briefly described in the list of exceptions pursuant to Article 2 (2) of Directive 77/780/EEC, in accordance with Chapter III (e) 3 of Annex I to the Treaty concerning the accession of the Hellenic Republic to the European Economic Community. Nor does it include the following credit institutions, which come under the arrangements for deferment of implementation of the Directive (in accordance with Article 2 (5) and (6) thereof):

(a) Αγροτική Τράπεζα της Ελλάδος AE (Agricultural Bank of Greece Ltd);

(b) Εθνική Κτηματική Τράπεζα της Ελλάδος (National Mortgage Bank of Greece).

SPAIN

The credit institutions which come within the scope of Directive 77/780/EEC fall into the following categories:

1. **Deposit-taking institutions** (Entidades de depósito)

The object of these institutions is to take deposits or accept similar funds from the public, which they then use for lending. There is no limit on the term of deposits or loans.

(a) ***Banks*** (Bancos)

These have the legal status of public limited companies, and include the subsidiaries of foreign banks.

(b) *Savings banks* (Cajas de ahorro)

These cover the general savings banks (Cajas Generales de Ahorro), which have the legal status of 'public interest entities', the Spanish Confederation of Savings Banks (Confederación Española de Cajas de Ahorros), which is the savings banks' professional association and also operates as a credit institution. Savings banks carry out all banking transactions.

(c) *Credit cooperatives* (Entidades de crédito cooperativo)

Credit cooperatives have the legal status of cooperative societies. They comprise rural credit banks and non-agricultural credit cooperatives. These entities carry out all banking transactions, but preference is given to the financial requirements of their members.

2. **Official Credit Institution** (Instituto de Crédito Oficial)

This is a state-owned company which, in addition to carrying out transactions normally performed by credit institutions, effects and administers transactions charged to the Development Aid Fund (Fondo de Ayuda al Desarrollo). It also acts as the Government's financial agent for granting certain special loans.

3. **Official credit institutions** (Entidades oficiales de crédito)

These have the legal status of public limited companies whose shares are held by a bank in which the State has a majority interest. Their principal activity is the granting of loans for specific purposes of interest to the national economy.

4. Credit institutions with a limited range of operations (Entidades de crédito de ámbito operativo limitado)

(a) *Mortgage credit institutions* (Sociedades de crédito hipotecario)

These have the legal status of public limited companies and raise funds by taking long-term deposits from the public and issuing special mortgage bonds. Their object is to finance, against the security of mortgages on real property, the construction, renovation and acquisition of housing and social capital assets.

(b) *Finance houses* (Entidades de financiación)

1. Finance houses (Entidades de financiación)

2. Factoring companies (Entidades de factoring)

These have the legal status of public limited companies. Their typical object is the granting of financing credits to suppliers or buyers for the acquisition of goods on credit. Those engaged mainly in factoring are a subgroup of finance houses.

(c) *Leasing companies* (Sociedades de arrendamiento financiero)

They have the legal status of public limited companies, and their sole object is to carry out leasing operations.

(d) *Money market brokers* (Sociedades mediadoras del mercado de dinero)

These have the legal status of public limited companies, and their object is to operate on the interbank markets and to set up secondary markets in certain public or private securities, mainly on a short-term basis.

FRANCE

Under the Law No 84-46 of 24 January 1984, as amended, all credit institutions doing business in France are subject to the same regulatory and supervisory authorities. Incorporated as legal persons, they are classified into six categories, depending on the nature of their activities and the term of the deposits which they are authorized to take (1).

I. Banks

The function of banks is to carry out all banking operations as defined by the Law of 24 January 1984, namely:

— taking deposits from the public, whatever their term,

— engaging in credit transactions without any restriction as to clientele,

— making available to their clientele, and managing, means of payment.

II. Mutual or cooperative banks (Banques mutualistes ou coopératives)

The function of mutual or cooperative banks is also to carry out all banking operations, subject to the restrictions resulting from their particular by-laws. There are seven sub-categories of mutual or cooperative banks.

1. *Establishments affiliated to the 'Chambre syndicale des banques populaires'*

These are cooperative credit institutions which grant loans for terms of any length mainly to their members, who may be small or medium-sized industrial, commercial or craft enterprises, members of the professions or private individuals. They may accept deposits from all sources. The 'Chambre syndicale des banques populaires', as the central body, is responsible for their administrative and financial supervision; the 'Caisse centrale des banques populaires' administers their surplus liquid assets.

(1) Credit institutions having their head office in the Principality of Monaco have not been included in the list for France.

2. *Establishments affiliated to the 'Caisse nationale de crédit agricole'*

The 'caisses régionales de crédit agricole mutuel', which are governed by Book V of the 'Code rural', are authorized to carry out all banking operations in addition to their traditional activities in rural areas, where their members live. The 'Caisse nationale de crédit agricole' plays an essential part in the administrative and financial organization of the 'Crédit agricole'; pursuant to the Law of 24 January 1984, it acts as the network's central body.

3. *Establishments affiliated to the 'Caisse centrale de crédit coopératif'*

The 'Caisse centrale de crédit coopératif' is set up in the form of an association of cooperative societies and its purpose is to promote the development of non-agricultural cooperative societies, in particular by granting them loans to purchase plant and machinery. It also acts as the central body for the 'Crédit maritime mutuel' network and for the credit institutions specially set up to grant finance to cooperative societies, mutual societies or associations.

The 'Caisses régionales de crédit maritime mutuel', which are set up in the form of cooperative societies, have the function of financing all activities connected with small-scale fishing and marine cultivation and non-commercial investment by their members. They may take deposits from all sources. As stated above, the 'Caisse centrale de crédit coopératif' acts as their central body. The 'Société centrale de crédit maritime mutuel' is responsible for promoting and coordinating their activities in the financial and accounting area.

4. *Establishments affiliated to the 'Confédération nationale du crédit mutuel'*

(a) 'Crédit mutuel'

The 'caisses de crédit mutuel' are accredited by the 'Confédération nationale du crédit mutuel', the central body which supervises them and acts as their collective representative. Their purpose is to accept savings deposits from private individuals and grant loans to their members. The local offices establish federal offices on the basis of departments or groups of departments and these act as their clearing houses and administer their surplus liquid assets. They act as intermediaries between the local offices and the 'Caisse centrale du crédit mutuel', which administers the financial interests pooled by the federal offices and may accept deposits and grant loans to its member offices. In Alsace and Lorraine, a 'société coopérative de banque' (the 'Banque fédérative du crédit mutuel') and a bank (the 'Banque du crédit mutuel lorrain') act as federal offices.

(b) 'Crédit mutuel agricole et rural'

Although they are supervised by the 'Confédération nationale du crédit mutuel', these establishments, like the 'caisses régionales de crédit agricole mutuel' (see II.2), are governed by Book V of the 'Code rural'; they may carry out all banking operations for their customers, most of whom belong to the agricultural sector.

5. *'Sociétés coopératives de banque' not affiliated to a central body*

The 'Sociétés coopératives de banque', which are governed by Law No 82/409 of 17 May 1982, can have only mutual or cooperative societies and associations as members. At least 80 % of the finance they provide must be for this category of clientele and for public bodies. They may take deposits from any natural or legal person.

III. **Savings and provident banks** (Caisses d'épargne et de prévoyance)

These are non-profit-making institutions engaged in the promotion and acceptance of savings and the development of provident funds. Their activity is not confined to the taking of deposits from private individuals, which has been their traditional role; they may carry out all banking operations on behalf of natural and legal persons, with the exception of companies drawing on the savings of the public. Some of the deposits are used by the 'Caisse des dépôts et consignations', mainly to finance public bodies. The savings and provident banks form a network whose central body is the 'Centre national des caisses d'épargne et de prévoyance'.

IV. **Municipal credit banks** (Caisses de crédit municipal)

The 'caisses de crédit municipal' have a monopoly for granting loans secured on tangible assets. They may also grant all kinds of loans to natural persons and carry out other banking operations with both natural and legal persons.

V. Finance companies

Finance companies may carry out only transactions provided for either by the laws and regulations specific to them or by the decision under which they were approved. They may take deposits for terms of less than two years on an incidental basis subject to conditions specified by the 'Comité de la réglementation bancaire'.

Some of these establishments are affiliated to a central body, the others belong to a professional organization.

It is necessary to distinguish between finance companies authorized to engage in various activities involving credit or the management of means of payment (A) and those authorized to operate as securities firms (B).

A. *Finance companies specializing in granting credit or managing means of payment*

1. *Companies affiliated to a central body*

(a) Finance companies affiliated to the 'Chambre syndicale des banques populaires' (Sociétés de caution mutuelle 'Law of 1917')

These companies, whose function is to put up guarantees for their members, notably with a view to allowing them easier access to credit, do business only with the 'banques populaires'. They are governed by the Law of 13 March 1917.

(b) Finance companies affiliated to the 'Centre national des caisses d'épargne et de prévoyance'

These are mainly finance companies whose activity is necessary for the operation of the network.

(c) Finance companies affiliated to the 'Caisse nationale de crédit agricole'

These companies mostly specialize in financing firms (SOFI) or in guaranteeing loans to individuals (Unicefi).

(d) Finance companies affiliated to the 'Caisse centrale de crédit coopératif'

These companies generally have a territorial or professional function.

(e) Finance companies affiliated to the 'Chambre syndicale des sociétés anonymes de crédit immobilier'

These are institutions concerned with low-cost housing, promoting property development and granting loans for the construction of dwellings for people with low incomes. They may also, as an ancillary activity, operate in the competitive sector of the property market.

2. *Finance companies belonging to a professional organization*

The following are the main types of such institutions:

(a) 'Sociétés de caution mutuelle' (Other companies 'Law of 1917' and various regulations)

These 'Sociétés de caution mutuelle', some of which are governed by the Law of 13 March 1917 without, however, being affiliated to the 'Chambre syndicale des banques populaires', put up guarantees for their members, notably with a view to allowing them easier access to credit.

(b) 'Sociétés de crédit différé'

These institutions make property loans subject to the receipt of one or more deposits from borrowers and subject to a waiting period. The loans must be used to finance the purchase of property or to enlarge or modernize immovable property owned by the borrower.

(c) 'Sociétés de crédit d'outre-mer'

These institutions, which are governed by the Law of 30 April 1946, are State bodies whose activities (credit transactions, acquisition of shareholdings and technical assistance) are confined to the overseas departments and territories.

(d) and (e) 'Sociétés de financement des télécommunications', 'Sofergie'

These two types of finance companies have a special legal and tax status: they specialize in the leasing of telecommunications equipment to the Post Office ('sociétés de financement des télécommunications') and the leasing of energy-saving equipment ('Sofergie'). They may engage in other activities, which would be subject to standard tax arrangements.

(f) 'Sicomi'

Operating under a special tax status, they specialize in the leasing of buildings used for industrial and commercial purposes.

(g) Other finance companies

These are specialist companies whose activities are determined not by general laws or regulations, but by the individual authorization decisions taken by the 'Comité des établissements de crédit'. The specialization criteria generally applied are their method of operation, the purpose of their loans, or the nature of their clientele. The activities of such finance companies relate essentially to the financing of hire purchase and credit sales, house-building and house-purchase loans, the financing of firms' plant and machinery, leasing and rental with option to buy or credit substitute guarantees.

B. *Finance companies authorized to operate as securities firms (only one such firm is affiliated to a central body)*

The main activity of these firms is to act as intermediaries — *del credere* agents — in securities transactions or to manage portfolios of securities on behalf of clients on receiving the requisite funds and management authority.

VI. Specialized financial institutions

Specialized financial institutions are credit institutions to which the State has permanently entrusted a task in the public interest. They must not carry out any banking transactions other than those relating to this task, except on an incidental basis. Like finance companies, they may take deposits from the public for terms of less than two years on an incidental basis subject to conditions specified by the 'Comité de la réglementation bancaire'.

IRELAND

Irish credit institutions, to which the Directive applies, fall into the following categories:

1. Licensed banks

With some exceptions (the institutions deferred pursuant to Article 2 (6) of the Directive, the Post Office Savings Bank and credit unions) all institutions which take deposits are licensed by the Central Bank, under section 12 (3) of the Central Bank Act 1971, as amended by Section 35 of the Central Bank Act 1989. By Order of the Minister for Finance under section 10 (4) (a) of that Act a licensed bank must be a company. The majority are limited companies incorporated in the State; a small number are branches of companies established under the laws of other Member States of the Community or third countries. Licensed banks provide a full range of services.

2. Building societies

3. Trustee savings banks

These are licensed banks under Section 10 (7) of the Trustee Savings Banks Act 1989.

4. State sponsored financial institutions

(a) Agricultural Credit Corporation plc is a State-owned lending agency empowered to borrow funds under State guarantee for on-lending for agricultural and fishery projects.

(b) Industrial Credit Corporation plc is the State industrial development bank. Its lending is primarily directed at small and medium-sized enterprises. Lending is funded mainly from deposits and loans from the European Investment Bank.

ITALY

1. Commercial banks (Banche ordinarie)

Commercial banks are credit institutions in public or private ownership, established in various legal forms, which operate as short-term credit institutions, with limited opportunities for engaging also in longer-term credit activities. This category includes the 'banche popolari' which, although generally constituted as cooperative societies, are basically subject to the same legal rules as other institutions in the same category constituted as limited companies.

2. Savings banks and pawnbrokers (Casse di risparmio e Monti di credito su pegno)

Following the splitting of banking activity resulting from implementation of Law No 218 of 30 July 1990 and Decree Law No 356 of 20 November 1990, all Italian savings banks have taken the legal form of public limited companies.

Pawnbrokers are bodies whose purpose is to grant small loans on moderate terms against the security of movable property.

3. Rural and trade banks (Casse rurali e artigiane)

These are moderate-sized credit cooperatives which are subject to special legal rules requiring them to provide credit for local economic development, especially to their members who are predominantly farmers, craftsmen and small businessmen.

4. Special credit institutions and departments (Istituti e sezioni di credito speciale)

Public credit institutions, departments of credit institutions incorporated under public law and of savings banks, and private institutions authorized to collect longer-term savings by issuing bonds which are normally used to finance investment.

The sub-categories represent the forms of credit activities predominantly engaged in by the special credit institutions: industrial credit; credit secured on real property and housing credit; credit for public works; facilities and amenities; agricultural credit.

5. Other institutions (Altri istituti)

Institutions and companies whose institutional and functional characteristics set them apart from the categories listed above. They comprise central institutions for classes of banks and refinancing agencies.

LUXEMBOURG

The characteristics of the institutions included in the five groups in the Luxembourg list are as follows:

1. All-purpose commercial banks (Banques commerciales de type universel)

These institutions are either companies constituted under Luxembourg law or companies constituted under foreign law (branches). Among the form that credit institutions constituted under Luxembourg law may adopt, the all-purpose commercial banks have invariably adopted the form of 'société

anonyme'. Credit institutions constitued under foreign law which set up a branch in Luxembourg are not required to adopt any particular form but must possess capital resources of their own.

Since they are 'universal' (i.e. all-purpose), these institutions are authorized to carry out all types of banking business, both national and international.

2. **Cooperative societies**

This heading comprises societies within the meaning of the Law of 10 August 1915 on commercial companies, as amended. From now on it consists of *inter alia* savings and credit banks (caisses rurales) which were previously organized in the form of agricultural associations and affiliated to the 'Caisse centrale Raiffeisen' and which have adopted the form of cooperative societies.

3. **Institutions specializing in mortgage lending** (Instituts spécialisés dans le crédit hypothécaire)

For the form of these institutions, see the remarks under paragraph 1. The specialized nature of the business carried out by these institutions derives from their corporate objectives.

4. **Public-law institutions** (Établissements de droit public)

(a) *Caisse d'épargne de l'État*

This was set up by the Law of 21 February 1856 and its legal status was defined in a large body of subsequent legislation. It is an autonomous public banking institution with legal personality; it operates under government supervision and enjoys the guarantee of the State.

Its activities essentially cover the whole range of domestic banking business.

(b) *Société nationale de crédit et d'investissement*

This is a public banking institution set up by the Law of 2 August 1977. It is subject to the control of Parliament and has legal personality. Its entire capital is held by the State. It does not carry out all banking operations, but specializes in industrial investment credit, medium-term and long-term lending, export credit and the acquisition of holdings.

5. **Other**

This heading comprises non-bank financial institutions, which differ from all-purpose commercial banks among other things in that they may not receive deposits or other repayable funds with a term of less than two years, unless these are provided by affiliated companies or other credit institutions.

NETHERLANDS

1. **All-purpose banks** ('Algemene banken' — Article 1 (1) (b) of the 'Wet Toezicht Kredietwezen', WTK)

All-purpose banks include all credit institutions other than:

— banks organized along cooperative lines,

— institutions granting loans to finance security dealings,

— savings banks,

— central credit institutions.

2. **Savings banks** ('Spaarbanken' — Article 1 (1) (e) of the WTK)

The term 'savings banks' covers credit institutions which are bodies corporate and whose main business consists in receiving savings deposits with the aim of promoting savings. In addition, they do not seek to make distributions, other than with a non-profit or social purpose. Banks organized along cooperative lines do not rank as savings banks.

3. **Banks organized along cooperative lines ('Coöperatief georganiseerde banken' — Article 1 (1) (c) of the WTK)**

Banks organized along cooperative lines comprise:

— credit institutions which enjoy the legal status of a cooperative association and which are affiliated on a cooperative basis to a central credit institution, and

— the credit institutions with corporate status which are established by them, whose main business consists in receiving savings deposits with the aim of promoting savings and which do not aim to make distributions other than with a non-profit or social purpose.

The number of affiliated banks is 767.

The relationship of joint and several liability characterizing these affiliated banks is such that they are regarded as a single entity by the Nederlandsche Bank NV for supervision purposes.

The 'Central Raiffeisen-Boerenleenbank BA' has policy-making powers over the institutions affiliated to it.

4. **Capital market institutions ('Kapitaalmarktinstellingen' — subject to supervision pursuant to Article 30 of the WTK)**

This category comprises undertakings which are not credit institutions but whose business consists in receiving deposits from the public which are withdrawable at maturities of two or more years and in granting loans for their own account:

— mortgage banks ('Hypotheekbanken' — decree on the supervision of mortgage banks of 21 December 1978),

— other capital market institutions (decree on the supervision of other capital market institutions of 1 May 1981).

5. **Institutions granting loans to finance security dealings ('Effectenkredietinstellingen' — Article 1 (1) (d) of the WTK)**

Institutions granting loans to finance security dealings are credit institutions whose main business consists in acting as intermediaries in dealings in securities on the stock exchange.

PORTUGAL

The credit institutions which come within the scope of Directive 77/780/EEC fall into two categories:

1. **Banks**

This category chiefly includes commercial banks (bancos comerciais) and investment banks (bancos de investimento). Although these two types of bank initially served different purposes, their activities have, over time, grown increasingly similar, to the extent that the distinction between them has lost much of its significance.

Although the commercial banks were supposed to be principally engaged in taking or accepting funds, to be used for short-term lending, their field of activity has, albeit with certain restrictions, been extended to include the granting of medium- and long-term credit.

On the other hand, the investment banks, whose specific purpose is to grant medium- and long-term credit from resources also raised for a fixed term, may likewise open deposit accounts for time-deposit holders and make short-term loans directly linked to medium- or long-term transactions.

The list does not include the Crédito Predial Português, which is treated as a commercial bank in so far as this is in keeping with its special status as an institution set up chiefly for the purpose of granting building loans, since the application of Directive 77/780/EEC to this institution has been deferred pursuant to Article 2 (5) and (6) of the Directive.

2. **Savings banks (Caixas económicas)**

This category includes only one savings bank in the form of a public limited company which does credit business on terms similar to those of the commercial banks, albeit with certain restrictions, and may take sight and time deposits.

It does not, however, include savings banks not incorporated as limited companies, because these fall under the list of permanent exclusions laid down in Article 2 (3) of Directive 77/780/EEC, as amended by Directive 86/524/EEC in accordance with Annex I (II) (c) (3) of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties.

Nor does it include the Caixa Geral de Depósitos, in respect of which the application of Directive 77/780/EEC has been deferred pursuant to Article 2 (5) and (6) of the Directive.

UNITED KINGDOM

1. Commercial credit institutions

These are institutions authorized to operate a deposit-taking business under the Banking Act 1987.

These comprise licensed deposit-taking institutions and recognized banks. Institutions in both groups provide general banking services and are established in various legal forms.

2. Building societies

These are institutions established to raise funds by subscriptions of the members for making advances to members secured by way of mortgage of freehold or leasehold property. They are governed by and registered under the Building Societies Act 1962 and brought within the scope of Directive 77/780/EEC by the Building Societies (Authorization) Regulations 1981.

GIBRALTAR

Since Gibraltar comes under British sovereignty, its credit institutions are covered by the chapter on the United Kingdom.

I .c) 89/646/EEC

Second Council Directive of 15 December 1989 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

(OJ No L 386, 30.12.1989, p. 1-13)

Title I : Definitions and scope (Art. 1-3)

Title II : Harmonization of authorization conditions (Art. 4-7)

Title III : Relations with third countries (Art. 8 and 9)

Title IV : Harmonization of the conditions governing pursuit of the business of credit institutions (Art. 10-17)

Title V : Provisions relating to the freedom of establishment and the freedom to provide services (Art. 18-21)

Title VI : Final provisions (Art. 22-25)

Annex (to Art. 18) : List of activities subject to mutual recognition

Corrigendum	OJ	L 83	30.03.1990	p. 128
	OJ	L 258	22 09.1990	p 35

II

(Acts whose publication is not obligatory)

COUNCIL

SECOND COUNCIL DIRECTIVE

of 15 December 1989

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

(89/646/EEC)

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 proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas this Directive is to constitute the essential instrument for the achievement of 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 this Directive will join the body of Community legislation already enacted, in particular the first Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (4), as last amended by Directive 86/524/EEC (5), Council Directive 83/350/EEC of 13 June 1983 on the supervision of credit institutions on a consolidated basis (6), Council Directive 86/635/EEC of 8 December 1986 on the annual and consolidated accounts of banks and other financial institutions (7) and Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions (8);

Whereas the Commission has adopted recommendations 87/62/EEC on large exposures of credit institutions (9) and 87/63/EEC concerning the introduction of deposit-guarantee schemes (10);

Whereas the approach which has been adopted is to achieve only the essential harmonization necessary and sufficient to secure the mutual recognition of authorization and of prudential supervision systems, making possible the granting of a single licence recognized throughout the Community and the application of the principle of home Member State prudential supervision;

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

Whereas, moreover, the harmonization of the conditions relating to the reorganization and winding-up of credit institutions is also proceeding;

Whereas the arrangements necessary for the supervision of the liquidity, market, interest-rate and foreign-exchange risks run by credit institutions will also have to be harmonized;

Whereas the principles of mutual recognition and of home Member State control require the competent authorities of

(1) OJ No C 84, 31. 3. 1988, p. 1.
(2) OJ No C 96, 17. 4. 1989, p. 33 and Decision of 22 November 1989 (not yet published in the Official Journal).
(3) OJ No C 318, 17. 12. 1988, p. 42.
(4) OJ No L 322, 17. 12. 1977, p. 30.
(5) OJ No L 309, 4. 11. 1986, p. 15.
(6) OJ No L 193, 18. 7. 1983, p. 18.
(7) OJ No L 372, 31. 12. 1986, p. 1.
(8) OJ No L 124, 5. 5. 1989, p. 16.
(9) OJ No L 33, 4. 2. 1987, p. 10.
(10) OJ No L 33, 4. 2. 1987, p. 16.

each Member State not to grant authorization or to withdraw it where factors such as the activities programme, the geographical distribution or the activities actually carried on make it quite clear that a credit institution has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State in which it intends to carry on or carries on the greater part of its activities; whereas, for the purposes of this Directive, a credit institution shall be deemed to be situated in the Member State in which it has its registered office; whereas the Member States must require that the head office be situated in the same Member State as the registered office;

Whereas the home Member State may also establish rules stricter than those laid down in Articles 4, 5, 11, 12 and 16 for institutions authorized by its competent authorities;

Whereas responsibility for supervising the financial soundness of a credit institution, and in particular its solvency, will rest with the competent authorities of its home Member State; whereas the host Member State's competent authorities will retain responsibility for the supervision of liquidity and monetary policy; whereas the supervision of market risk must be the subject of close cooperation between the competent authorities of the home and host Member States;

Whereas the harmonization of certain financial and investment services will be effected, where the need exists, by specific Community instruments, with the intention, in particular, of protecting consumers and investors; whereas the Commission has proposed measures for the harmonization of mortgage credit in order, *inter alia*, to allow mutual recognition of the financial techniques peculiar to that sphere;

Whereas, by virtue of mutual recognition, the approach chosen permits credit institutions authorized in their home Member States to carry on, throughout the Community, any or all of the activities listed in the Annex by establishing branches or by providing services;

Whereas the carrying-on of activities not listed in the Annex shall enjoy the right of establishment and the freedom to provide services under the general provisions of the Treaty;

Whereas it is appropriate, however, to extend mutual recognition to the activities listed in the Annex when they are carried on by financial institutions which are subsidiaries of credit institutions, provided that such subsidiaries are covered by the consolidated supervision of their parent undertakings and meet certain strict conditions;

Whereas the host Member State may, in connection with the exercise of the right of establishment and the freedom to provide services, require compliance with specific provisions of its own national laws or regulations on the part of institutions not authorized as credit institutions in their home Member States and with regard to activities not listed in the Annex provided that, on the one hand, such provisions are compatible with Community law and are intended to protect the general good and that, on the other hand, such institutions or such activities are not subject to equivalent rules under the legislation or regulations of their home Member States;

Whereas the Member States must ensure that there are no obstacles to carrying on activities receiving mutual recognition in the same manner as in the home Member State, as long as the latter do not conflict with legal provisions protecting the general good in the host Member State;

Whereas the abolition of the authorization requirement with respect to the branches of Community credit institutions once the harmonization in progress has been completed necessitates the abolition of endowment capital; whereas Article 6 (2) constitutes a first transitional step in this direction, but does not, however, affect the Kingdom of Spain or the Portuguese Republic, as provided for in the Act concerning the conditions of those States' accession to the Community;

Whereas there is a necessary link between the objective of this Directive and the liberalization of capital movements being brought about by other Community legislation; whereas in any case the measures regarding the liberalization of banking services must be in harmony with the measures liberalizing capital movements; whereas where the Member States may, by virtue of Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (1), invoke safeguard clauses in respect of capital movements, they may suspend the provision of banking services to the extent necessary for the implementation of the abovementioned safeguard clauses;

Whereas the procedures established in Directive 77/780/EEC, in particular with regard to the authorization of branches of credit institutions authorized in third countries, will continue to apply to such institutions; whereas those branches will not enjoy the freedom to provide services under the second paragraph of Article 59 of the Treaty or the freedom of establishment in Member States other than those in which they are established; whereas, however, requests for the authorization of subsidiaries or of the acquisition of holdings made by undertakings governed by the laws of third countries are subject to a procedure intendet to ensure that Community credit institutions receive reciprocal treatment in the third countries in question;

Whereas the authorizations granted to credit institutions by the competent national authorities pursuant to this Directive will have Community-wide, and no longer merely nationwide, application, and whereas existing reciprocity clauses will henceforth have no effect; whereas a flexible procedure is therefore needed to make it possible to assess reciprocity on a Community basis; whereas the aim of this

(1) OJ No L 178, 8. 7. 1988, p. 5.

procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets in other third countries; whereas, to that end, this Directive provides for procedures for negotitating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization or the restriction of new authorizations;

Whereas the smooth operation of the internal banking market will require not only legal rules but also close and regular cooperation between the competent authorities of the Member States; whereas for the consideration of problems concerning individual credit institutions the Contact Committee set up between the banking supervisory authorities, referred to in the final recital of Directive 77/780/EEC, remains the most appropriate forum; whereas that Committee is a suitable body for the mutual exchange of information provided for in Article 7 of that Directive;

Whereas that mutual information procedure will not in any case replace the bilateral collaboration established by Article 7 of Directive 77/780/EEC; whereas the competent host Member State authorities can, without prejudice to their powers of control proper, continue either, in an emergency, on their own initiative or following the initiative of the competent home Member State authorities to verify that the activities of a credit institution established within their territories comply with the relevant laws and with the principles of sound administrative and accounting procedures and adequate internal control;

Whereas technical modifications to the detailed rules laid down in this Directive may from time to time be necessary to take account of new developments in the banking sector; whereas the Commission shall accordingly make such modifications as are necessary, after consulting the Banking Advisory Committee, within the limits of the implementing powers conferred on the Commission by the Treaty; whereas that Committee shall act as a 'Regulatory' Committee, according to the rules of procedure laid down in Article 2, procedure III, variant (b), of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission [1],

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Definitions and scope

Article 1

For the purpose of this Directive:

1. 'credit institution' shall mean a credit institution as defined in the first indent of Article 1 of Directive 77/780/EEC;

2. 'authorization' shall mean authorization as defined in the second indent of Article 1 of Directive 77/780/EEC;

3. 'branch' shall mean a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions; any number of places of business set up in the same Member State by a credit institution with headquarters in another Member State shall be regarded as a single branch;

4. 'own funds' shall mean own funds as defined in Directive 89/299/EEC;

5. 'competent authorities' shall mean competent authorities as defined in Article 1 of Directive 83/350/EEC;

6. 'financial institution' shall mean an undertaking other than a credit institution the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 in the Annex;

7. 'home Member State' shall mean the Member State in which a credit institution has been authorized in accordance with Article 3 of Directive 77/780/EEC;

8. 'host Member State' shall mean the Member State in which a credit institution has a branch or in which it provides services;

9. 'control' shall mean the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC [2], or a similar relationship between any natural or legal person and an undertaking;

10. 'qualifying holding' shall mean a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which a holding subsists.

    For the purposes of this definition, in the context of Articles 5 and 11 and of the other levels of holding referred to in Article 11, the voting rights referred to in Article 7 of Directive 88/627/EEC [3] shall be taken into consideration;

11. 'initial capital' shall mean capital as defined in Article 2 (1) (1) and (2) of Directive 89/299/EEC;

12. 'parent undertaking' shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;

13. 'subsidiary' shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC;

[1] OJ No L 197, 18. 7. 1987, p. 33.

[2] OJ No L 193, 18. 7. 1983, p. 1.

[3] OJ No L 348, 17. 12. 1988, p. 62.

any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings;

14. 'solvency ratio' shall mean the solvency coefficient of credit institutions calculated in accordance with Directive 89/647/EEC [1].

Article 2

1. This Directive shall apply to all credit institutions.

2. It shall not apply to the institutions referred to in Article 2 (2) of Directive 77/780/EEC.

3. A credit institution which, as defined in Article 2 (4) (a) of Directive 77/780/EEC, is affiliated to a central body in the same Member State may be exempted from the provisions of Articles 4, 10 and 12 of this Directive provided that, without prejudice to the application of those provisions to the central body, the whole as constituted by the central body together with its affiliated institutions is subject to the abovementioned provisions on a consolidated basis.

In cases of exemption, Articles 6 and 18 to 21 sahll apply to the whole as constituted by the central body together with its affiliated institutions.

Article 3

The Member States shall prohibit persons or undertakings that are not credit institutions from carrying on the business of taking deposits or other repayable funds from the public. This prohibition shall not apply to the taking of deposits or other funds repayable by a Member State or by a Member State's regional or local authorities or by public international bodies of which one or more Member States are members or to cases expressly covered by national or Community legislation, provided that those activities are subject to regulations and controls intended to protect depositors and investors and applicable to those cases.

TITLE II

Harmonization of authorization conditions

Article 4

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

2. The Member States shall, however, have the option of granting authorization to particular categories of credit institutions the initial capital of which is less than that prescribed in paragraph 1. In such cases:

(a) the initial capital shall not be less than ECU 1 million;

(b) the Member States concerned must notify the Commission of their reasons for making use of the option provided for in this paragraph;

(c) when the list referred to in Article 3 (7) of Directive 77/780/EEC is published, the name of each credit institution that does not have the minimum capital prescribed in paragraph 1 shall be annotated to that effect;

(d) within five years of the date referred to in Article 24 (1), the Commission shall draw up a report on the application of this paragraph in the Member States, for the attention of the Banking Advisory Committee referred to in Article 11 of Directive 77/780/EEC.

Article 5

The competent authorities shall not grant authorization for the taking-up of the business of credit institutions before they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings, and of the amounts of those holdings.

The competent authorities shall refuse authorization if, taking into account the need to ensure the sound and prudent management of a credit institution, they are not satisfied as to the suitability of the abovementioned shareholders or members.

Article 6

1. Host Member States may no longer require authorization, as provided for in Article 4 of Directive 77/780/EEC, or endowment capital for branches of credit institutions authorized in other Member States. The establishment and supervision of such branches shall be effected as prescribed in Articles 13, 19 and 21 of this Directive.

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

3. Credit institutions shall be entitled to the free use of the funds no longer required pursuant to paragraphs 1 and 2.

[1] See p. 14 of this Official Journal.

Article 7

There must be prior consultation with the competent authorities of the other Member State involved on the authorization of a credit institution which is:

— a subsidiary of a credit institution authorized in another Member State, or

— a subsidiary of the parent undertaking of a credit institution authorized in another Member State, or

— controlled by the same persons, whether natural or legal, as control a credit institution authorized in another Member State.

TITLE III

Relations with third countries

Article 8

The competent authorities of the Member States shall inform the Commission:

(a) of any authorization of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Banking Advisory Committee accordingly;

(b) whenever such a parent undertaking acquires a holding in a Community credit institution such that the latter would become its subsidiary. The Commission shall inform the Banking Advisory Committee accordingly.

When authorization is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission in accordance with Article 3 (7) of Directive 77/780/EEC.

Article 9

1. The Member States shall inform the Commission of any general difficulties encountered by their credit institutions in establishing themselves or carrying on banking activities in a third country.

2. Initially no later than six months before the application of this Directive and thereafter periodically, the Commission shall draw up a report examining the treatment accorded to Community credit institutions in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying-on of banking activities, and the acquisition of holdings in third-country credit institutions. The Commission shall submit those reports to the Council, together with any appropriate proposals.

3. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community credit institutions effective market access comparable to that granted by the Community to credit institutions from that third country, the Commission may submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community credit institutions. The Council shall decide by a qualified majority.

4. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 2 or on the basis of other information that Community credit institutions in a third country do not receive national treatment offering the same competitive opportunities as are available to domestic credit institutions and the the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure laid down in Article 22 (2), that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending at the moment of the decision or future requests for authorizations and the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question. The duration of the measures referred to may not exceed three months.

Before the end of that three-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.

Such limitations or suspension may not apply to the setting up of subsidiaries by credit institutions or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community credit institutions by such institutions or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 obtains, the Member States shall inform it at its request:

(a) of any request for the authorization of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of the third country in question;

(b) whenever they are informed in accordance with Article 11 that such an undertaking proposes to acquire a holding in a Community credit institution such that the latter would become its subsidiary.

This obligation to provide information shall lapse whenever an agreement is reached with the third country referred to in paragraph 3 or 4 or when the measures referred to in the second and third subparagraphs of paragraph 4 cease to apply.

6. Measures taken pursuant to this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking-up and pursuit of the business of credit institutions.

TITLE IV

Harmonization of the conditions governing pursuit of the business of credit institutions

Article 10

1. A credit institution's own funds may not fall below the amount of initial capital required pursuant to Article 4 at the time of its authorization.

2. The Member States may decide that credit institutions already in existence when the Directive is implemented, the own funds of which do not attain the levels prescribed for initial capital in Article 4, may continue to carry on their activities. In that event, their own funds may not fall below the highest level reached after the date of the notification of this Directive.

3. If control of a credit institution falling within the category referred to in paragraph 2 is taken by a natural or legal person other than the person who controlled the institution previously, the own funds of that institution must attain at least the level prescribed for initial capital in Article 4.

4. However, in certain specific circumstances and with the consent of the competent authorities, where there is a merger of two or more credit institutions falling within the category referred to in paragraph 2, the own funds of the institution resulting from the merger may not fall below the total own funds of the merged institutions at the time of the merger, as long as the appropriate levels pursuant to Article 4 have not been attained.

5. However, if, in the cases referred to in paragraphs 1, 2 and 4, the own funds should be reduced, the competent authorities may, where the circumstances justify it, allow an institution a limited period in which to rectify its situation or cease its activities.

Article 11

1. The Member States shall require any natural or legal person who proposes to acquire, directly or indirectly a qualifying holding in a credit institution first to inform the competent authorities, telling them of the size of the intended holding. Such a person must likewise inform the competent authorities if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital held by him would reach or exceed 20 %, 33 % or 50 % or so that the credit institution would become his subsidiary.

Without prejudice to the provisions of paragraph 2 the competent authorities shall have a maximum of three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the credit institution, they are not satisfied as to the suitablility of the person referred to in the first subparagraph. If they do not oppose the plan referred to in the first subparagraph, they may fix a maximum period for its implementation.

2. If the acquirer of the holdings referred to in paragraph 1 is a credit institution authorized in another Member State or the parent undertaking of a credit institution authorized in another Member State or a natural or legal person controlling a credit institution authorized in another Member State and if, as a result of that acquisition, the institution in which the acquirer proposes to acquire a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be the subject of the prior consultation referred to in Article 7.

3. The Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in a credit institution first to inform the competent authorities, telling them of the size of his intended holding. Such a person must likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20 %, 33 % or 50 % or so that the credit institution would cease to be his subsidiary.

4 On becoming aware of them, credit institutions shall inform the competent authorities of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 1 and 3.

They shall also, at least once a year, inform them of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

5. The Member States shall require that, where the influence exercised by the persons referred to in paragraph 1

is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. Such measures may consist for example in injunctions, sanctions against directors and managers, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the obligation to provide prior information, as laid down in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 12

1. No credit institution may have a qualifying holding the amount of which exceeds 15% of its own funds in an undertaking which is neither a credit institution, nor a financial institution, nor an undertaking carrying on an activity referred to in the second subparagraph of Article 43 (2) (f) of Directive 86/635/EEC.

2. The total amount of a credit institution's qualifying holdings in undertakings other than credit institutions, financial institutions or undertakings carrying on activities referred to in the second subparagraph of Article 43 (2) (f) of Directive 86/635/EEC may not exceed 60% of its own funds.

3. The Member States need not apply the limits laid down in paragraphs 1 and 2 to holdings in insurance companies as defined in Directive 73/239/EEC (1), as last amended by Directive 88/357/EEC (2), and Directive 79/267/EEC (3), as last amended by the Act of Accession of 1985.

4. Shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in an institution's own name on behalf of others shall not be counted as qualifying holdings for the purpose of calculating the limits laid down in paragraphs 1 and 2. Shares which are not financial fixed assets as defind in Article 35 (2) of Directive 86/635/EEC shall not be included.

5. The limits laid down in paragraphs 1 and 2 may be exceeded only in exceptional circumstances. In such cases, however, the competent authorities shall require a credit institution either to increase its own funds or to take other equivalent measures.

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

7. Credit institutions which, on the date of entry into force of the provisions implementing this Directive, exceed the limits laid down in paragraphs 1 and 2 shall have a period of 10 years from that date in which to comply with them.

8. The Member States may provide that the competent authorities shall not apply the limits laid down in paragraph 1 and 2 if they provide that 100% of the amounts by which a credit institution's qualifying holdings exceed those limits must be covered by own funds and that the latter shall not be included in the calculation of the solvency ratio. If both the limits laid down in paragraphs 1 and 2 are exceeded, the amount to be covered by own funds shall be the greater of the excess amounts.

Article 13

1. The prudential supervision of a credit institution, including that of the activities it carries on in accordance with Article 18, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the authorities of the host Member State.

2. Home Member State competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms.

3. Paragraphs 1 and 2 shall not prevent supervision on a consolidated basis pursuant to Directive 83/350/EEC.

Article 14

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, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms'.

2. Host Member States shall retain responsibility in cooperation with the competent authorities of the home Member State for the supervision of the liquidity of the branches of credit institutions pending 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

(1) OJ No L 228, 16. 8. 1973, p. 3.
(2) OJ No L 172, 4. 7. 1988, p. 1.
(3) OJ No L 63, 13. 3. 1979, p. 1.

measures resulting from the implementation of their monetary policies. Such measures may not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorized in another Member State.

3. Without prejudice to further coordination of the measures designed to supervise the risks arising out of open positions on markets, where such risks result from transactions carried out on the financial markets of other Member States, the competent authorities of the latter shall collaborate with the competent authorities of the home Member State to ensure that the institutions concerned take steps to cover those risks.

Article 15

1. Host Member States shall provide that, where a credit institution authorized in another Member State carries on its activities through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose 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 also, for purposes of the verification of branches, have recourse to one of the other procedures laid down in Article 5 (4) of Directive 83/350/EEC.

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

Article 16

Article 12 of Directive 77/780/EEC is hereby replaced by the following:

'*Article 12*

1. The Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy. This means that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual institutions cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with the Directives applicable to credit institutions. That information shall be subject to the conditions of professional secrecy 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 disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article.

4. Competent authorities receiving confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

— to check that the conditions governing the taking up of the business of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such business, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms, or

— to impose sanctions, or

— in an administrative appeal against a decision of the competent authority, or

— in court proceedings initiated pursuant to Article 13 or to special provisions provided for in the Directives adopted in the field of credit institutions.

5. Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or between Member States, between competent authorities and:

— authorities entrusted with the public duty of supervising other financial organizations and insurance companies and the authorities responsible for the supervision of financial markets,

— bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures,

— persons responsible for carrying out statutory audits of the accounts of credit institutions and other financial institutions,

in the discharge of their supervisory functions, and the disclosure to bodies which administer deposit-guarantee schemes of information necessary to the exercise of their functions. The information received shall be subject to the conditions of professional secrecy indicated in paragraph 1.

6. Nor shall the provisions of this Article preclude a competent authority from disclosing to those central banks which do not supervise credit institutions

individually such information as they may need to act as monetary authorities. Information received in this context shall be subject to the conditions of professional secrecy indicated in paragraph 1.

7. In addition, notwithstanding the provisions referred to in paragraphs 1 and 4, the Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

However, the Member States shall provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verification referred to in Article 15 (1) and (2) of Directive 89/646/EEC (1) may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

(1) OJ No L 386, 30. 12. 89, p.1.'

Article 17

Without prejudice to the procedures for the withdrawal of authorizations and the provisions of criminal law, the Member States shall provide that their respective competent authorities may, as against credit institutions or those who effectively control the business of credit institutions which breach laws, regulations or administrative provisions concerning the supervision or pursuit of their activities, adopt or impose in respect of them penalties or measures aimed specifically at ending observed breaches or the causes of such breaches.

TITLE V

Provisions relating to the freedom of establishment and the freedom to provide services

Article 18

1. The Member States shall provide that the activities listed in the Annex may be carried on within their territories, in accordance with Articles 19 to 21, 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 another Member State, in accordance with this Directive, provided that such activities are covered by the authorization.

2. The Member States shall also provide that the activities listed in the Annex may be carried on within their territories, in accordance with Articles 19 to 21, either by the establishment of a branch or by way of the provision of services, by any financial institution from another Member State, whether a subsidiary of a credit institution or the jointly-owned subsidiary of two or more credit institutions, the memorandum and articles of association of which permit the carrying on of those activities and which fulfils each of the following conditions:

— the parent undertaking or undertakings must be authorized as credit institutions in the Member State by the law of which the subsidiary is governed,

— the activities in question must actually be carried on within the territory of the same Member State,

— the parent undertaking or undertakings must hold 90 % or more of the voting rights attaching to shares in the capital of the subsidiary,

the parent undertaking or undertakings must satisfy the competent authorities regarding the prudent management of the subsidiary and must have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the subsidiary,

— the subsidiary must be effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Directive 83/350/EEC, in particular for the calculation of the solvency ratio, for the control of large exposures and for purposes of the limitation of holdings provided for in Article 12 of this Directive.

Compliance with these conditions must be verified by the competent authorities of the home Member State and the latter must supply the subsidiary with a certificate of compliance which must form part of the notification referred to in Articles 19 and 20.

The competent authorities of the home Member State shall ensure the supervision of the subsidiary in accordance with Articles 10 (1), 11, 13, 14 (1), 15 and 17 of this Directive and Articles 7 (1) and 12 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 fulfilling the conditions laid down in Article 18 (2)' and the word 'authorization' as 'memorandum and articles of association'.

The second subparagraph of Article 19 (3) shall read:

'The home Member State competent authorities shall also communicate the amount of own funds of the subsidiary financial institution and the consolidated solvency ratio of the credit institution which is its parent undertaking.'

If a financial institution eligible under this paragraph should cease to fulfil any of the conditions imposed, the home

Member State shall notify the competent authorities of the host Member State and the activities carried on by that institution in the host Member State shall become subject to the legislation of the host Member State.

Article 19

1. A credit institution wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. The Member State shall require every credit institution wishing to establish a branch in another Member State to provide the following information when effecting the notification referred to in paragraph 1:

(a) the Member State within the territory of which it plans to establish a branch;

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

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

(d) the names of those responsible for the management of the branch.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the credit institution, taking into account the activities envisaged, they shall within three months of receipt of the information referred to in paragraph 2 communicate that information to the competent authorities of the host Member State and shall inform the institution concerned accordingly.

The home Member State competent authorities shall also communicate the amount of own funds and the solvency ratio of the credit institution and, pending subsequent coordination, details of any deposit-guarantee scheme which is intended to ensure the protection of depositors in the branch.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the institution concerned within three months of receipt of all the information. That refusal or failure to reply shall be subject to a right to apply to the courts in the home Member State.

4. Before the branch of a credit institution commences its activities the competent authorities of the host Member State shall, within two months of receiving the information mentioned in paragraph 3, prepare for the supervision of the credit institution in accordance with Article 21 and if necessary indicate the conditions under which, in the interest of the general good, those activities must be carried on in the host Member State.

5. On receipt of a communication from the competent authorities of the host Member State, or in the event of the expiry of the period provided for in paragraph 4 without receipt of any communication from the latter, the branch may be established and commence its activities.

6. In the event of a change in any of the particulars communicated pursuant to paragraph 2 (b), (c) or (d) or in the deposit-guarantee scheme referred to in paragraph 3 a credit institution shall give written notice of the change in question to the competent authorities of the home and host Member States at least one month before making the change so as to enable the competent authorities of the home Member State to take a decision pursuant to paragraph 3 and the competent authorities of the host Member State to take a decision on the change pursuant to paragraph 4.

Article 20

1. Any credit institution wishing to exercise the freedom to provide services by carrying on its activities within the territory of another Member State for the first time shall notify the competent authorities of the home Member State of the activities on the list in the Annex which it intends to carry on.

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 21

1. Host Member State may, for statistical purposes, require that all credit institutions having branches within their territories shall report periodically on their activities in those host Member States to the competent authorities of those host Member States.

In discharging the responsibilities imposed on them in Article 14 (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 national credit institutions for that purpose.

2. Where the competent authorities of a host Member State ascertain that an institution having a branch or providing services within its territory is not complying with the legal provisions adopted in that State pursuant to the provisions of this Directive involving powers of the host Member State competent authorities, those authorities shall require the institution concerned to put an end to that irregular situation.

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

4. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the Member State in question, the institution persists in violating the legal rules referred to in paragraph 2 in force in the host Member State, the latter State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to punish further irregularities and, insofar as is necessary, to prevent that institution from initiating further transactions within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for these measures on credit institutions.

5. The foregoing provisions shall not affect the power of host Member States to take appropriate measures to prevent or to punish irregularities committed within their territories which are contrary to the legal rules they have adopted in the interest of the general good. This shall include the possibility of preventing offending institutions from initiating any further transactions within their territories.

6. Any measure adopted pursuant to paragraphs 3, 4 and 5 involving penalties or restrictions on the exercise of the freedom to provide 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 the authorities of which adopted it.

7. Before following the procedure provided for in paragraphs 2 to 4, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity.

The Commission may, after consulting the competent authorities of the Member States concerned, decide that the Member State in question must amend or abolish those measures.

8. Host Member States may exercise the powers conferred on them under this Directive by taking appropriate measures to prevent or to punish irregularities committed within their territories. This shall include the possibility of preventing institutions from initiating further transactions within their territories.

9. In the event of the withdrawal of authorization the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the institution concerned from initiating further transactions within its territory and to safeguard the interests of depositors. Every two years the Commission shall submit a report on such cases to the Banking Advisory Committee.

10. The Member States shall inform the Commission of the number and type of cases in which there has been a refusal pursuant to Article 19 or in which measures have been taken in accordance with paragraph 4. Every two years the Commission shall submit a report on such cases to the Banking Advisory Committee.

11. Nothing this Article shall prevent credit institutions with head offices in other Member States from advertising their services through all available means of communication in the host Member State, subject to any rules governing the form and the content of such advertising adopted in the interest of the general good.

TITLE VI

Final provisions

Article 22

1. The 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:

— expansion of the content of the list referred to in Article 18 and set out in the Annex or adaptation of the terminology used in that list to take account of developments on financial markets,

— alteration of the amount of initial capital prescribed in Article 4 to take account of developments in the economic and monetary field,

— the areas in which the competent authorities must exchange information as listed in Article 7 (1) of Directive 77/780/EEC,

— clarification of the definitions in order 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.

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 Commission shall adopt the measures proposed, unless the Council has decided against those measures by a simple majority.

Article 23

1. Branches which have commenced their activities, in accordance with the provisions in force in their host Member States, before the entry into force of the provisions adopted in implementation of this Directive shall be presumed to have been subject to the procedure laid down in Article 19 (1) to (5). They shall be governed, from the date of that entry into force, by Articles 15, 18, 19 (6) and 21. They shall benefit pursuant to Article 6 (3).

2. Article 20 shall not affect rights acquired by credit institutions providing services before the entry into force of the provisions adopted in implementation of this Directive.

Article 24

1. Subject to paragraph 2, the Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by the later of the two dates laid down for the adoption of measures to comply with Directives 89/299/EEC and 89/647/EEC and at the latest by 1 January 1993. They shall forthwith inform the Commission thereof.

2. The Member States shall adopt the measures necessary for them to comply with Article 6 (2) by 1 January 1990.

3. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 25

This Directive is addressed to the Member States.

Done at Brussels, 15 December 1989.

For the Council

The President

P. BÉRÉGOVOY

ANNEX

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Acceptance of deposits and other repayable funds from the public.
2. Lending (1).
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments.
7. Trading for own account or for account of 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) transferable securities.

'8. Participation in securities issues and the provision of services related to such issues.'

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portofolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe custody services.

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(1) Including *inter alia*:
- consumer credit,
- mortgage credit,
- factoring, with or without recourse,
- financing of commercial transactions (including forfaiting)

CORRIGENDA

Corrigendum to the Second Council Directive 89/646/EEC of 15 December 1989 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

(Official Journal of the European Communities No L 386 of 30 December 1989)

On page 13 in point 8 of the Annex:

for: '8. Participation in share issues and the provision of services related to such issues.'

read: '8. Participation in securities issues and the provision of services related to such issues.'

Corrigendum to Commission Regulation (EEC) No 435/90 of 19 February 1990 amending the list annexed to Regulation (EEC) No 55/87 establishing the list of vessels exceeding eight metres length overall permitted to use beam trawls within certain areas of the Community

(Official Journal of the European Communities No L 46 of 22 February 1990)

On page 6 in the second table of the Annex delete the entry under 'GERMANY':

'— ZK 19	Solea		Ulrum-Zoutkamp	55',

and insert the entry under 'NETHERLANDS':

'— ZK 19	Solea		Ulrum-Zoutkamp	55'.

Corrigendum to Commission Directive 90/110/EEC of 19 February 1990 amending the Annexes to Council Directive 70/524/EEC concerning additives in feedingstuffs

(Official Journal of the European Communities No L 67 of 15 March 1990)

On page 45, under point 1 (b) of the Annex (the maximum content in mg/kg of complete feedingstuff):

for: '100',

read: '80'.

CORRIGENDA

Corrigendum to the second Council Directive 89/646/EEC of 15 December 1989 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

(Official Journal of the European Communities No L 386 of 30 December 1989)

This corrigendum cancels and replaces the corrigendum published in *Official Journal of the European Communities* No L 158 of 23 June 1990, page 87.

On page 8, Article 16, first indent of Article 12 (5) as quoted:

for: '— authorities responsible for the supervision of other financial ...',

read: '— authorities entrusted with the public duty of supervising other financial ...'.

Corrigendum to Council Directive 90/384/EEC of 20 June 1990 on the harmonization of the laws of the Member States relating to non-automatic weighing instruments

(Official Journal of the European Communities No L 189 of 20 July 1990)

On page 6, Annex I:

— line 2:

for: 'Organisation internationale de Métrologie Légale',

read: 'Organisation Internationale de Métrologie Légale'.

— under 'Metrological requirements', point 1 'Units of mass', second subparagraph, first indent:

for: 'SI untis',

read: 'SI units'.

— Table 1 'Accuracy classes'; second column, against class II:

for: '0,001 g ≤ e ≤ 0,005 g',

read: '0,001 g ≤ e ≤ 0,05 g'.

— footnote (1):

for: 'OJ No L 39, 15. 12. 1980, p. 39',

read: 'OJ No L 39, 15. 2. 1980, p. 40'.

On page 7, Annex I:

— last line of points 2.2.3 and 3.1:

for: 'class 1',

read: 'class i'.

— first line of point 3.3.2:

for: 'range 1',

read: 'range i'.

On page 9, Annex I:

— point 7.6:

the footnote reference '(1)' is deleted.

— footnote (1):

for: 'OJ No L 33, 15. 2. 1980, p. 39',

read: 'OJ No L 39, 15. 2. 1990, p. 40'.

DRAFT COMMISSION COMMUNICATION

Freedom to provide services and the interest of the general good in the Second Banking Directive

(95/C 291/06)

(Text with EEA relevance)

This draft communication is the Commission's contribution to the discussions under way on the problems associated with freedom to provide services (I) and the interest of the general good (II) under the Second Banking Directive (1).

To date, these discussions have been restricted to the Member States, particularly within the framework of the Banking Advisory Committee (BAC) and the Working Group on the Interpretation of the Banking Directives (GTIAD).

The Commission takes the view that the broadest possible consultations should be held on its interpretative work and, accordingly, it invites all interested parties to submit their comments on the draft communication within four months of its being published in the *Official Journal of the European Communities*. Comments should be sent in writing to the following address:

European Commission,
Directorate-General XV, Unit C-1,
Rue de la Loi/Wetstraat 200,
B 1049 Brussels.

If appropriate, and in the light of the contributions received, this draft will be transformed into a Commission interpretative communication which will enable economic operators and the Member States to determine the stance that the Commission would be likely to adopt in the event of a particular problem being brought to its attention.

In the course of its contacts with numerous economic operators, the Commission has come to realize that continuing uncertainty with regard to the interpretation of basic concepts such as freedom to provide services and the interest of the general good has seriously undermined the workings of the machinery set up by the Second Directive and is such as to deter certain credit institutions from exercising the very freedoms which the Second Directive sets out to promote.

The Commission therefore deems it desirable to restate the principles laid down by the Court of Justice and to consider their application to the Second Banking Directive.

The interpretations and ideas set out in this draft communication do not claim to cover all possible situations, but merely the most frequent or most likely.

They do not necessarily represent the views of the Member States and should not, in themselves, impose any obligation on them. However, in accordance with its duties as guardian of the Treaty establishing the European Community and of secondary legislation (Article 155), the Commission reserves the right to exercise the powers vested in it by the Treaty (Article 169).

Lastly, they do not prejudge the interpretation that the Court, which is responsible in the final instance for interpreting the Treaty and secondary legislation, might place on the matters at issue.

I. FREEDOM TO PROVIDE SERVICES AND THE SECOND BANKING DIRECTIVE

A. SERVICES COVERED BY THE DIRECTIVE

1. Nature of the services

Article 20 (1) of the Second Banking Directive provides that:

'Any credit institution wishing to exercise the freedom to provide services by carrying on its activities within the territory of another Member State for the first time shall notify the competent authorities of the home Member State of the activities on the list in the Annex which it intends to carry on.'

Two initial conclusions may be drawn from this paragraph:

— only services involving activities listed in the Annex are concerned,

— only services provided for the first time are covered by the procedure.

The procedure laid down in Article 20 thus concerns only those credit institutions (and their subsidiaries within the meaning of Article 18 (2)) which intend to

(1) Directive 89/646/EEC of 15 December 1989 (OJ No L 386, 30. 12. 1989, p. 1).

carry on for the first time an activity listed in the Annex. Article 23 (2) provides that rights acquired by credit institutions which provided services before the Directive came into force are not affected.

The upshot is that a credit institution which, under freedom to provide services, has already carried on activities listed in the Annex in a Member State prior to the entry into force of the Second Directive is not, as regards those activities and that Member State, subject to the Article 20 procedure.

This raises two questions:

— Should the fact that an activity has been carried on only once or a few times be considered sufficient to confer entitlement to acquired rights?

— How far back in time should one go to find evidence that the activity has been carried on previously?

The Directive is silent on these points.

We can reasonably say, however, that it would be absurd to set a quantitative limit on the number of times an activity has to have been carried on previously and just as arbitrary to set a cut-off date (which date and why?).

Consequently, the credit institution need only have provided a service at least once in the territory of a Member State, regardless of when that was, but it must have carried on this activity lawfully, i.e. in accordance with the law in force in the host Member State at the time the service was provided, and within the territory of the Member State in question (in line with the reasoning at 2). It must also be able, if necessary, to furnish evidence of this previous activity in order to gain exemption from the Article 20 procedure in respect of that activity and that Member State.

Credit institutions with acquired rights within the meaning of Article 23 (2) cannot be subjected by their own supervisory authorities to more onerous procedures than those which were applicable prior to the entry into force of the Second Directive. For example, a credit institution which has already lawfully carried on a number of service activities in the territory of another Member State will not have to notify its home-country supervisory authorities that it intends to continue carrying them on under the Second Directive. Such notification is necessary only for activities it has never previously carried on in the territory of another Member State.

2. **Forms of provision of services**

Article 20 (1) of the Second Directive makes notification conditional on activities being carried on 'within the territory of another Member State'.

This is fundamental in so far as it provides a decisive criterion that applies alongside the preceding considerations.

First of all, it should be noted that, under the Treaty as interpreted by the Court of Justice, freedom to provide services may involve movement on the part of the service provider, a situation covered by the third paragraph of Article 60 of the Treaty, or on the part of the service recipient (4). Services may also be provided without any movement on the part of either provider or recipient (5).

Most of the banking activities listed in the Annex to the Second Directive can be carried on under one of these three forms of provision of services. However, the Commission takes the view that Article 20 was not intended to cover all three forms and that the following distinctions should be made:

(a) *Provision of services with movement on the part of the provider*

This form of freedom to provide services is undoubtedly covered by Article 20, albeit on condition that the activity is listed in the Annex and is being carried on for the first time, as stated above.

(b) *Provision of services with movement on the part of the recipient*

In this instance, the service is provided in the Member State in which the credit institution is established, with the recipient not having been subjected by the credit institution or one of its intermediaries to commercial canvassing (as defined at (d)) in the country in which he is ordinarily resident.

The position here is that a credit institution will not have to make any notification in order to provide banking services to customers who, on their own initiative and without previously having been canvassed, have contacted the credit institution within the territory in which it is established.

(4) Joined Cases 286/82 and 26/83 Luisi and Carbone v. Ministero del Tesoro [1984] ECR 377.

(5) Case C-76/90 Säger v. Dennemeyer [1991] ECR I-4221.

By the same token, a credit institution which, before the entry into force of the Second Directive, carried on certain activities listed in the Annex solely on the basis of approaches made by customers resident in another Member State on their own initiative is subject to the obligation to notify if it wishes to carry on the same activities either by going to the countries where the customers reside or by actually canvassing them.

(c) *Movement of the service itself*

We are concerned here with situations in which the service is provided by post or by modern means of communication (telephone, fax, telex, electronic mail, etc.).

A distinction should be made according to whether the service is provided on the customer's initiative, in which case the credit institution is exempt, as seen above, from complying with the Article 20 procedure, or following commercial canvassing by the credit institution within the recipient's territory. Such canvassing demonstrates an intention to provide a service within the meaning af Article 20 and is therefore subject to prior notification.

The notification procedure must be duly completed before commercial relations are established between the credit institution and its customers.

Thus, it is important to be able to determine who took the first initiative. However, once commercial relations have been established, knowledge of who takes new initiatives is not relevant.

It is only where the credit institution wished to offer its customers services not covered by the initial noification that an additional notification would first have to be made.

(d) *Rules governing advertising*

The question is to determine under what conditions advertising could rank as an intention to provide a service in the territory of another Member State within the meaning of Article 20 and be subject, therefore, to prior notification.

Without prejudice to any future interpretation by the Court of Justice, the Commission's position is as set out below:

Since it is defined as:

'the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations' (*), advertising is to be regarded as simple promotion and, as such, is not subject to prior notification.

It is only where, by its very nature, the advertisement constitutes commercial canvassing, ranking as an actual invitation, issued at a distance, to enter into a contract, or where it precedes a physical journey by the supplier, that it constitutes an intention to provide a service within the territory of another Member State, within the meaning of Article 20.

Consideration should therefore be given to two possible scenarios:

— **The credit institution which placed the advertisement does not intend subsequently to go to the consumer's State of residence**

Here, it is only where the following two requirements are both met that the intention to advertise needs to be notified in advance:

— the advertisement contains sufficient information for the consumer to be able to make up his mind (e. g. interest rate, duration and cost),

— the contract can, thanks to the methods used (reply slip, exchange of letters, telephone, etc.), be concluded at a distance, i.e. without the supplier and the consumer being present in the same place at the same time.

If, however, the contract cannot be concluded without the consumer going to the Member State in which the credit institution is established, notification prior to the launching of the advertising campaign is not required, since, irrespective of the content of the advertisement, the ensuing services will not be provided within the territory of another Member State within the meaning of Article 20.

— **The credit institution which placed the advertisement intends subsequently to go to the consumer's State of residence in order to conclude the contract**

Here, it goes without saying that the supplier must give prior notification since, when he concludes the contract, he will be providing a service within the territory of the State in which the consumer resides. Such notification must be lodged irrespective of the content of the advertisement, even if it does not describe the service in sufficient detail.

(*) Council Directive 84/450/EEC of 10 September 1984 concerning misleading advertising (OJ No L 250, 19. 9. 1984, p. 17).

The Commission is perfectly aware that some situations may be extremely difficult to classify. For example, a consumer may read an advertisement, ranking on the above criteria as commercial canvassing, in a publication which is sold throughout Europe, or see such an advertisement on a television channel which is received in more than one Member State.

The Commission takes the view that, in such cases, the credit institution need not normally notify its intention to the supervisory authorities in all the countries where the publication may be read or the television channel received.

I might, however, be required to do so if the advertisement is ostensibly directed at consumers in a given Member State. Some publications sold throughout the Community have different editions for each country, and some advertisers try to tailor their advertisements to the audiences in the countries where the television channels which carry them are received.

The foregoing applies only to advertising in the strict sense of the term and does not affect the right of Member States to insist that the rules they have adopted, in the interest of the general good, on the content of such advertising are, in accordance with Article 21 (11) of the Second Banking Directive and subject to the Community legislation in force, complied within their territory.

3. Provision of services and establishment

The concept of provision of services differs from that of establishment in that the former, when carried on in the territory of the host country, is characterized by its temporary nature, whereas the latter implies the existence of permanent premises in the host country.

The distinction stems from the Treaty itself, Article 60 of which stipulates that a person providing a service may, in order to do so, 'temporarily' pursue his activity in the State where the service is provided.

Extensive case-law has confirmed this definition.

If, on the other hand, the undertaking maintains a permanent presence in the Member State in which it provides services, it comes under the Treaty provisions on the right of establishment (3).

If an activity is carried on temporarily, but frequently, the question arises whether there might not be, on the part of the company, an intention to sidestep the rules on establishment by invoking the freedom to provide services. The Court has acknowledged that a Member State is entitled to take steps to prevent a service provider whose activity is entirely or mainly directed towards its territory from exercising the freedom enshrined in Article 59 of the Treaty in order to circumvent the rules of professional conduct which would be applicable to him if he were established in that State (4). It adds that such a situation may fall within the ambit of the chapter on the right of establishment and not of that on the freedom to provide services.

Accordingly, the criterion of frequency, though not sufficient to define provision of services (an establishment may also operate on an occasional basis), is important when it comes to determining whether there has been an attempt to abuse the right embodied in Article 59.

However, this reasoning is valid only for those forms of provision of services which are covered by Article 20, i.e. those which involve movement by the service provider or commercial canvassing without any movement on his part.

Thus, a situation where a credit institution is constantly being approached within its territory by consumers residing in other Member States could not be held to constitute an abuse. In such a case there would be no intention to abuse the right recognized by the Treaty.

However, it is not always easy to draw the line between the two concepts of provision of services and establishment. Some situations are difficult to classify. This is particularly true of:

— electronic machines,

— recourse to independent intermediaries, and

— the permanent presence of the institution's own staff.

(3) Case 205/84 Commission v. Germany [1986] ECR 3755.

(4) Case 205/84, *supra*; Case 33/74 Van Binsbergen [1974] ECR 1299; Case C-148/91 Veronica [1993] ECR I-487; Case C-23/93 TV 10, judgment of 5 October 1994, not yet reported.

On the strength of the Court's case-law, the Commission proposes the following clarifications:

(a) *Electronic machines*

This means electronic machines capable of performing the banking activities listed in the Annex to the Second Directive.

Such machines may be covered by the concept of 'establishment' if they fulfil the criteria laid down by the Court of Justice (see the paragraph on intermediaries below).

However, such a machine is unlikely to be the only place of business of a credit institution in a Membre State. In the vast majority of cases, such machines are attached, in the same country, to a branch or an agency or some other form of establishment. In that event, the machine is not an entity in its own right and is covered by the rules governing the establishment to which it is attached.

If the machine does, however, constitute the only presence of a credit institution in a Member State, the Commission takes the view that, except in the unlikely event that the credit institution itself considers it to be an establishment within the meaning of the Court's case-law, it ranks as a provision of services in the territory of a Member State and must, for that reason and subject to the above considerations on the concept of 'first time', be notified.

For such a machine to be capable of being treated as an establishment, it would have to have a management, which is by definition impossible unless the Court acknowledges that the concept can encompass not only 'human', management but also 'electronic' management.

Notification keeps the host country informed and enables it, whatever the circumstances, to enforce the rules it has adopted in the interest of the general good, such as the requirement that a telephone number in that country be affixed to the machine.

Lastly, the mere presence in the host country of a person or company responsible simply for maintaining the machine, filling it and dealing with any technical problems encountered by users cannot rank as an establishment and does not deprive the credit institution of its status as a cross-border service provider.

(b) *Independent intermediaries*

We are concerned here with defining the arrangements applicable to intermediaries to whom credit institutions have recourse in order to do business in another Member State, the conditions under which intermediaries might be regarded as permanent establishments, and the resulting legal implications.

In its ruling of 4 December 1986 in Commission v. Germany (7) the Court held that:

'an insurance undertaking of another Member State which maintains a permanent presence in the Member State in question comes within the scope of the provisions of the Treaty on the right of establishment, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but authorized to act on a permanent basis for the undertaking, as will be the case with an agency'.

The Court has therefore acknowledged that, in principle, an enterprise which employs an intermediary in another Member State on a permanent basis may lose its status as a cross-border service provider and fall within the scope of the provisions on the right of establishment.

Its case-law sheds light on the conditions under which the intermediary might himself be regarded as an agency or a branch.

It its De Bloss ruling of 6 October 1976 (8) the Court held that:

'One of the essential characteristics of the concepts of branch or agency is the fact of being subject to the direction and control of the parent body'.

It concluded that a sole concessionaire not subject to the control and direction of a company could not be regarded as a branch, agency or establishment.

In its ruling of 18 March 1981 in Blanckaert & Willems (9) the Court held that:

'An independent commercial agent who merely negotiates business, inasmuch as his legal status leaves him basically free to arrange his own work and decide what proportion of his time to devote to the interests of the undertaking which he agrees to represent and whom that undertaking may not prevent from representing at the same time several firms competing in the same manu-

(7) Case 205/84 [1986] ECR 3755.
(8) Case 14/76 [1976] ECR 1497.
(9) Case 139/80 [1981] ECR 819.

facturing or marketing sector, and who, moreover, merely transmits orders to the parent undertaking without being involved in either their terms or their execution, does not have the character of a branch, agency or other establishment ...'.

In even more precise terms, in its Somafer ruling of 22 November 1978 ([10]), the Court held that:

'The concept of branch, agency or other establishment implies a place of business wich has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties, so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension'.

Moreover, in his opinion in Shearson Lehman Hutton, which he delivered on 27 October 1992 ([11]), Mr Advocate-General Darmon stated that:

'The link of dependance *vis-à-vis* the company established in another signatory State ([12]) is not the determining criterion here. In our opinion, that criterion resides in the fact that the secondary establishment has the power to enter into contracts with third parties'.

Lastly, in his report on the Brussels Convention, Mr Jenard notes that there is an agency or branch only 'where the foreign company is represented by a person capable of acting in a manner that is binding on it *vis-à-vis* third parties' ([13]).

It follows from these precedents that, for the links between an independent intermediary and a credit institution to be regarded as meaning that the credit institution falls within the scope of the arrangements governing a branch, the intermediary must at one and the same time:

— have received an exclusive brief from a single credit institution,

— be able to negotiate on behalf of the credit institution and commit the latter,

— operate on a permanent basis.

([10]) Case 33/78 [1978] ECR 2183. See also judgment of 6 April 1995 in Case C-439/93 Lloyd's Register of Shipping v. Societé Campenon Bernard, not yet reported.

([11]) Case C 89/91 [1993] ECR I-139.

([12]) The term 'signatory State' is used here because the case concerned the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

([13]) OJ No C 59, 5. 3. 1979, p. 1.

It is, therefore, only where the independent intermediary acts as a genuine extension of the credit institution that the credit institution falls within the scope of the arrangements applicable to the establishment of a branch.

This means in practice that, in such a case, the credit institution must be regarded as possessing a branch in the host country, with all that this implies from the legal point of view. The credit institution will have to make a prior notification, specifying that the activities envisaged will be carried on through an independent intermediary. The host Member State may, if it so wishes, require a credit institution which has recourse to such an intermediary to report to it periodically on transactions effected through him (Article 21 (1)). Lastly, the intermediary's activities will be carried on with due regard for the rules on branches adopted in the interest of the general good by the host State.

Other scenarios must, however, also be considered:

If the intermediary works for more than one credit institution, the following distinction must be made:

— **He works exclusively for a group of credit institutions which have jointly called on his services**

Here, it can be considered that all the credit institutions are established in the form of a branch, on condition, of course, that all the other three criteria referred to above are satisfied.

— **He works for more than one credit institution which have not jointly called on his services**

In this instance, it cannot reasonably be maintained that all the credit institutions on whose behalf he operates are covered by the arrangements applicable to branches. The first of the above three conditions is not satisfied

Accordingly, it may be considered that credit institutions having recourse to this intermediary are, for want of being established, in the situation envisaged by Article 20 of the Second Directive.

Indeed, the fact that a credit institution has made use of the services of an intermediary demonstrates its intention temporarily to provide services within the meaning of Article 20 of the Second Directive. Prior notification is, therefore, required.

The above conclusions are not affected by the fact that law in some Member States requires that a mandate be given by the credit institution to the intermediary.

We should in such case examine the extent of the mandate, the institution's ability to control the authorized representative, the possibility for the latter to act in a manner that is binding on the credit institution, etc.

The above considerations apply irrespective of whether the intermediary is a natural person or a legal person.

Under the specific scenario where the intermediary is a credit institution, offering its own customers the products of another credit institution, the latter must, unless it is covered by the aquired rights clause under Article 23 (2), make prior notification regarding the exercise of the freedom to provide services on the basis of Article 20 of the Second Directive.

If, however, a credit institution accommodates on its premises a branch of another credit institution, it is clear that notification of the exercise of freedom of establishment by setting up a branch must be made, subject to Article 23 (1).

(c) *Permanent presence of the credit institution's staff*

A distinction should be drawn here between two possible scenarios:

— **The institution's staff established on a permanent basis in another Member State do not engage in any banking activity**

Such an arrangement is commonly referred to as a 'representative office', a flexible structure traditionally regarded simply as a means of reconnoitring the market, establishing contacts and examining to what extent establishment in the country concerned might prove viable.

Such offices are to be regarded as *sui generis* establishments.

The Commission takes the view that such offices cannot, of course, be regarded as branches, the establishment of which would, on the basis of Article 19 of the Second Banking Directive, be subject to the prior notification requirement, and that they may not be subject to a prior authorization requirement on the basis of the authorization issued for the opening of a branch under the arrangements in force prior to the Second Directive.

The host Member State may, however, require the credit institution to inform it of the opening of such an office, may subject it to a registration procedure that would have to be a mere formality and may carry out a simple, unsystematic check to ascertain whether the office is not, in fact, engaging in banking activities.

— **The permanent staff engage in banking activities**

The situation here is quite clear. The credit institution is regarded as having a branch which, after 1 January 1993, should have been notified in advance under the Second Directive. If the branch was operational before 1 January 1993 without having received authorization even though the host-country legislation imposed such a requirement, it may not avail itself of the acquired rights granted by Article 23 (1) since it had not commenced its activities 'in accordance with the provisions in force in [its] host Member State'.

4. Nature of the notification

The Commission considers that the notification procedure laid down in the Second Directive (both for branches and for provision of services) pursues a simple objective of exchange of information between supervisory authorities and is not a consumer protection measure. It cannot, in the Commission's view, be considered a procedural condition underlying the validity of banking contract. The fact that notification has not taken place cannot, therefore, vitiate such a contract. Action can, of course, be taken against the offending bank, but not against the contract itself.

The annulment of a banking contract concluded, in the absence of notification, by a credit institution authorized in the Community would, in the Commission's opinion, contravene the principle of proportionality, which is one of the general principles of Community law (14).

If this risk of nullity were to be incurred, the legal certainty of contracts concluded in good faith might be seriously affected.

B. COMMENCEMENT OF THE PROVISION OF SERVICES

The problem lies in the interpretation of Article 20 (2), which provides that:

'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.'

Thus, the arrangements governing the provision of services differ from those applicable to branches in that, for the latter, Article 19 (5) provides for the 'receipt' by

(14) See, for example, the judgment in Case C-331/88 [1990] ECR I-4023

the branch of a 'communication' from the competent authorities of the host Member State or, failing that, the absence of any such communication for a period of two months as a prerequisite for the branch to commence its activities.

This triangular relationship is not provided for in the case of the provision of services, for which there is a more flexible set of arrangements expressly laid down by the Community legislation so as not to create obstacles which did not exist under the previous arrangements.

During the discussions which preceded the adoption of the Second Directive, proposals to base the arrangements governing freedom to provide services on those governing branches were rejected.

Since June 1989 the text under discussion has contained no reference to any obligation for a credit institution which has notified its own supervisory authorities of its intention to carry on business in another Member State under freedom to provide services to await confirmation of receipt of the notification before commencing its activities.

In the Commission's opinion, the re-introduction, by way of interpretation, of formalities which the Member States did not wish to see in the definitive version of the text adopted by the Council is neither desirable nor in keeping with the spirit and letter of the Second Directive.

A credit institution will therefore be able to commence its activities under freedom to provide services as soon as it has notified its intention to its own supervisory authorities, which, under the Directive, have one month in which to send that notification to the supervisory authorities in the host country.

The Commission considers that the requirement of confirmation of receipt by the supervisory authorities in the host country (a procedure envisaged for the establishment of a branch) is unacceptable and constitutes an infringement of the Second Directive. The credit institution is free to request such confirmation but this formality may not be imposed as a prerequisite for it to commence its activities under freedom to provide services.

II. THE GENERAL GOOD IN THE SECOND BANKING DIRECTIVE

A. NOTIFICATION OF CONDITIONS TO BE MET IN THE INTEREST OF THE GENERAL GOOD

The Commission considers that, under Article 19 (4) of the Second Directive, it is an option and not an obligation for the competent authority in the host country to inform a credit institution wishing to set up a branch in its territory of the conditions to be met in the general good.

The uncertainty arose from the use in the provision in question of the expression 'if necessary'. Some countries felt that this was indicative of an obligation, while others viewed it as an option or a simple 'moral obligation'.

The Commission takes the view that it is not possible to conclude from the wording of Article 19 (4) that an obligation exists, since the text is silent about the form and content of such notification. Should the instruments in question be identified or their full text communicated? Should only the provisions in them that deal with the general good be notified?

Consequently, since this 'obligation' cannot be accurately demarcated, it would not be possible to determine, firstly, whether it had been complied with in a particular case and, secondly, whether any penalty could be imposed for failure to comply. Under such circumstances, what would be the implications of an obligation that would be neither verifiable nor binding since there would be no scope for imposing any penalty?

Furthermore, since there is no detailed, harmonized definition of the 'general good', how can a Member State be deemed to be obliged to notify the conditions laid down by it in the interest of the general good when such conditions may vary from one Member State to another and may not be applicable in the same fields as in the home Member State? Since there is no way of knowing in advance what the credit institution wishes to obtain, the responsibility of a Member State acting in good faith could be called into question possibly giving rise to legal uncertainty prejudicial to the branch.

At all events, any shifting onto the host country of a duty to provide information that was incumbent on the credit institution would not be desirable. On the contrary, the Commission takes the view that the said duty lies with the credit institution itself, which is deemed to be aware of the law of the country in which it is carrying on business.

However, a credit institution which has let it be known, via its supervisory authority, that it wishes to set up a branch and wants to find out about the conditions applicable in the interest of the general good in the host country (assuming that it has not yet found out before submitting its notification), should be able to obtain without any difficulty the information it is seeking from the host country. However, a Member State that refused

to accede to such a request for information would not be in breach of Community law. Any harm suffered would be covered only by national law. Once informed, the Commission could at most make its views known to the host country; it would not be in a position to take any legal action on the basis of existing instruments.

Moreover, if the Member State responded favourably to the credit institution's request for information, it would be bound only by an obligation as to means and not as to result, that is to say, it could not be required to give notification of all its legislation and a non-notified text could still be fully relied on against the credit institution. This is because the application of a legal provision within the territory of the Member State which adopted it cannot be made conditional on compliance with an administrative formality. Otherwise a foreign institution would, with complete impunity, be 'outside the law', and this makes no sense.

B. APPLICABILITY OF RULES ADOPTED IN THE INTEREST OF THE GENERAL GOOD

The Second Banking Directive contains many references to the concept of the general good, providing in particular that a credit institution operating under a single licence must comply with host-country rules adopted in the interest of the general good.

Such compliance is required either in the specific context of freedom of establishment (Article 19 (4)) or generally (Article 21 (5)), thereby extending it to the provision of services.

In view of this, the following question arises:

Since the entry into force of the Second Banking Directive, may the host Member State require a credit institution operating under a single licence to comply with the same conditions laid down in the interest of the general good, whether the credit institution carries on its activity through a branch or under freedom to provide services?

1. Compliance with the interest of the general good by service providers

(a) *Principles laid down by case-law*

The Court ruled in Säger (see footnote 3) that:

'as a fundamental principle of the Treaty, the freedom to provide services may be limited only by provisions which are justified by imperative reasons relating to the public interest and which apply to all persons or undertakings pursuing an activity in the State of destination, in so far as that interest is not protected by the rules to which the person providing the services is subject in the Member State in which he is established. In particular, those requirements must be objectively necessary in order to ensure compliance with professional rules and to guarantee the protection of the recipient of services and they must not exceed what is necessary to attain those objectives.'

The Court has therefore spelt out a number of criteria for determining whether a measure can be relied upon against a service provider.

Such a measure must:

— be in the interest of the general good,

— be non-discriminatory,

— be objectively necessary, and

— be proportionate to the objective pursued.

It is also necessary for the interest of the general good not to be safeguarded by rules to which the provider of services is already subject in the Member State in which he is established.

Lastly, the restriction must also come within a field which has not been harmonized. National provisions concerning, for example, own funds, the solvency ratio, deposit guarantees or large exposures can no longer be justified on grounds of the general good. The level of harmonization achieved by the directives determines what one might call the 'Community general good'.

(b) *Contribution made by the Second Banking Directive*

By providing that activities carried on under freedom to provide services may be restricted only by host-country general good rules, the Second Banking Directive adds nothing new to the Court's long-established case-law. As explained above, the Court has held that even a non-discriminatory host-country rule may be overridden to the benefit of a service provider if the provision is found not to be in the interest of the general good or, where it is so, if it is not necessary or proportionate to the objective pursued.

A host Member State will be able to enforce its general good rules against a service provider only subject to the conditions developed by case-law and in accordance with the criteria set out above.

2. **Compliance with the interest of the general good by a branch** (15)

(a) *Principles developed by case-law*

The fact that the Second Directive refers expressly to the concept of the general good in connection with the activities of a branch is a considerable step forward compared with the Court's current case-law.

The Court's case-law on the right of establishment (which does not draw a distinction between subsidiaries and branches) is still based on the principle of full compliance by the economic operator with the legislation of the country in which he is established, unless it can be shown that this is discriminatory.

The Court of Justice considers that Article 52 of the Treaty is simply a non-discrimination measure, i.e. that a Community national (including a company or firm within the meaning of Article 58) cannot invoke it against a provision laid down by another Member State restricting his freedom of establishment unless the provision in question introduces discrimination based on nationality (or, as far as companies or firms are concerned, on the location of the head office.) (16)

The Court has, however, softened its approach here in two respects:

— firstly, it has held that the rules of equal treatment also prohibit all hidden forms of discrimination which, by applying other distinguishing criteria, actually lead to the same result (17),

— secondly, it has extended its case-law in two stages:

  — In its judgment of 7 May 1991 in Vlassopoulou (18) it held that

  'even if applied without any discrimination on the basis of nationality, national requirements concerning qualifications may have the effect of hindering nationals of the other Member States in the exercise of their right of establishment guaranteed to them by Article 52 of the EEC Treaty.'

  This judgment required a Member State to compare the diplomas held by a Community national with the qualifications required by its own legislation.

  Nevertheless, there was still no question here of the general good.

  — This step was first taken in the Ramrath judgment of 20 May 1992 (19) and then, above all, in the Kraus judgment of 31 March 1993 (20) in paragraph 32 of which the Court stated that Article 52 of the Treaty precluded any national measure which, even if it is not discriminatory, 'is liable to hamper or make less attractive the exercise by Community nationals [...] of the basic freedoms guaranteed by the Treaty. Only if such a measure pursued a legitimate objective compatible with the Treaty and justified by urgent reasons of general interest would this not be the case. In addition, the application of the national rules in question must [...] be suited to guaranteeing the achievement of the objective they pursue and not go beyond what is necessary to attain that objective.'

Examination of this new case-law shows that, as regards the professional qualifications needed in order to gain access to an activity, the Court is moving away from its traditional approach of strict equality of treatment. In this respect, it now proceeds on the basis that any restriction is in principle contrary to Article 52 unless it is in the interest of the general good and is necessary and proportionate. This is an instance of the full and complete application of the principle of mutual recognition.

It would seem, however, that the Court is adhering to its classic case-law as regards the conditions under which an activity may be carried on by way of establishment (see footnote 15). A Member State may still, in principle, impose conditions on the pursuit of the activity in its territory which are additional to or different from those in force in the home Member State, provided, of course, they are not discriminatory (21).

(15) The Commission's analysis is based on existing case-law. It may, of course, have to be amended in the light of the Court's future case-law in this field.

(16) See, for example, Case 221/85 Commission v. Belgium [1987] ECR 719; Case 198/86 Conradi [1987] ECR 4469.

(17) See, for example, its judgment in Case C-1/93 Halliburton, [1994] ECR I-1137, or in Case C-330/91 Commerzbank [1993] ECR I-4017.

(18) Case C-340/89 [1991] ECR I-2357. See also Case C-104/91 Colegio Oficial [1992] ECR I-3003.

(19) Case C-106/91 [1992] ECR I-3351.

(20) Case C-19/92 [1993] ECR I-1663.

(21) Only on a very 'progressive' interpretation of the Ramrath judgment could one take the view that, even as regards the conditions governing the pursuit of an activity by way of establishment, the Court applies the general good test. The judgment stands alone, however, and lends itself to different interpretations. The Court would, therefore, have to confirm the interpretation expressly and clearly before its decision could be regarded as a precedent. At all events, the question no longer arises in the banking sphere as, in the Commission's view, Directive 89/646/EEC goes further than the Court's case-law.

The position is, however, now different in the banking sphere.

(b) *Contribution made by the Second Banking Directive*

The Second Directive provides for mutual recognition of the activities listed in the Annex, both by a branch and under freedom to provide services, subject to the host-country's general good rules.

It does not distinguish, with regard to the conditions of carrying on this activity, between setting up a branch and provision of services. The differences which it introduces concern essentially the notification procedure, which is more detailed for the establishment of a branch (Article 19), and the reporting requirements reserved for branches (Article 21 (1)).

The Commission is therefore of the opinion that, since the entry into force of the Second Banking Directive, the legal reasoning to be applied when assessing whether a restriction on a banking activitiy listed in the Annex to the Second Directive is in conformity with Community law is identical, whether the operator on whom the restriction is placed carries on that activity through a branch or under freedom to provide services.

With regard to application of the principle of mutual recognition, the fact that the Community legislation was not intended to differentiate between the arrangements applicable to branches and those applicable to the provision of services ([22]) is clear from the 16th recital to the Directive, which states that:

'... Member States must ensure that there are no obstacles to carrying on activities receiving mutual recognition in the same manner as in the home Member State, as long as the latter do not conflict with legal provisions protecting the general good in the host Member State.'

([22]) This interpretation, which gives full effect to the principle of mutual recognition, is shared in particular by W. Van Gerven, former Advocate-General at the Court of Justice, who wrote in issue 1/1991 of the review *Droit Bancaire et Financier* that the Second Banking Directive '... is not, however, restricted to mutual recognition of authorizations and systems of prudential supervision. The host Member States have also had to renounce the application in their entirety of their own rules governing the activities benefiting from mutual recognition to the institutional concerned. Only requirements justified by the interest of the general good may still be relied upon against them.' He concludes that 'in comparison with the Court's case-law, it must be noted that the Council has taken an important step by providing that the host Member States will no longer be able to apply to credit institutions operating through a branch all their national provisions, even if non-discriminatory, governing the activities benefiting from mutual recognition.'

The recitals to a Directive have legal value as an aid to interpretation since they shed light, for the reader, on the intentions behind Community legislation ([23]).

3. **Conditions under which rules adopted in the interest of the general good by the host country may be enforced**

It can be deduced from the Second Directive, read in conjunction with the Court's general good case-law, that any non-discriminatory national measure which restricts a banking activity benefiting from mutual recognition and carried on either through a branch or under freedom to provide services must, if it is to be capable of being lawfully enforced against a Community credit institution, be in the interest of the general good, be necessary and proportionate and not duplicate the rules of the home country.

If the restriction in question is discriminatory, it can be justified only on the grounds set out in Article 56 of the Treaty (public policy, public security and public health) ([24]).

It is for the Member States imposing the restriction to prove that it meets these conditions.

The Court has provided a number of pointers as to the areas covered by the concept of the general good and the principles to be applied.

(a) *Areas covered by the general good*

The Court has so far recognized the following areas as being covered by the concept of the general good ([25]);

Professional rules intended to protect the recipient of services ([26]), the protection of workers ([27]), and

([23]) See, in particular, the judgment in Case 76/72 Michel [1973] ECR 457.

([24]) Case C-17/92 Federación de Distribuidores Cinematográficos (not yet reported).

([25]) To this list must be added *a fortiori* the provisions of Article 56, i.e. public policy, public security and public health.

([26]) Joined Cases 110/78 and 11/78 Van Wesemael [1979] ECR 35.

([27]) Case 279/80 Webb, *supra*.

consumers ([28]), preservation of the good reputation of the national financial sector ([29]), the prevention of fraud ([30]), social order ([31]), the protection of intellectual property ([32]), the preservation of the national historical and artistic heritage ([33]) the cohesion of the tax system ([34]) and road safety ([35]).

The list is open-ended, and the Court reserves the right to add to it at any time ([36]).

(b) *Principles to be applied*

For it to be compatible with Community law, it is not sufficient that the measure invoked be recognized as being in the interest of the general good. The host Member State must also respect certain principles.

These principles are those established by the Court in its case-law on the general good (non-discrimination, non-duplication, necessity, proportionality, etc.).

A Member State might, therefore, have to show that, *vis-à-vis* foreign operators authorized in a Member State where such a restriction does not exist, a measure is in the interest of the general good and is necessary, proportionate, etc., or that it belongs to a field in which the competence of the host country is undiminished (e.g. monetary policy). If it were unable to do so, the restriction would not apply to the foreign operator.

However, although the reasoning is identical and the same questions must be raised whether the credit institution operates through a branch or under freedom to provide services, the answers vary depending on the mode of operation.

The assessment of the proportionality of a restriction may differ depending on the mode of operation.

There are undoubtedly differences of kind between provision of services and establishment and, consequently, a restriction could be more easily regarded as proportionate where an operator carries on his activities permanently within the territory of a Member State than where he does so only temporarily.

Moreover, the Court has recognized this difference by imposing a less restrictive and more 'lightweight' legal framework for provision of servivces than for establishment.

It has consistently held that a Member State:

'may not make the provision of services in its territory subject to compliance with all the conditions required for establishment and thereby deprive of all practical effectiveness the provisions of the Treaty whose object is, precisely, to guarantee the freedom to provide services.' ([37])

The Court has likewise consistently held that it does not follow from Article 60 (3) of the Treaty that:

'all national legislation applicable to nationals of that State and usually applied to the permanent activities of undertakings established therein may be similarly applied in its entirety to the temporary activities of undertakings which are established in other Member States.' ([38])

Thus, depending on the circumstances, the same restriction applied in the interest of the general good could be adjudged proportionate in respect of a branch but disproportionate in respect of a service provider.

(c) *Link with the Rome Convention*

The Commission is aware that the question of the applicability of the rules governing the interest of the general good is closely linked to that of the law applicable to banking contracts.

By determining the law applicable to a banking contract, it is possible to establish which substantive law

([28]) Judgment of 4 December 1986, Commission v. Germany, *supra*.

([29]) Case C-384/93 Alpine Investments BV (not yet reported).

([30]) Case C-275/92 Schindler (not yet reported).

([31]) Ibid.

([32]) Case 62/70 Coditel [1980] ECR 881.

([33]) Case C-180/89 Commisssion v. Italy [1991] ECR 709.

([34]) Case C-204/90 Bachmann [1992] ECR 249.

([35]) Case 55/93 Johannis Gerrit, judgment of 5 October 1994, not yet reported.

([36]) It is also likely that mandatory requirements, a term generally used in relation of the movement of goods, may also be invoked in relation to services. Thus, there is no doubt that environmental protection might, even in the area of services, be covered by the general interest. The Court has simply not yet had the opportunity to confirm this. This example apart, measures in the interest of the general good (Article 59) and mandatory requirements (Article 30) are virtually identical.

([37]) Säger, *supra*. See also Case C-198/89 Commission v. Greece [1991] ECR I-735.

([38]) Case 205/84 Commission v. Germany, *supra*. See also Case 279/80 Webb [1981] ECR 3305.

should govern the service proposed, i.e. to ascertain both what service may be offered and what contractual clauses can legally be agreed.

In the absence of harmonized substantive law, and given that the Second Banking Directive contains no specific rules for determining the law applicable to contractual obligations, reference should be made to the Rome Convention of 19 June 1980 (39).

This Convention unifies the rules governing the choice between the laws of the States that have ratified it by laying down the principles under which, if the parties to a contract have not done so, the law applicable to a contractual obligation is to be determined.

It sets out in particular the legal line to be taken where a contract is concluded with a consumer for a purpose which can be regarded as being outside his trade or profession.

Without going into detail, the Commission considers that application of the rules for determining the law applicable laid down in the Rome Convention may conflict with the principle of mutual recognition of banking activities, the cornerstone of the Second Directive.

The principle of mutual recognition, as elucidated by the Court of Justice and adopted in the Second Directive, tends towards application of the substantive law of the service provider subject to compliance with the rules governing the interest of the general good in the host country, provided, however, that those rules satisfy the tests described above.

The Rome Convention, an instrument governed by private laws, has a different objective.

As a result of these different objectives, application of the principles laid down in the Rome Convention could lead a court, particularly where the contract is concluded with a consumer, to designate automatically the legislation of the country of the consumer (host country in the hypothesis adopted) as the legislation applicable to a banking contract. A conflict would thus be created with the principle of mutual recognition, according to which only the host country rules governing the interest of the general good and satisfying the tests established by the Court can be relied upon against the service provider.

There is every reason to believe, in the case of consumer protection, that the host country legislation may, either entirely or in part, come under the interest of the general good. It is still necessary, however, for the provisions invoked to satisfy the test of necessity, non-duplication, proportionality, etc. (40).

There can be no doubt that, if such a choice as to the law applicable had to be made, Community law would prevail. The Rome Convention itself provides for Community law to have precedence (Article 20).

The Commission therefore takes the view that, for full effect to be given to the principle of mutual recognition, a three-stage approach should be adopted:

— first stage: determination of the law applicable on the basis of the Rome Convention,

— second stage: does the result obtained constitute an ostacle to mutual recognition?

— third stage: in the case of an answer in the negative: application of the host country law; in the case of an answer in the affirmative: application of the host country law only if it can be justified by the interest of the general good and if the conditions laid down by the Court are met.

A national court asked to rule on a choice of laws (this will inevitably occur with the growth in cross-frontier banking transactions) will therefore have to carry out this three-stage reasoning process (41).

4. Conclusions

The Commission does not believe that an activity may, whatever the circumstances, be carried on under the same conditions in the home country and in the host country. It is self-evident that, for example, the

(39) Convention on the law applicable to contractual obligations, 80/934/EEC (OJ No L 266, 9. 10. 1980, p. 1).

(40) See in particular Case 286/81 Oosthoeck [1989] ECR 4575; Case 382/87 Buet [1990] ECR 1235; Case C-362/88 GB-INNO-BM [1993] ECR I-667; Case C-126/91 Yves Rocher [1993] ECR I-2361.

(41) The Court of Justice is not yet competent to interpret the Rome Convention since the two protocols (89/128/EEC and 89/129/EEC) conferring such competence on it have not yet been adequately ratified.

civil, criminal, tax or labour laws of the host country apply to the branch or foreign service provider, albeit within the limits of existing Community harmonization and the Court's case-law. These sectors, which concern the overall socio-economic environment in which the credit institution operates, are not affected by the mutual recognition introduced by the Second Directive.

However, non-discriminatory restrictions applying to the service itself (its intrinsic features — cost, interest rates, duration, contractual terms and conditions — and underlying financial techniques) or the way in which it is marketed (advertising, canvassing, etc.) must, if they are to be capable of being relied upon against a Community credit institution, satisfy the general good test (and the principles of proportionality, etc.), regardless of whether the service is provided through a branch or under freedom to provide services ([42]).

In deciding whether they do so, one will have to take account of the fact that, as regards proportionality, the results will vary depending on whether the credit institution operates under freedom to provide services or through a branch.

([42]) In the case of canvassing, the Court has ruled, in the above-mentioned judgment concerning Alpine Investment BV (see footnote 29), that a Member State may, without infringing Article 59 of the Treaty, prohibit an economic operator from making unsolicited telephone calls (cold calling) in the interest of protecting consumers and preserving the good reputation of the national financial sector.

I. d) Directive 95/26/EC of the European Parliament and of the Council of 29 June 1995 amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions. Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance. Directives 79/267/EEC and 92/96/EEC in the field of life assurance. Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits) with a view to reinforcing prudential supervision.

OJ. N° L 168 18.07.1995, p. 7 - 13.

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 95/26/EC

of 29 June 1995

amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits), with a view to reinforcing prudential supervision

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3) in the light of the joint text approved by the Conciliation Committee on 11 May 1995,

(1) Whereas certain events have shown that it is appropriate to amend in certain respects certain Council Directives, specifying the general framework within which credit institutions, insurance undertakings, investment firms and undertakings for investment in transferable securities (Ucits) may carry on their business, namely Directives 77/780/EEC (4) and 89/646/EEC, Directives 73/239/EEC (5) and 92/49/EEC, Directives 79/267/EEC (6) and 92/96/EEC, Directive 93/22/EEC (7) and Directive 85/611/EEC (8), with a view to reinforcing prudential supervision; whereas it is desirable to adopt similar measures throughout the financial services sector;

(2) Whereas those Directives lay down, *inter alia*, the conditions which must be fulfilled before the competent authorities may grant authorization for the taking-up of business;

(3) Whereas the competent authorities should not authorize or continue the authorization of a financial undertaking where they are liable to be prevented from effectively exercising their supervisory functions by the close links between that undertaking and other natural or legal persons; whereas financial undertakings already authorized must also satisfy the competent authorities in that respect;

(4) Whereas the definition of 'close links' in this Directive lays down minimum criteria and that does not prevent Member States from applying it to situations other than those envisaged by the definition;

(5) Whereas the sole fact of having acquired a significant proportion of a company's capital does not constitute participation for the purposes of this Directive if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking;

(6) Whereas the reference to the supervisory authorities' effective exercise of their supervisory functions covers supervision on a consolidated basis which must be exercised over a financial undertaking where the provisions of Community law so provide; whereas, in such cases, the authorities applied to for authorization must be able to identify the authorities competent to exercise supervision on a consolidated basis over that financial undertaking;

(7) Whereas the principles of mutual recognition and of home Member State supervision require that Member States' competent authorities should not grant or should withdraw authorization where factors such as the content of programmes of operations, the geographical distribution of the activities actually carried on indicate clearly that a financial undertaking has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries on or intends to carry on the greater part of its activities; whereas a

(1) OJ No C 229, 25. 8. 1993, p. 10.
(2) OJ No C 52, 14. 2. 1994, p. 15.
(3) Opinion of the European Parliament of 9 March 1994 (OJ No C 91, 28. 3. 1994, p. 61), Council common position of 6 June 1994 (OJ No C 213, 3. 8. 1994, p. 29), European Parliament Decision of 26 October 1994 (OJ No C 323, 21. 11. 1994, p. 56).
(4) OJ No L 322, 17. 12. 1977, p. 30. Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).
(5) OJ No L 228, 16. 8. 1973, p. 3. Directive as last amended by Directive 92/49/EEC (OJ No L 228, 11. 8. 1992, p. 1).
(6) OJ No L 63, 13. 3. 1979, p. 1. Directive as last amended by Directive 92/96/EEC (OJ No L 360, 9. 12. 1992, p. 1).
(7) OJ No L 141, 11. 6. 1993, p. 27.
(8) OJ No L 375, 31. 12. 1985, p. 3. Directive as amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

financial undertaking which is a legal person must be authorized in the Member State in which it has its registered office; whereas a financial undertaking which is not a legal person must have its head office in the Member State in which it has been authorized; whereas, in addition, Member States must require that a financial undertaking's head office always be situated in its home Member State and that it actually operates there;

(8) Whereas it is appropriate to provide for the possibility of exchanges of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system; whereas, in order to preserve the confidential nature of the information forwarded, the list of addressees must remain within strict limits;

(9) Whereas certain behaviour, such as fraud and insider offenses, is liable to affect the stability, including integrity, of the financial system, even when involving undertakings other than financial ones;

(10) Whereas it is necessary to specify the conditions under which such exchanges of information are authorized;

(11) Whereas, where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, these may, where appropriate, make their agreement subject to compliance with strict conditions;

(12) Whereas exchanges of information between, on the one hand, the competent authorities and, on the other, central banks and other bodies with a similar function in their capacity as monetary authorities and, where appropriate, other public authorities responsible for supervising payment systems should also be authorized;

(13) Whereas the same obligation of professional secrecy on the authorities responsible for authorizing and supervising Ucits and the undertakings that take part in those activities and the same possibilities for exchanging information as those granted to the authorities responsible for authorizing and supervising credit institutions, investment firms and insurance undertakings, should be included in Directive 85/611/EEC;

(14) Whereas this Directive coordinates all the provisions governing information exchanges between authorities for the entire financial sector as provided for in Directive 93/22/EEC;

(15) Whereas, for the purpose of strengthening the prudential supervision of financial undertakings and protection of clients of financial undertakings, it should be stipulated that an auditor must have a duty to report promptly to the competent authorities, wherever, as provided for by this Directive, he becomes aware, while carrying out his tasks, of certain facts which are liable to have a serious effect on the financial situation or the administrative and accounting organization of a financial undertaking;

(16) Whereas, having regard to the aim in view, it is desirable for Member States to provide that such a duty should apply in all circumstances where such facts are discovered by an auditor during the performance of his tasks in an undertaking which has close links with a financial undertaking;

(17) Whereas the duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning a financial undertaking which they discover during the performance of their tasks in a non-financial undertaking does not in itself change the nature of their tasks in that undertaking nor the manner in which they must perform those tasks in that undertaking;

(18) Whereas adopting this Directive is the most appropriate means of achieving the objectives in view, and in particular of reinforcing the powers of the competent authorities; whereas this Directive restricts itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Wherever the term 'financial undertaking' is used in this Directive, it shall be replaced by:

— 'credit institution' where this Directive amends Directives 77/780/EEC and 89/646/EEC;

— 'insurance undertaking' where this Directive amends Directives 73/239/EEC and 92/49/EEC, and 'life assurance undertaking' where this Directive amends Directives 79/267/EEC and 92/96/EEC;

— 'investment firm' where this Directive amends Directive 93/22/EEC;

— 'undertaking for collective investment in transferable securities (Ucits) or an undertaking contributing towards its business activity' where this Directive amends Directive 85/611/EEC.

Article 2

1. — In Article 1 of Directive 77/780/EEC, a fifth indent,

— in Article 1 of Directive 92/49/EEC, a point (l),

— in Article 1 of Directive 92/96/EEC, a point (m), and

— in Article 1 of Directive 93/22/EEC, a point 15,

shall be added containing the following definition:

'"close links" shall mean a situation in which two or more natural or legal persons are linked by:

(a) "participation", which shall mean the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking or

(b) "control", which shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1 (1) and (2) of Directive 83/349/EEC (*), or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

(*) OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).'

2. The following subparagraphs shall be added at the end of:

— Article 3 (2) of Directive 77/780/EEC,

— Article 3 (3) of Directive 93/22/EEC,

— Article 8 (1) of Directive 73/239/EEC,

— Article 8 (1) of Directive 79/267/EEC:

'Moreover, where close links exist between the financial undertaking and other natural or legal persons, the competent authorities shall grant authorization only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorization if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require financial undertakings to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.'

Article 3

1. The following paragraph shall be inserted in Article 8 of Directive 73/239/EEC and in Article 8 of Directive 79/267/EEC:

'1a. Member States shall require that the head offices of insurance undertakings be situated in the same Member State as their registered offices.'

2. The following paragraph shall be inserted in Article 3 of Directive 77/780/EEC:

'2a. Each Member State shall require that:

— any credit institution which is a legal person and which, under its national law, has a registered office have its head office in the same Member State as its registered office,

— any other credit institution have its head office in the Member State which issued its authorization and in which it actually carries on its business.'

Article 4

1. In Article 16 of Directive 92/49/EEC and in Article 15 of Directive 92/96/EEC, the following paragraph shall be inserted:

'5a. Notwithstanding paragraphs 1 to 4, Member States may authorize exchanges of information between the competent authorities and:

— the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or

— the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions, or

— independent actuaries of insurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

— this information shall be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph,

— information received in this context will be subject to the conditions of professional secrecy imposed in paragraph 1,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, person and bodies which may receive information pursuant to this paragraph.'

2. In Article 12 of Directive 77/780/EEC and in Article 25 of Directive 93/22/EEC, the following paragraph shall be inserted:

'5a. Notwithstanding paragraphs 1 to 4, Member States may authorize exchanges of information between, the competent authorities and:

— the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or

— the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

— the information shall be for the purpose of performing the task of overseeing referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.'

3. In Article 12 of Directive 77/780/EEC, in Article 16 of Directive 92/49/EEC, in Article 25 of Directive 93/22/EEC and in Article 15 of Directive 92/96/EEC, the following paragraph shall be inserted:

'5b. Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorize the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditons are met:

— the information shall be for the purpose of performing the task referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of the provisions of this paragraph.'

4. In Article 12 of Directive 77/780/EEC and in Article 25 of Directive 93/22/EEC, paragraph 6 shall be replaced by the following:

'6. This Article shall not prevent a competent authority from transmitting:

— to central banks and other bodies with a similar function in their capacity as monetary authorities,

— where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.'

5. In Article 16 of Directive 92/49/EEC and in Article 15 of Directive 92/96/EEC, the following shall be inserted:

'5c. Member States may authorize the competent authorities to transmit:

— to central banks and other bodies with a similar function in their capacity as monetary authorities,

— where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task and may authorize such authorities or bodies to communicate to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professonial secrecy imposed in this Article.'

6. The following paragraph 8 shall be added to Article 12 of Directive 77/780/EEC:

'8. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member States' markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy referred to in paragraph 1. The Member States shall, however, ensure that information received under paragraph 2 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.'

7. In Article 50 of Directive 85/611/EEC, paragraphs 2, 3 and 4 shall be replaced by the following:

'2. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that Ucits and management companies and depositaries (hereinafter referred to as undertakings contributing towards their business activity) cannot be individually identified, without prejudice to cases covered by criminal law.

Nevertheless, when an Ucits or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in civil or commercial proceedings.

3. Paragraph 2 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive or other Directives applicable to Ucits or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

4. Member States may conclude cooperation agreements providing for exchanges of information with the competent authorities of third countries only if the information communicated is covered by guarantees of professional secrecy at least equivalent to those provided for in this Article.

5. Competent authorities receiving confidential information under paragraphs 2 or 3 may use it only in the course of their duties:

— to check that the conditions governing the taking up of the business of Ucits or of undertakings contributing towards their business activity are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms,

— to impose sanctions,

— in administrative appeals against decisions by the competent authorities, or

— in court proceedings initiated under Article 51 (2).

6. Paragraphs 2 and 5 shall not preclude the exchange of information:

(a) within a Member State, where there are two or more competent authorities; or

(b) within a Member State or between Member States, between competent authorities; and

— authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings and other financial organizations and the authorities responsible for the supervision of financial markets,

— bodies involved in the liquidation or bankruptcy of Ucits and other similar procedures and of undertakings contributing towards their business activity,

— persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings and other financial institutions,

in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

7. Notwithstanding paragraphs 2 to 5, Member States may authorize exchanges of information between the competent authorities and:

— the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or

— the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

— the information shall be for the purpose of performing the task of overseeing referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

8. Notwithstanding paragraphs 2 to 5, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorize the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditons are met:

— the information shall be for the purpose of performing the task referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

9. This Article shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 5. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

10. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 2 to 5 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2. Member States shall, however, ensure that information received under paragraph 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

11. In addition, notwithstanding the provisions referred to in paragraphs 2 and 5, Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the

supervision of Ucits and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 3 and 6 may never be disclosed in the circumstances referred to in this paragraph except with the express agreement of the competent authorities which disclosed the information.'

Article 5

The following shall be incorporated:

— in Directive 77/780/EEC, an Article 12a,

— in Directive 92/49/EEC, an Article 16a,

— in Directive 92/96/EEC, an Article 15a,

— in Directive 93/22/EEC, an Article 25a,

— and in Directive 85/611/EEC, an Article 50a,

reading as follows:

'1. Member States shall provide at least that:

(a) any person authorized within the meaning of Directive 84/253/EEC (*), performing in a financial undertaking the task described in Article 51 of Directive 78/660/EEC (**), Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC, or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task which is liable to:

— constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorization or which specifically govern pursuit of the activities of financial undertakings, or

— affect the continuous functioning of the financial undertaking, or

— lead to refusal to certify the accounts or to the expression of reservations;

(b) that person shall likewise have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in (a) in an undertaking having close links resulting from a control relationship with the financial undertaking within which he is carrying out the abovementioned task.

2. The disclosure in good faith to the competent authorities, by persons authorized within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract of by any legislative, regulatory or administrative provision and shall not involce such persons in liability of any kind.

(*) OJ No L 126, 12. 5. 1984, p. 20.
(**) OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).'

Article 6

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 18 July 1996. They shall forthwith inform the Commission thereof.

When the Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 29 June 1995.

For the European Parliament	*For the Council*
The President	*The President*
K. HÄNSCH	M. BARNIER

I e) 93/22/EEC Council Directive of 10 May 1993 on Investment services in the securities field

OJ N° L 141 11 06 1993. p. 27 - 46

COUNCIL DIRECTIVE 93/22/EEC

of 10 May 1993

on investment services in the securities field

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission [1],

In cooperation with the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas this Directive constitutes an instrument essential to the achievement of 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 both of the right of establishment and of the freedom to provide financial services, in the field of investment firms;

Whereas firms that provide the investment services covered by this Directive must be subject to authorization by their home Member States in order to protect investors and the stability of the financial system;

Whereas the approach adopted is to effect only the essential harmonization necessary and sufficient to secure the mutual recognition of authorization and of prudential supervision systems, making possible the grant of a single authorization valid throughout the Community and the application of the principle of home Member State supervision; whereas, by virtue of mutual recognition, investment firms authorized in their home Member States may carry on any or all of the services covered by this Directive for which they have received authorization throughout the Community by establishing branches or under the freedom to provide services;

Whereas the principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorization where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities; whereas, for the purposes of this Directive, an investment firm which is a legal person must be authorized in the Member State in which it has its registered office; whereas an investment firm which is not a legal person must be authorized in the Member State in which it has its head office; whereas, in addition, Member States must require that an investment firm's head office must always be situated in its home Member State and that it actually operates there;

Whereas it is necessary, for the protection of investors, to guarantee the internal supervision of every firm, either by means of two-man management or, where that is not required by this Directive, by other mechanisms that ensure an equivalent result;

Whereas in order to guarantee fair competition, it must be ensured that investment firms that are not credit institutions have the same freedom to create branches and provide services across frontiers as is provided for by the Second Council Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions [4];

Whereas an investment firm should not be able to invoke this Directive in order to carry out spot or forward exchange transactions other than as services connected with the provision or investment services; whereas, therefore, the use of a branch solely for such foreign-exchange transactions would constitute misuse of the machinery of this Directive;

Whereas an investment firm authorized in its home Member State may carry on business throughout the Community by whatever means it deems appropriate; whereas, to that end it may, if it deems it necessary, retain tied agents to receive and transmit orders for its account and under its full and unconditional responsibility; whereas, in these circumstances, such agents' business must be regarded as that of the firm; whereas, moreover, this Directive does not prevent a home Member State from making the status of such agents subject to special requirements; whereas should

(1) OJ No C 43, 22. 2. 1989, p. 7; and OJ No C 42, 22. 2. 1990, p. 7.
(2) OJ No C 304, 4. 12. 1989, p. 39; and OJ No C 115, 26. 4. 1993.
(3) OJ No C 298, 27. 11. 1989, p. 6.
(4) OJ No L 386, 30. 12. 1989, p. 1. Directive as last amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

the investment firm carry on cross-border business, the host Member State must treat those agents as being the firm itself; whereas, moreover, the door-to-door selling of transferable securities should not be covered by this Directive and the regulation thereof should remain a matter for national provisions;

Whereas 'transferable securities' means those classes of securities which are normally dealt in on the capital market, such as government securities, shares in companies, negotiable securities giving the right to acquire shares by subscription or exchange, depositary receipts, bonds issued as part of a series, index warrants and securities giving the right to acquire such bonds by subscription;

Whereas 'money-market instruments' means those classes of instruments which are normally dealt in on the money market such as treasury bills, certificates of deposit and commercial paper;

Whereas the very wide definitions of transferable securities and money-market instruments included in this Directive are valid only for this Directive and consequently in no way affect the various definitions of financial instruments used in national legislation for other purposes such as taxation; whereas, furthermore, the definition of transferable securities covers negotiable instruments only; whereas, consequently, shares and other securities equivalent to shares issued by bodies such as building societies and industrial and provident societies, ownership of which cannot in practice be transferred except by the issuing body's buying them back, are not covered by this definition;

Whereas 'instrument equivalent to a financial-futures contract' means a contract which is settled by a payment in cash calculated by reference to fluctuations in interest or exchange rates, the value of any instrument listed in Section B of the Annex or an index of any such instruments;

Whereas, for the purposes of this Directive, the business of the reception and transmission of orders also includes bringing together two or more investors thereby bringing about a transaction between those investors;

Whereas no provision in this Directive affects the Community provisions or, failing such, the national provisions regulating public offers of the instruments covered by this Directive; whereas the same applies to the marketing and distribution of such instruments;

Whereas Member States retain full responsibility for implementing their own monetary-policy measures, without prejudice to the measures necessary to strengthen the European Monetary System;

Whereas it is necessary to exclude insurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are coordinated at Community level and undertakings carrying out reinsurance and retrocession activities;

Whereas undertakings which do not provide services for third parties but the business of which consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive;

Whereas the purpose of this Directive is to cover undertakings the normal business of which is to provide third parties with investment services on a professional basis; whereas its scope should not therefore cover any person with a different professional activity (e.g. a barrister or solicitor) who provides investment services only on an incidental basis in the course of that other professional activity, provided that that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services; whereas it is also necessary for the same reason to exclude from the scope of this Directive persons who provide investment services only for producers or users of commodities to the extent necessary for transactions in such products where such transactions constitute their main business;

Whereas firms which provide investment services consisting exclusively in the administration of employee-participation schemes and which therefore do not provide investment services for third parties should not be covered by this Directive;

Whereas it is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof; whereas, in particular, this exclusion does not cover bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings;

Whereas it is necessary to exclude from the scope of this Directive any firms or persons whose business consists only of receiving and transmitting orders to certain counterparties and who do not hold funds or securities belonging to their clients; whereas, therefore, they will not enjoy the right of establishment and freedom to provide services under the conditions laid down in this Directive, being subject, when they wish to operate in another Member State, to the relevant provisions adopted by that State;

Whereas it is necessary to exclude from the scope of this Directive collective investment undertakings whether o

not coordinated at Community level, and the depositaries or managers of such undertakings, since they are subject to specific rules directly adapted to their activities;

Whereas, where associations created by a Member State's pension funds to permit the management of their assets confine themselves to such management and do not provide investment services for third parties, and where the pension funds are themselves subject to the control of the authorities charged with monitoring insurance undertakings, it does not appear to be necessary to subject such associations to the conditions for taking up business and for operation imposed by this Directive;

Whereas this Directive should not apply to 'agenti di cambio' as defined by Italian law since they belong to a category the authorization of which is not to be renewed, their activities are confined to the national territory and they do not give rise to a risk of the distortion of competition;

Whereas the rights conferred on investment firms by this Directive are without prejudice to the right of Member States, central banks and other national bodies performing similar functions to choose their counterparties on the basis of objective, non-discriminatory criteria;

Whereas responsibility for supervising the financial soundness of an investment firm will rest with the competent authorities of its home Member State pursuant to Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (1), which coordinates the rules applicable to market risk;

Whereas a home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorization conditions, prudential requirements and the rules of reporting and transparency;

Whereas the carrying on of activities not covered by this Directive is governed by the general provisions of the Treaty on the right of establishment and the freedom to provide services;

Whereas in order to protect investors an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm should in particular be protected by being kept distinct from those of the firm; whereas this principle does not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending;

(1) See page 1 of this Official Journal.

Whereas the procedures for the authorization of branches of investment firms authorized in third countries will continue to apply to such firms; whereas those branches will not enjoy the freedom to provide services under the second paragraph of Article 59 of the Treaty or the right of establishment in Member States other than those in which they are established; whereas, however, requests for the authorization of subsidiaries or of the acquisition of holdings by undertakings governed by the laws of third countries are subject to a procedure intended to ensure that Community investment firms receive reciprocal treatment in the third countries in question;

Whereas the authorizations granted to investment firms by the competent national authorities pursuant to this Directive will have Community-wide, and no longer merely nationwide application, and existing reciprocity clauses will henceforth have no effect; whereas a flexible procedure is therefore needed to make it possible to assess reciprocity on a Community basis; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets in third countries; whereas, to that end, this Directive provides for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization and the restriction of new authorizations;

Whereas one of the objectives of this Directive is to protect investors; whereas it is therefore appropriate to take account of the different requirements for protection of various categories of investors and of their levels of professional expertise;

Whereas the Member States must ensure that there are no obstacles to prevent activities that receive mutual recognition from being carried on in the same manner as in the home Member State, as long as they do not conflict with laws and regulations protecting the general good in force in the host Member State;

Whereas a Member State may not limit the right of investors habitually resident or established in that Member State to avail themselves of any investment service provided by an investment firm covered by this Directive situated outside that Member State and acting outwith that Member State;

Whereas in certain Member States clearing and settlement functions may be performed by bodies separate from the markets on which transactions are effected; whereas, accordingly, any reference in this Directive to access to and membership of regulated markets should be read as including references to access to and membership of bodies performing clearing and settlement functions for regulated markets;

Whereas each Member State must ensure that within its territory, treatment of all investment firms authorized in any Member State and likewise all financial instruments listed on the Member States' regulated markets is non-discriminatory; whereas investment firms must all have the same opportunities of joining or having access to regulated markets; whereas, regardless of the manner in which transactions are at present organized in the Member States, it is therefore important, subject to the conditions imposed by this Directive, to abolish the technical and legal restrictions on access to the regulated markets within the framework of this Directive;

Whereas some Member States authorize credit institutions to become members of their regulated markets only indirectly, by setting up specialized subsidiaries; whereas the opportunity which this Directive gives credit institutions of becoming members of regulated markets directly without having to set up specialized subsidiaries constitutes a significant reform for those Member States and all its consequences should be reassessed in the light of the development of the financial markets; whereas, in view of those factors, the report which the Commission will submit to the Council on this matter no later than 31 December 1998 will have to take account of all the factors necessary for the Council to be able to reassess the consequences for those Member States, and in particular the danger of conflicts of interest and the level of protection afforded to investors;

Whereas it is of the greatest importance that the harmonization of compensation systems be brought into effect on the same date as this Directive; whereas, moreover, until the date on which a Directive harmonizing compensation systems is brought into effect, host Member States will be able to impose application of their compensation systems on investment firms including credit institutions authorized by other Member States, where the home Member States have no compensation systems or where their systems do not offer equivalent levels of protection;

Whereas the structure of regulated markets must continue to be governed by national law, without thereby forming an obstacle to the liberalization of access to the regulated markets of host Member States for investment firms authorized to provide the services concerned in their home Member States; whereas, pursuant to that principle, the law of the Federal Republic of Germany and the law of the Netherlands govern the activities *Kursmakler* and *hoekmannen* respectively so as to ensure that they do not exercise their functions in parallel with other functions; whereas it should be noted that *Kursmakler* and *hoekmannen* may not provide services in other Member States; whereas no one, whatever his home Member State, may claim to act as a *Kursmakler* or a *hoekman* without being subject to the same rules on incompatibility as result from the status of *Kursmakler* or *hoekman*;

Whereas it should be noted that this Directive cannot affect the measures taken pursuant to Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing (1);

Whereas the stability and sound operation of the financial system and the protection of investors presuppose that a host Member State has the right and responsibility both to prevent and to penalize any action within its territory by investment firms contrary to the rules of conduct and other legal or regulatory provisions it has adopted in the interest of the general good and to take action in emergencies; whereas, moreover, the competent authorities of the host Member State must, in discharging their responsibilities, be able to count on the closest cooperation with the competent authorities of the home Member State, particularly as regards business carried on under the freedom to provide services; whereas the competent authorities of the home Member State are entitled to be informed by the competent authorities of the host Member State of any measures involving penalties on an investment firm or restrictions on its activities which the latter have taken *vis-à-vis* the investment firms which the former have authorized so as to be able to perform their function of prudential supervision efficiently; whereas to that end cooperation between the competent authorities of home and host Member States must be ensured;

Whereas, with the two-fold aim of protecting investors and ensuring the smooth operation of the markets in transferable securities, it is necessary to ensure that transparency of transactions is achieved and that the rules laid down for that purpose in this Directive for regulated markets apply both to investment firms and to credit institutions when they operate on the market;

Whereas examination of the problems arising in the areas covered by the Council Directives on investment services and securities, as regards both the application of existing measures and the possibility of closer coordination in the future, requires cooperation between national authorities and the Commission within a committee; whereas the establishment of such a committee does not rule out other forms of cooperation between supervisory authorities in this field;

Whereas technical amendments to the detailed rules laid down in this Directive may from time to time be necessary to take account of new developments in the investment-services sector; whereas the Commission will make such amendments as are necessary, after referring the matter to the committee to be set up in the securities-markets field,

(1) OJ No L 66, 16. 3. 1979, p. 21. Directive last amended by the Act of Accession of Spain and Portugal

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Definitions and scope

Article 1

For the purposes of this Directive:

1. *investment service* shall mean any of the services listed in Section A of the Annex relating to any of the instruments listed in Section B of the Annex that are provided for a third party;

2. *investment firm* shall mean any legal person the regular occupation or business of which is the provision of investment services for third parties on a professional basis.

   For the purposes of this Directive, Member States may include as investment firms undertakings which are not legal persons if:

   — their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons, and

   — they are subject to equivalent prudential supervision appropriate to their legal form.

   However, where such natural persons provide services involving the holding of third parties' funds or transferable securities, they may be considered as investment firms for the purposes of this Directive only if, without prejudice to the other requirements imposed in this Directive and in Directive 93/6/EEC, they comply with the following conditions:

   — the ownership rights of third parties in instruments and funds belonging to them must be safeguarded, especially in the event of the insolvency of a firm or of its proprietors, seizure, set-off or any other action by creditors of the firm or of its proprietors,

   — an investment firm must be subject to rules designed to monitor the firm's solvency and that of its proprietors,

   — an investment firm's annual accounts must be audited by one or more persons empowered, under national law, to audit accounts,

   — where a firm has only one proprietor, he must make provision for the protection of investors in the event of the firm's cessation of business following his death, his incapacity or any other such event.

   No later than 31 December 1997 the Commission shall report on the application of the second and third subparagraphs of this point and, if appropriate, propose their amendment or deletion.

   Where a person provides one of the services referred to in Section A (1) (a) of the Annex and where that activity is carried on solely for the account of and under the full and unconditional responsibility of an investment firm, that activity shall be regarded as the activity not of that person but of the investment firm itself;

3. *credit institution* shall mean a credit institution as defined in the first indent of Article 1 of Directive 77/780/EEC [1] with the exception of the institutions referred to in Article 2 (2) thereof;

4. *transferable securities* shall mean:

   — shares in companies and other securities equivalent to shares in companies,

   — bonds and other forms of securitized debt

   which are negotiable on the capital market and

   — any other securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to a cash settlement

   excluding instruments of payment;

5. *money-market instruments* shall mean those classes of instruments which are normally dealt in on the money market;

6. *home Member State* shall mean:

   (a) where the investment firm is a natural person, the Member State in which his head office is situated;

   (b) where the investment firm is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;

   (c) in the case of a market, the Member State in which the registered office of the body which provides trading facilities is situated or, if under its national law it has no registered office, the Member State in which that body's head office is situated;

[1] OJ No L 322, 17. 12. 1977, p. 30. Directive last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

7. *host Member State* shall mean the Member State in which an investment firm has a branch or provides services;

8. *branch* shall mean a place of business which is a part of an investment firm, which has no legal personality and which provides investment services for which the investment firm has been autorized; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;

9. *competent authorities* shall mean the authorities which each Member State designates under Article 22;

10. *qualifying holding* shall mean any direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists.

For the purposes of this definition, in the context of Articles 4 and 9 and of the other levels of holding referred to in Article 9, the voting rights referred to in Article 7 of Directive 88/627/EEC [1] shall be taken into account;

11. *parent undertaking* shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC [2];

12. *subsidiary* shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is the ultimate parent of those undertakings;

13. *regulated market* shall mean a market for the instruments listed in Section B of the Annex which:

— appears on the list provided for in Article 16 drawn up by the Member State which is the home Member State as defined in Article 1 (6) (c),

— functions regularly,

— is characterized by the fact that regulations issued or approved by the competent authorities define the conditions for the operation of the market, the conditions for access to the market and, where Directive 79/279/EEC is applicable, the conditions governing admission to listing imposed in that Directive and, where that Directive is not applicable, the conditions that must be satisfied by a financial instrument before it can effectively be dealt in on the market,

— requires compliance with all the reporting and transparency requirements laid down pursuant to Articles 20 and 21;

14. *control* shall mean control as defined in Article 1 of Directive 83/349/EEC.

Article 2

1. This Directive shall apply to all investment firms. Only paragraph 4 of this Article and Articles 8 (2), 10, 11, 12, first paragraph, 14 (3) and (4), 15, 19 and 20, however, shall apply to credit institutions the authorization of which, under Directives 77/780/EEC and 89/646/EEC, covers one or more of the investment services listed in Section A of the Annex to this Directive.

2. This Directive shall not apply to:

(a) insurance undertakings as defined in Article 1 of Directive 73/239/EEC [3] or Article 1 of Directive 79/267/EEC [4] or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225/EEC [5];

(b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

(d) firms that provide investment services consisting exclusively in the administration of employee-participation schemes;

(e) firms that provide investment services that consist in providing both the services referred to in (b) and those referred to in (d);

(f) the central banks of Member States and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

(1) OJ No L 348, 17. 12. 1988, p. 62.
(2) OJ No L 193, 18. 7. 1983, p. 1. Directive last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).
(3) OJ No L 228, 16. 8. 1973, p. 3. Directive last amended by Directive 90/619/EEC (OJ No L 330, 29. 11. 1990, p. 50).
(4) OJ No L 63, 13. 3. 1979, p. 1. Directive last amended by Directive 90/618/EEC (OJ No L 330, 29. 11. 1990, p. 44).
(5) OJ No 56, 4. 4. 1964, p. 878/64.

(g) firms

— which may not hold clients' funds or securities and which for that reason may not at any time place themselves in debit with their clients, and

— which may not provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings, and

— which in the course of providing that service may transmit orders only to

(i) investment firms authorized in accordance with this Directive;

(ii) credit institutions authorized in accordance with Directives 77/780/EEC and 89/646/EEC;

(iii) branches of investment firms or of credit institutions which are authorized in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive, in Directive 89/646/EEC or in Directive 93/6/EEC;

(iv) collective investment undertakings authorized under the law of a Member State to market units to the public and to the managers of such undertakings;

(v) investment companies with fixed capital, as defined in Article 15 (4) of Directive 77/91/EEC [1], the securities of which are listed or dealt in on a regulated market in a Member State;

— the activities of which are governed at national level by rules or by a code of ethics;

(h) collective investment undertakings whether coordinated at Community level or not and the depositaries and managers of such undertakings;

(i) persons whose main business is trading in commodities amongst themselves or with producers or professional users of such products and who provide investment services only for such producers and professional users to the extent necessary for their main business;

(j) firms that provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets. Responsibility for ensuring the performance of contracts entered into by such firms must be assumed by clearing members of the same markets;

(k) associations set up by Danish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;

(l) 'agenti di cambio' whose activities and functions are governed by Italian Royal Decree No 222 of 7 March 1925 and subsequent provisions amending it, and who are authorized to carry on their activities under Article 19 of Italian Law No 1 of 2 January 1991.

3. No later than 31 December 1998 and at regular intervals thereafter the Commission shall report on the application of paragraph 2 in conjunction with Section A of the Annex and shall, where appropriate, propose amendments to the definition of the exclusions and the services covered in the light of the operation of this Directive.

4. The rights conferred by this Directive shall not extend to the provision of services as counterparty to the State, the central bank or other Member State national bodies performing similar functions in the pursuit of the monetary, exchange-rate, public-debt and reserves management policies of the Member State concerned.

TITLE II

Conditions for taking up business

Article 3

1. Each Member State shall make access to the business of investment firms subject to authorization for investment firms of which it is the home Member State. Such authorization shall be granted by the home Member State's competent authorities designated in accordance with Article 22. The authorization shall specify the investment services referred to in Section A of the Annex which the undertaking is authorized to provide. The authorization may also cover one or more of the non-core services referred to in Section C of the Annex. Authorization within the meaning of this Directive may in no case be granted for services covered only by Section C of the Annex.

2. Each Member State shall require that:

— any investment firm which is a legal person and which, under its national law, has a registered office shall have its head office in the same Member State as its registered office,

— any other investment firm shall have its head office in the Member State which issued its authorization and in which it actually carries on its business.

[1] OJ No L 26, 30. 1. 1977, p. 1. Directive last amended by the Act of Accession of Spain and Portugal.

3. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorization unless:

— an investment firm has sufficient initial capital in accordance with the rules laid down in Directive 93/6/EEC having regard to the nature of the investment service in question,

— the persons who effectively direct the business of an investment firm are of sufficiently good repute and are sufficiently experienced.

The direction of a firm's business must be decided by at least two persons meeting the above conditions. Where an appropriate arrangement ensures that the same result will be achieved, however, particularly in the cases provided for in the last indent of the third subparagraph of Article 1 (2), the competent authorities may grant authorization to investment firms which are natural persons or, taking account of the nature and volume of their activities, to investment firms which are legal persons where such firms are managed by single natural persons in accordance with their articles of association and national laws.

4. Member States shall also require that every application for authorization be accompanied by a programme of operations setting out *inter alia* the types of business envisaged and the organizational structure of the investment firm concerned.

5. An applicant shall be informed within six months of the submission of a complete application whether or not authorization has been granted. Reasons shall be given whenever an authorization is refused.

6. An investment firm may commence business as soon as authorization has been granted.

7. The competent authorities may withdraw the authorization issued to an investment firm subject to this Directive only where that investment firm:

(a) does not make use of the authorization within 12 months, expressly renounces the authorization or ceased to provide investment services more than six months previously unless the Member State concerned has provided for authorization to lapse in such cases;

(b) has obtained the authorization by making false statements or by any other irregular means;

(c) no longer fulfils the conditions under which authorization was granted;

(d) no longer complies with Directive 93/6/EEC;

(e) has seriously and systematically infringed the provisions adopted pursuant to Articles 10 or 11; or

(f) falls within any of the cases where national law provides for withdrawal.

Article 4

The competent authorities shall not grant authorization to take up the business of investment firms until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The competent authorities shall refuse authorization if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the aforementioned shareholders or members.

Article 5

In the case of branches of investment firms that have registered offices outwith the Community and are commencing or carrying on business, the Member States shall not apply provisions that result in treatment more favourable than that accorded to branches of investment firms that have registered offices in Member States.

Article 6

The competent authorities of the other Member State involved shall be consulted beforehand on the authorization of any investment firm which is:

— a subsidiary of an investment firm or credit institution authorized in another Member State,

— a subsidiary of the parent undertaking of an investment firm or credit institution authorized in another Member State,

or

— controlled by the same natural or legal persons as control an investment firm or credit institution authorized in another Member State.

TITLE III

Relations with third countries

Article 7

1. The competent authorities of the Member States shall inform the Commission:

(a) of the authorization of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country;

(b) whenever such a parent undertaking acquires a holding in a Community investment firm such that the latter would become its subsidiary.

In both cases the Commission shall inform the Council until such time as a committee on transferable securities is set up by the Council acting on a proposal from the Commission.

When authorization is granted to any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country, the competent authorities shall specify the structure of the group in the notification which they address to the Commission.

2. The Member States shall inform the Commission of any general difficulties which their investment firms encounter in establishing themselves or providing investment services in any third country.

3. Initially no later than six months before this Directive is brought into effect and thereafter periodically the Commission shall draw up a report examining the treatment accorded to Community investment firms in third countries, in the terms referred to in paragraphs 4 and 5, as regards establishment, the carrying on of investment services activities and the acquisition of holdings in third-country investment firms. The Commission shall submit those reports to the Council together with any appropriate proposals.

4. Whenever it appears to the Commission, either on the basis of the reports provided for in paragraph 3 or on the basis of other information, that a third country does not grant Community investment firms effective market access comparable to that granted by the Community to investment firms from that third country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community investment firms. The Council shall act by a qualified majority.

5. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 3 or on the basis of other information, that Community investment firms in a third country are not granted national treatment affording the same competitive opportunities as are available to domestic investment firms and that the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph it may also be decided, at any time and in addition to the initiation of negotiations, in accordance with the procedure to be laid down in the Directive by which the Council will set up the committee referred to in paragraph 1, that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending or future requests for authorization and the acquisition of holdings by direct or indirect parent undertakings governed by the law of the third country in question. The duration of such measures may not exceed three months.

Before the end of that three-month period and in the light of the results of the negotiations the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.

Such limitations or suspensions may not be applied to the setting up of subsidiaries by investment firms duly authorized in the Community or by their subsidiaries, or to the acquisition of holdings in Community investment firms by such firms or subsidiaries.

6. Whenever it appears to the Commission that one of the situations described in paragraphs 4 and 5 obtains, the Member States shall inform it at its request:

(a) of any application for the authorization of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of the third country in question;

(b) whenever they are informed in accordance with Article 10 that such a parent undertaking proposes to acquire a holding in a Community investment firm such that the latter would become its subsidiary.

This obligation to provide information shall lapse whenever agreement is reached with the third country referred to in paragraph 4 or 5 or when the measures referred to in the second and third subparagraphs of paragraph 5 cease to apply.

7. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking up or pursuit of the business of investment firms.

TITLE IV

Operating conditions

Article 8

1. The competent authorities of the home Member States shall require that an investment firm which they have authorized comply at all times with the conditions imposed in Article 3 (3).

2. The competent authorities of the home Member State shall require that an investment firm which they have authorized comply with the rules laid down in Directive 93/6/EEC.

3. The prudential supervision of an investment firm shall be the responsibility of the competent authorities of the home Member State whether the investment firm establishes a branch or provides services in another Member State or not, without prejudice to those provisions of this Directive which give responsibility to the authorities of the host Member State.

Article 9

1. Member States shall require any person who proposes to acquire, directly or indirectly, a qualifying holding in an investment firm first to inform the competent authorities, telling them of the size of his intended holding. Such a person shall likewise inform the competent authorities if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital that he holds would reach or exceed 20, 33, or 50 % or so that the investment firm would become his subsidiary.

Without prejudice to paragraph 2, the competent authorities shall have up to three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the investment firm, they are not satisfied as to the suitability of the person referred to in the first subparagraph. If they do not oppose the plan, they may fix a deadline for its implementation.

2. If the acquirer of the holding referred to in paragraph 1 is an investment firm authorized in another Member State or the parent undertaking of an investment firm authorized in another Member State or a person controlling an investment firm authorized in another Member State and if, as a result of that acquisition, the firm in which the acquirer proposes to acquire a holding would become the acquirer's subsidiary or come under his control, the assessment of the acquisition must be the subject of the prior consultation provided for in Article 6.

3. Member States shall require any person who proposes to dispose, directly or indirectly, of a qualifying holding in an investment firm first to inform the competent authorities, telling them of the size of his holding. Such a person shall likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20, 33 or 50 % or so that the investment firm would cease to be his subsidiary.

4. On becoming aware of them, investment firms shall inform the competent authorities of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below any of the thresholds referred to in paragraphs 1 and 3.

At least once a year they shall also inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders and members or as a result of compliance with the regulations applicable to companies listed on stock exchanges.

5. Member States shall require that, where the influence exercised by the persons referred to in paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authorities take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and those responsible for management or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to persons failing to comply with the obligation to provide prior information imposed in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.

Article 10

Each home Member State shall draw up prudential rules which investment firms shall observe at all times. In particular, such rules shall require that each investment firm:

— have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing, and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees,

— make adequate arrangements for instruments belonging to investors with a view to safeguarding the latter's ownership rights, especially in the event of the investment firm's instruments for its own account except with the investors' express consent,

— make adequate arrangements for funds belonging to investors with a view to safeguarding the latter's rights and, except in the case of credit institutions, preventing the investment firm's using investors' funds for its own account,

— arrange for records to be kept of transactions executed which shall at least be sufficient to enable the home Member State's authorities to monitor compliance with the prudential rules which they are responsible for applying; such records shall be retained for periods to be laid down by the competent authorities,

— be structured and organized in such a way as to minimize the risk of clients' interests being prejudiced by conflicts of interest between the firm and its clients or between one of its clients and another. Nevertheless, where a branch is set up the organizational arrangements may not conflict with the rules of conduct laid down by the host Member State to cover conflicts of interest.

Article 11

1. Member States shall draw up rules of conduct which investment firms shall observe at all times. Such rules must implement at least the principles set out in the following indents and must be applied in such a way as to take account of the professional nature of the person for whom the service is provided. The Member States shall also apply these rules where appropriate to the non-core services listed in Section C of the Annex. These principles shall ensure that an investment firm:

— acts honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market,

— acts with due skill, care and diligence, in the best interests of its clients and the integrity of the market,

— has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities,

— seeks from its clients information regarding their financial situations, investment experience and objectives as regards the services requested,

— makes adequate disclosure of relevant material information in its dealings with its clients,

— tries to avoid conflicts of interests and, when they cannot be avoided, ensures that its clients are fairly treated, and

— complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and the integrity of the market.

2. Without prejudice to any decisions to be taken in the context of the harmonization of the rules of conduct, their implementation and the supervision of compliance with them shall remain the responsibility of the Member State in which a service is provided.

3. Where an investment firm executes an order, for the purposes of applying the rules referred to in paragraph 1 the professional nature of the investor shall be assessed with respect to the investor from whom the order originates, regardless of whether the order was placed directly by the investor himself or indirectly through an investment firm providing the service referred to in Section A (1) (a) of the Annex.

Article 12

Before doing business with them, a firm shall inform investors which compensation fund or equivalent protection will apply in respect of the transactions envisaged, what cover is offered by whichever system applies, or if there is no fund or compensation.

The Council notes the Commission's statement to the effect that it will submit proposals on the harmonization of compensation systems covering transactions by investment firms by 31 July 1993 at the latest. The Council will act on those proposals within the shortest possible time with the aim of bringing the systems proposed into effect on the same date as this Directive.

Article 13

This Directive shall not prevent investment firms authorized in other Member States from advertising their services through all available means of communication in their host Member States, subject to any rules governing the form and the content of such advertising adopted in the interest of the general good.

TITLE V

The right of establishment and the freedom to provide services

Article 14

1. Member States shall ensure that investment services and the other services listed in Section C of the Annex may be provided within their territories in accordance with Articles 17, 18 and 19 either by the establishment of a branch or under the freedom to provide services by any investment firm authorized and supervised by the competent authorities of another Member State in accordance with this Directive, provided that such services are covered by the authorization.

This Directive shall not affect the powers of host Member States in respect of the units of collective investment undertakings to which Directive 85/611/EEC [1] does not apply.

[1] OJ No L 375, 31. 12. 1985, p. 3. Directive last amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

2. Member States may not make the establishment of a branch or the provision of services referred to in paragraph 1 subject to any authorization requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

3. A Member State may require that transactions relating to the services referred to in paragraph 1 must, where they satisfy all the following criteria, be carried out on a regulated market:

— the investor must be habitually resident or established in that Member State,

— the investment firm must carry out such transactions through a main establishment, through a branch situated in that Member State or under the freedom to provide services in that Member State,

— the transaction must involve a instrument dealt in on a regulated market in that Member State.

4. Where a Member State applies paragraph 3 it shall give investors habitually resident or established in that Member State the right not to comply with the obligation imposed in paragraph 3 and have the transactions referred to in paragraph 3 carried out away from a regulated market. Member States may make the exercise of this right subject to express authorization, taking into account investors' differing needs for protection and in particular the ability of professional and institutional investors to act in their own best interests. It must in any case be possible for such authorization to be given in conditions that do not jeopardize the prompt execution of investors' orders.

5. The Commission shall report on the operation of paragraphs 3 and 4 not later than 31 December 1998 and shall, if appropriate, propose amendments thereto.

Article 15

1. Without prejudice to the exercise of the right of establishment or the freedom to provide services referred to in Article 14, host Member States shall ensure that investment firms which are authorized by the competent authorities of their home Member States to provide the services referred to in Section A (1) (b) and (2) of the Annex can, either directly or indirectly, become members of or have access to the regulated markets in their host Member States where similar services are provided and also become members of or have access to the clearing and settlement systems which are provided for the members of such regulated markets there.

Member States shall abolish any national rules or laws or rules of regulated markets which limit the number of persons allowed access thereto. If, by virtue of its legal structure or its technical capacity, access to a regulated market is limited, the Member State concerned shall ensure that its structure and capacity are regularly adjusted.

2. Membership of or access to a regulated market shall be conditional on investment firms' complying with capital adequacy requirements and home Member States' supervising such compliance in accordance with Directive 93/6/EEC.

Host Member States shall be entitled to impose additional capital requirements only in respect of matters not covered by that Directive.

Access to a regulated market, admission to membership thereof and continued access or membership shall be subject to compliance with the rules of the regulated market in relation to the constitution and administration of the regulated market and to compliance with the rules relating to transactions on the market, with the professional standards imposed on staff operating on and in conjunction with the market, and with the rules and procedures for clearing and settlement. The detailed arrangements for implementing these rules and procedures may be adapted as appropriate, *inter alia* to ensure fulfilment of the ensuing obligations, provided, however, that Article 28 is complied with.

3. In order to meet the obligation imposed in paragraph 1, host Member States shall offer the investment firms referred to in that paragraph the choice of becoming members of or of having access to their regulated markets either:

— directly, by setting up branches in the host Member States, or

— indirectly, by setting up subsidiaries in the host Member States or by acquiring firms in the host Member States that are already members of their regulated markets or already have access thereto.

However, those Member States which, when this Directive is adopted, apply laws which do not permit credit institutions to become members of or have access to regulated markets unless they have specialized subsidiaries may continue until 31 December 1996 to apply the same obligation in a non-discriminatory way to credit institutions from other Member States for purposes of access to those regulated markets.

The Kingdom of Spain, the Hellenic Republic and the Portuguese Republic may extend that period until 31 December 1999. One year before that date the Commission shall draw up a report, taking into account the experience acquired in applying this Article and shall if appropriate, submit a proposal. The Council may, acting by qualified majority on the basis of that proposal, decide to review those arrangements.

4. Subject to paragraphs 1, 2 and 3, where the regulated market of the host Member State operates without any requirement for a physical presence the investment firms referred to in paragraph 1 may become members of or have access to it on the same basis without having to be established in the host Member State. In order to enable their investment firms to become members of or have access to host Member States' regulated markets in accordance with this paragraph home Member States shall allow those host Member States' regulated markets to provide appropriate facilities within the home Member States' territories.

5. This Article shall not affect the Member States' right to authorize or prohibit the creation of new markets within their territories.

6. This Article shall have no effect:

— in the Federal Republic of Germany, on the regulation of the activities of *Kursmakler*, or

— in the Netherlands, on the regulation of the activities of *boekmannen*.

Article 16

For the purposes of mutual recognition and the application of this Directive, it shall be for each Member State to draw up a list of the regulated markets for which it is the home Member State and which comply with its regulations, and to forward that list for information, together with the relevant rules of procedures and operation of those regulated markets, to the other Member States and the Commission. A similar communication shall be effected in respect of each change to the aforementioned list or rules. The Commission shall publish the lists of regulated markets and updates thereto in the *Official Journal of the European Communities* at least once a year.

No later than 31 December 1996 the Commission shall report on the information thus received and, where appropriate, propose amendments to the definition of regulated market for the purposes of this Directive.

Article 17

1. In addition to meeting the conditions imposed in Article 3, any investment firm wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. Member States shall require every investment firm wishing to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

(a) the Member State within the territory of which it plans to establish a branch;

(b) a programme of operations setting out *inter alia* the types of business envisaged and the organizational structure of the branch;

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

(d) the names of those responsible for the management of the branch.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of an investment firm, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the investment firm concerned accordingly.

They shall also communicate details of any compensation scheme intended to protect the branch's investors.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the investment firm concerned within three months of receiving all the information. That refusal or failure to reply shall be subject to the right to apply to the courts in the home Member States.

4. Before the branch of an investment firm commences business the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 3, prepare for the supervision of the investment firm in accordance with Article 19 and, if necessary, indicate the conditions, including the rules of conduct, under which, in the interest of the general good, that business must be carried on in the host Member State.

5. On receipt of a communication from the competent authorities of the host Member State or on the expiry of the period provided for in paragraph 4 without receipt of any communication from those authorities, the branch may be established and commence business.

6. In the event of a change in any of the particulars communicated in accordance with paragraph 2 (b), (c) or (d), an investment firm shall give written notice of that change to the competent authorities of the home and host Member States at least one month before implementing the change so that the competent authorities of the home Member State may take a decision on the change under paragraph 3 and the competent authorities of the host Member State may do so under paragraph 4.

7. In the event of a change in the particulars communicated in accordance with the second subparagraph of paragraph 3, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.

Article 18

1. Any investment firm wishing to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of its home Member State:

— the Member State in which it intends to operate,

— a programme of operations stating in particular the investment service or services which it intends to provide.

2. The competent authorities of the home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the host Member State. The investment firm may then start to provide the investment service or services in question in the host Member State.

Where appropriate, the competent authorities of the host Member State shall, on receipt of the information referred to in paragraph 1, indicate to the investment firm the conditions, including the rules of conduct, with which, in the interest of the general good, the providers of the investment services in question must comply in the host Member State.

3. Should the content of the information communicated in accordance with the second indent of paragraph 1 be amended, the investment firm shall give notice of the amendment in writing to the competent authorities of the home Member State and of the host Member State before implementing the change, so that the competent authorities of the host Member State may, if necessary, inform the firm of any change or addition to be made to the information communicated under paragraph 2.

Article 19

1. Host Member States may, for statistical purposes, require all investment firms with branches within their territories to report periodically on their activities in those host Member States to the competent authorities of those host Member States.

In discharging their responsibilities in the conduct of monetary policy, without prejudice to the measures necessary for the strengthening of the European Monetary System, host Member States may within their territories require all branches of investment firms originating in other Member States to provide the same particulars as national investment firms for that purpose.

2. In discharging their responsibilities under this Directive, host Member States may require branches of investment firms to provide the same particulars as national firms for that purpose.

Host Member States may require investment firms carrying on business within their territories under the freedom to provide services to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them, although those requirements may not be more stringent than those which the same Member State imposes on established firms for the monitoring of their compliance with the same standards.

3. Where the competent authorities of a host Member State ascertain that an investment firm that has a branch or provides services within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the investment firm concerned to put an end to its irregular situation.

4. If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The latter shall, at the earliest opportunity, take all appropriate measures to ensure that the investment firm concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

5. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the State in question, the investment firm persists in violating the legal or regulatory provisions referred to in paragraph 2 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalize further irregularities and, in so far as necessary, to prevent that investment firm from initiating any further transactions within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on investment firms.

6. The foregoing provisions shall not affect the powers of host Member States to take appropriate measures to prevent or to penalize irregularities committed within their territories which are contrary to the rules of conduct introduced pursuant to Article 11 as well as to other legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending investment firms from initiating any further transactions within their territories.

7. Any measure adopted pursuant to paragraphs 4, 5 or 6 involving penalties or restrictions on the activities of an investment firm must be properly justified and communicated to the investment firm concerned. Every

such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

8. Before following the procedure laid down in paragraphs 3, 4 or 5 the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures.

9. In the event of the withdrawal of authorization, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the investment firm concerned from initiating any further transactions within its territory and to safeguard investors' interests. Every two years the Commission shall submit a report on such cases to the committee set up at a later stage in the securities field.

10. The Member States shall inform the Commission of the number and type of cases in which there have been refusals pursuant to Article 17 or measures have been taken in accordance with paragraph 5. Every two years the Commission shall submit a report on such cases to the committee set up at a later date in the securities field.

Article 20

1. In order to ensure that the authorities responsible for the markets and for supervision have access to the information necessary for the performance of their duties, home Member States shall at least require:

(a) without prejudice to steps taken in implementation of Article 10, that investment firms keep at the disposal of the authorities for at least five years the relevant data on transactions relating to the services referred to in Article 14 (1) which they have carried out in instruments dealt in on a regulated market, whether such transactions were carried out on a regulated market or not;

(b) that investment firms report to competent authorities in their home Member States all the transactions referred to in (a) where those transactions cover:

- shares or other instruments giving access to capital,
- bonds and other forms of securitized debt,
- standardized forward contracts relating to shares or
- standardized options on shares.

Such reports must be made available to the relevant authority at the earliest opportunity. The time limit shall be fixed by that authority. It may be extended to the end of the following working day where operational or practical reasons so dictate but in no circumstances may it exceed that limit.

Such reports must, in particular, include details of the names and numbers of the instruments bought or sold, the dates and times of the transactions, the transaction prices and means of identifying the investment firms concerned.

Home Member States may provide that the obligation imposed in (b) shall, in the case of bonds and other forms of securitized debt, apply only to aggregated transactions in the same instrument.

2. Where an investment firm carries out a transaction on a regulated market in its host Member State, the home Member State may waive its own requirements as regards reporting if the investment firm is subject to equivalent requirements to report the transaction in question to the authorities in charge of that market.

3. Member States shall provide that the report referred to in paragraph 1 (b) shall be made either by the investment firm itself or by a trade-matching system, or through stock-exchange authorities or those of another regulated market.

4. Member States shall ensure that the information available in accordance with this Article is also available for the proper application of Article 23.

5. Each Member State may, in a non discriminatory manner, adopt or maintain provisions more stringent in the field governed by this Article with regard to substance and form in respect of the conservation and reporting of data relating to transactions:

- carried out on a regulated market of which it is the home Member State or
- carried out by investment firms of which it is the home Member State.

Article 21

1. In order to enable investors to assess at any time the terms of a transaction they are considering and to verify afterwards the conditions in which it has been carried out, each competent authority shall, for each of the regulated markets which it has entered on the list provided for in Article 16, take measures to provide

investors with the information referred to in paragraph 2. In accordance with the requirements imposed in paragraph 2, the competent authorities shall determine the form in which and the precise time within which the information is to be provided, as well as the means by which it is to be made available, having regard to the nature, size and needs of the market concerned and of the investors operating on that market.

2. The competent authorities shall require for each instrument at least:

(a) publication at the start of each day's trading on the market of the weighted average price, the highest and the lowest prices and the volume dealt in on the regulated market in question for the whole of the preceding day's trading;

(b) in addition, for continuous order-driven and quote-driven markets, publication:

— at the end of each hour's trading on the market, of the weighted average price and the volume dealt in on the regulated market in question for a six-hour trading period ending so as to leave two hours' trading on the market before publication, and

— every 20 minutes, of the weighted average price and the highest and lowest prices on the regulated market in question for a two-hour trading period ending so as to leave one hour's trading on the market before publication.

Where investors have prior access to information on the prices and quantities for which transactions may be undertaken:

(i) such information shall be available at all times during market trading hours;

(ii) the terms announced for a given price and quantity shall be terms on which it is possible for an investor to carry out such a transaction.

The competent authorities may delay or suspend publication where that proves to be justified by exceptional market conditions or, in the case of small markets, to preserve the anonymity of firms and investors. The competent authorities may apply special provisions in the case of exceptional transactions that are very large in scale compared with average transactions in the security in question on that market and in the case of highly illiquid securities defined by means of objective criteria and made public. The competent authorities may also apply more flexible provisions, particularly as regards publication deadlines, for transactions concerning bonds and other forms of securitized debt.

3. In the field governed by this Article each Member State may adopt or maintain more stringent provisions or additional provisions with regard to the substance and form in which information must be made available to investors concerning transactions carried out on regulated markets of which it is the home Member State, provided that those provisions apply regardless of the Member State in which the issuer of the financial instrument is located or of the Member State on the regulated market of which the instrument was listed for the first time.

4. The Commission shall report on the application of this Article no later than 31 December 1997; the Council may, on a proposal from the Commission, decide by a qualified majority to amend this Article.

TITLE VI

Authorities responsible for authorization and supervision

Article 22

1. Member States shall designate the competent authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of those duties.

2. The authorities referred to in paragraph 1 must be either public authorities, bodies recognized by national law or bodies recognized by public authorities expressly empowered for that purpose by national law.

3. The authorities concerned must have all the powers necessary for the performance of their functions.

Article 23

1. Where there are two or more competent authorities in the same Member State, they shall collaborate closely in supervising the activities of investment firms operating in that Member State.

2. Member States shall ensure that such collaboration takes place between such competent authorities and the public authorities responsible for the supervision of financial markets, credit and other financial institutions and insurance undertakings, as regards the entities which those authorities supervise.

3. Where, through the provision of services or by the establishment of branches, an investment firm operates in one or more Member States other than its home Member State the competent authorities of all the Member States concerned shall collaborate closely in order more effectively to discharge their respective responsibilities in the area covered by this Directive.

They shall supply one another on request with all the information concerning the management and ownership of such investment firms that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such firms. In particular, the authorities of the home Member State shall cooperate to ensure that the authorities of the host Member State collect the particulars referred to in Article 19 (2).

In so far as it is necessary for the purpose of exercising their powers of supervision, the competent authorities of the home Member State shall be informed by the competent authorities of the host Member State of any measures taken by the host Member State pursuant to Article 19 (6) which involve penalties imposed on an investment firm or restrictions on an investment firm's activities.

Article 24

1. Each host Member State shall ensure that, where an investment firm authorized in another Member State carries on business within its territory through a branch, the competent authorities of the home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for the purpose carry out on-the-spot verification of the information referred to in Article 23 (3).

2. The competent authorities of the home Member State may also ask the competent authorities of the host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so.

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

Article 25

1. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Accordingly no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that individual investment firms cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that investment firm may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of different Member States from exchanging information in accordance with this Directive or other Directives applicable to investment firms. That information shall be subject to the conditions of professional secrecy imposed 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 disclosed is covered by guarantees of professional secrecy at least equivalent to those provided for in this Article.

4. Competent authorities receiving confidential information under paragraph 1 or 2 may use it only in the course of their duties:

— to check that the conditions governing the taking up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed in Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms,

— to impose sanctions,

— in administrative appeals against decisions by the competent authorities, or

— in court proceedings initiated under Article 26.

5. Paragraphs 1 and 4 shall not preclude the exchange of information:

(a) within a Member State, where there are two or more competent authorities, or

(b) within a Member State or between Member States, between competent authorities and

— authorities responsible for the supervision of credit institutions, other financial organizations and insurance undertakings and the authorities responsible for the supervision of financial markets,

— bodies responsible for the liquidation and bankruptcy of investment firms and other similar procedures and

— persons responsible for carrying out statutory audits of the accounts of investment firms and other financial institutions,

in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

6. This Article shall not prevent a competent authority from disclosing to those central banks which do not supervise credit institutions or investment firms individually such information as they may need to act as monetary authorities. Information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1.

7. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received shall be subject to the conditions of professional secrecy imposed in paragraph 1. The Member States shall, however, ensure that information received under paragraph 2 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

8. In addition, notwithstanding the provisions referred to in paragraphs 1 and 4, Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment firms and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verifications referred to in Article 24 may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which the on-the-spot verification was carried out.

9. If, at the time of the adoption of this Directive, a Member State provides for the exchange of information between authorities in order to check compliance with the laws on prudential supervision, on the organization, operation and conduct of commercial companies and on the regulation of financial markets, that Member State may continue to authorize the forwarding of such information pending coordination of all the provisions governing the exchange of information between authorities for the entire financial sector but not in any case after 1 July 1996.

Member States shall, however, ensure that, where information comes from another Member State, it may not be disclosed in the circumstances referred to in the first subparagraph without the express consent of the competent authorities which disclosed it and it may be used only for the purposes for which those authorities gave their agreement.

The Council shall effect the coordination referred to in the first subparagraph on the basis of a Commission proposal. The Council notes the Commission's statement to the effect that it will submit proposals by 31 July 1993 at the latest. The Council will act on those proposals within the shortest possible time with the intention of bringing the rules proposed into effect on the same date as this Directive.

Article 26

Member States shall ensure that decisions taken in respect of an investment firm under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts; the same shall apply where no decision is taken within six months of its submission in respect of an application for authorization which provides all the information required under the provisions in force.

Article 27

Without prejudice to the procedures for the withdrawal of authorization or to the provisions of criminal law, Member States shall provide that their respective competent authorities may, with regard to investment firms or those who effectively control the business of such firms that infringe laws, regulations or administrative provisions concerning the supervision or carrying on of their activities, adopt or impose in respect of them measures or penalties aimed specifically at ending observed breaches or the causes of such breaches.

Article 28

Member States shall ensure that this Directive is implemented without discrimination.

TITLE VII

Final provisions

Article 29

Pending the adoption of a further Directive laying down provisions adapting this Directive to technical progress in the areas specified below, the Council shall, in accordance with Decision 87/373/EEC [1],20acting by a qualified majority on a proposal from the Commission, adopt any adaptations which may be necessary, as follows:

— expansion of the list in Section C of the Annex,

— adaptation of the terminology of the lists in the Annex to take account of developments on financial markets,

— the areas in which the competent authorities must exchange information as listed in Article 23;

— clarification of the definitions in order to ensure uniform application of this Directive in 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 and the framing of definitions in accordance with subsequent measures on investment firms and related matters,

— the other tasks provided for in Article 7 (5).

Article 30

1. Investment firms already authorized in their home Member States to provide investment services before 31 December 1995 shall be deemed to be so authorized for the purpose of this Directive, if the laws of those Member States provide that to take up such activities they must comply with conditions equivalent to those imposed in Articles 3 (3) and 4.

2. Investment firms which are already carrying on business on 31 December 1995 and are not included among those referred to in paragraph 1 may continue their activities provided that, no later than 31 December 1996 and pursuant to the provisions of their home Member States, they obtain authorization to continue such activities in accordance with the provisions adopted in implementation of this Directive.

Only the grant of such authorization shall enable such firms to qualify under the provisions of this Directive on the right of establishment and the freedom to provide services.

3. Where before the date of the adoption of this Directive investment firms have commenced business in other Member States either through branches or under the freedom to provide services, the authorities of each home Member State shall, between 1 July and 31 December 1995, communicate, for the purposes of Articles 17 (1) and (2) and 18, to the authorities of each of the other Member States concerned the list of firms that comply with this Directive and operate in those States, indicating the business carried on.

4. Natural persons authorized in a Member State on the date of the adoption of this Directive to offer investment services shall be deemed to be authorized under this Directive, provided that they fulfil the requirements imposed in Article 1 (2), second subparagraph, second indent, and third subparagraph, all four indents.

Article 31

No later than 1 July 1995 Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive.

These provisions shall enter into force no later than 31 December 1995. The Member States shall forthwith inform the Commission thereof.

When Member States adopt the provisions referred to in the first paragraph they shall include a reference to this Directive or accompany them with such a reference on the occasion of their official publication. The manner in which such references are to be made shall be laid down by the Member States.

Article 32

This Directive is addressed to the Member States.

Done at Brussels, 10 May 1993.

For the Council

The President

N. HELVEG PETERSEN

[1] OJ No L 197, 18. 7. 1987, p. 33.

ANNEX

SECTION A

Services

1. (a) Reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in Section B.

   (b) Execution of such orders other than for own account.

2. Dealing in any of the instruments listed in Section B for own account.

3. Managing portfolios of investments in accordance with mandates given by investors on a discriminatory, client-by-client basis where such portfolios include one or more of the instruments listed in Section B.

4. Underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues.

SECTION B

Instruments

1. (a) Transferable securities.

   (b) Units in collective investment undertakings.

2. Money-market instruments.

3. Financial-futures contracts, including equivalent cash-settled instruments.

4. Forward interest-rate agreements (FRAs).

5. Interest-rate, currency and equity swaps.

6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

SECTION C

Non-core services

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B

2. Safe custody services.

3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.

4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings.

5. Services related to underwriting.

6. Investment advice concerning one or more of the instruments listed in Section B.

7. Foreign-exchange service where these are connected with the provision of investment services.

[1] †) 94/19/EC

Directive of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes

(OJ N° 135. 31.05 1994. p. 5 - 14)

DIRECTIVE 94/19/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 May 1994

on deposit-guarantee schemes

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure referred to in Article 189b of the Treaty (3),

Whereas, in accordance with the objectives of the Treaty, the harmonious development of the activities of credit institutions throughout the Community should be promoted through the elimination of all restrictions on the right of establishment and the freedom to provide services, while increasing the stability of the banking system and protection for savers;

Whereas, when restrictions on the activities of credit institutions are eliminated, consideration should be given to the situation which might arise if deposits in a credit institution that has branches in other Member States become unavailable; whereas it is indispensable to ensure a harmonized minimum level of deposit protection wherever deposits are located in the Community; whereas such deposit protection is as essential as the prudential rules for the completion of the single banking market;

Whereas in the event of the closure of an insolvent credit institution the depositors at any branches situated in a Member State other than that in which the credit institution has its head office must be protected by the same guarantee scheme as the institution's other depositors;

Whereas the cost to credit institutions of participating in a guarantee scheme bears no relation to the cost that would result from a massive withdrawal of bank deposits not only from a credit institution in difficulties but also from healthy institutions following a loss of depositor confidence in the soundness of the banking system;

Whereas the action the Member States have taken in response to Commission recommendation 87/63/EEC of 22 December 1986 concerning the introduction of deposit-guarantee schemes in the Community (4) has not fully achieved the desired result; whereas that situation may prove prejudicial to the proper functioning of the internal market;

Whereas the Second Council Directive 89/646/EEC of 15 December 1989 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 (5), provides for a system for the single authorization of each credit institution and its supervision by the authorities of its home Member State, which entered into force on 1 January 1993;

Whereas a branch no longer requires authorization in any host Member State, because the single authorization is valid throughout the Community, and its solvency will be monitored by the competent authorities of its home Member State; whereas that situation justifies covering all the branches of the same credit institution set up in the Community by means of a single guarantee scheme; whereas that scheme can only be that which exists for that category of institution in the State in which that institution's head office is situated, in particular because of the link which exists between the supervision of a branch's solvency and its membership of a deposit-guarantee scheme;

Whereas harmonization must be confined to the main elements of deposit-guarantee schemes and, within a very short period, ensure payments under a guarantee calculated on the basis of a harmonized minimum level;

Whereas deposit-guarantee schemes must intervene as soon as deposits become unavailable;

Whereas it is appropriate to exclude from cover, in particular, the deposits made by credit institutions on their own behalf and for own account; whereas that should not prejudice the right of a guarantee scheme to take any measures necessary for the rescue of a credit institution that finds itself in difficulties,

(1) OJ No C 163, 30. 6. 1992, p. 6 and OJ No C 178, 30. 6. 1993, p. 14.
(2) OJ No C 332, 16. 12. 1992, p. 13.
(3) OJ No C 115, 26. 4. 1993, p. 96 and Decision of the European Parliament of 9 March 1994 (OJ No C 91, 28. 3. 1994).
(4) OJ No L 33, 4. 2. 1987, p. 16.
(5) OJ No L 386, 30. 12. 1989, p. 1. Directive as amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

Whereas the harmonization of deposit-guarantee schemes within the Community does not of itself call into question the existence of systems in operation designed to protect credit institutions, in particular by ensuring their solvency and liquidity, so that deposits with such credit institutions, including their branches established in other Member States, will not become unavailable; whereas such alternative systems serving a different protective purpose may, subject to certain conditions, be deemed by the competent authorities to satisfy the objectives of this Directive; whereas it will be for those competent authorities to verify compliance with those conditions;

Whereas several Member States have deposit-protection schemes under the responsibility of professional organizations, other Member States have schemes set up and regulated on a statutory basis and some schemes, although set up on a contractual basis, are partly regulated by statute; whereas that variety of status poses a problem only with regard to compulsory membership of and exclusion from schemes; whereas it is therefore necessary to take steps to limit the powers of schemes in this area;

Whereas the retention in the Community of schemes providing cover for deposits which is higher than the harmonized minimum may, within the same territory, lead to disparities in compensation and unequal conditions of competition between national institutions and branches of institutions from other Member States; whereas, in order to counteract those disadvantages, branches should be authorized to join their host countries' schemes so that they can offer their depositors the same guarantees as are offered by the schemes of the countries in which they are located; whereas it is appropriate that after a number of years the Commission should report on the extent to which branches have made use of this option and on the difficulties which they or the guarantee schemes may have encountered in implementing these provisions; whereas it is not ruled out that home Member State schemes should themselves offer such complementary cover, subject to the conditions such schemes may lay down;

Whereas market disturbances could be caused by branches of credit institutions which offer levels of cover higher than those offered by credit institutions authorized in their host Member States; whereas it is not appropriate that the level of scope of cover offered by guarantee schemes should become an instrument of competition; whereas it is therefore necessary, at least during an initial period, to stipulate that the level and scope of cover offered by a home Member State scheme to depositors at branches located in another Member State should not exceed the maximum level and scope offered by the corresponding scheme in the host Member State; whereas possible market disturbances should be reviewed after a number of years, on the basis of the experience acquired and in the light of developments in the banking sector;

Whereas in principle this Directive requires every credit institution to join a deposit-guarantee scheme; whereas the Directives governing the admission of any credit institution which has its head office in a non member country, and in particular the First Council Directive (77/780/EEC) of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions [1] allow Member States to decide whether and subject to what conditions to permit the branches of such credit institutions to operate within their territories; whereas such branches will not enjoy the freedom to provide services under the second paragraph of Article 59 of the Treaty, nor the right of establishment in Member States other than those in which they are established; whereas, accordingly, a Member State admitting such branches should decide how to apply the principles of this Directive to such branches in accordance with Article 9 (1) of Directive 77/780/EEC and with the need to protect depositors and maintain the integrity of the financial system; whereas it is essential that depositors at such branches should be fully aware of the guarantee arrangements which affect them;

Whereas, on the one hand, the minimum guarantee level prescribed in this Directive should not leave too great a proportion of deposits without protection in the interest both of consumer protection and of the stability of the financial system; whereas, on the other hand, it would not be appropriate to impose throughout the Community a level of protection which might in certain cases have the effect of encouraging the unsound management of credit institutions; whereas the cost of funding schemes should be taken into account; whereas it would appear reasonable to set the harmonized minimum guarantee level at ECU 20 000; whereas limited transitional arrangements might be necessary to enable schemes to comply with that figure;

Whereas some Member States offer depositors cover for their deposits which is higher than the harmonized minimum guarantee level provided for in this Directive; whereas it does not seem appropriate to require that such schemes, certain of which have been introduced only recently pursuant to recommendation 87/63/EEC, be amended on this point;

Whereas a Member State must be able to exclude certain categories of specifically listed deposits or depositors, if it does not consider that they need special protection, from the guarantee afforded by deposit-guarantee schemes;

Whereas in certain Member States, in order to encourage depositors to look carefully at the quality of credit

[1] OJ No L 322, 17. 12. 1977, p. 30. Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

institutions, unavailable deposits are not fully reimbursed; whereas such practices should be limited in respect of deposits falling below the minimum harmonized level;

Whereas the principle of a harmonized minimum limit per depositor rather than per deposit has been retained; whereas it is therefore appropriate to take into consideration the deposits made by depositors who either are not mentioned as holders of an account or are not the sole holders; whereas the limit must therefore be applied to each identifiable depositor; whereas that should not apply to collective investment undertakings subject to special protection rules which do not apply to the aforementioned deposits;

Whereas information is an essential element in depositor protection and must therefore also be the subject of a minimum number of binding provisions; whereas, however, the unregulated use in advertising of references to the amount and scope of a deposit-guarantee scheme could affect the stability of the banking system or depositor confidence; whereas Member States should therefore lay down rules to limit such references;

Whereas, in specific cases, in certain Member States in which there are no deposit-guarantee schemes for certain classes of credit institutions which take only an extremely small proportion of deposits, the introduction of such a system may in some cases take longer than the time laid down for the transposition of this Directive; whereas in such cases a transitional derogation from the requirement to belong to a deposit-guarantee scheme may be justified; whereas, however, should such credit institutions operate abroad, a Member State would be entitled to require their participation in a deposit-guarantee scheme which it had set up;

Whereas it is not indispensable, in this Directive, to harmonize the methods of financing schemes guaranteeing deposits or credit institutions themselves, given, on the one hand, that the cost of financing such schemes must be borne, in principle, by credit institutions themselves and, on the other hand, that the financing capacity of such schemes must be in proportion to their liabilities; whereas this must not, however, jeopardize the stability of the banking system of the Member State concerned;

Whereas this Directive may not result in the Member States' or their competent authorities' being made liable in respect of depositors if they have ensured that one or more schemes guaranteeing deposits or credit institutions themselves and ensuring the compensation or protection of depositors under the conditions prescribed in this Directive have been introduced and officially recognized;

Whereas deposit protection is an essential element in the completion of the internal market and an indispensable supplement to the system of supervision of credit institutions on account of the solidarity it creates amongst all the institutions in a given financial market in the event of the failure of any of them,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. *'deposit'* shall mean any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable, and any debt evidenced by a certificate issued by a credit institution.

   Shares in United Kingdom and Irish building societies apart from those of a capital nature covered in Article 2 shall be treated as deposits.

   Bonds which satisfy the conditions prescribed in Article 22 (4) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Ucits) [1] shall not be considered deposits.

   For the purpose of calculating a credit balance, Member States shall apply the rules and regulations relating to set-off and counterclaims according to the legal and contractual conditions applicable to a deposit;

2. *'joint account'* shall mean an account opened in the names of two or more persons or over which two or more persons have rights that may operate against the signature of one or more of those persons;

3. *'unavailable deposit'* shall mean a deposit that is due and payable but has not been paid by a credit institution under the legal and contractual conditions applicable thereto, where either:

   (i) the relevant competent authorities have determined that in their view the credit institution concerned appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and to have no current prospect of being able to do so.

   The competent authorities shall make that determination as soon as possible and at the latest 21 days after first becoming satisfied that a credit institution has failed to repay deposits which are due and payable; or

   (ii) a judicial authority has made a ruling for reasons which are directly related to the credit

[1] OJ No L 375, 31. 12. 1985, p. 3. Directive as last amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31.).

institution's financial circumstances which has the effect of suspending depositors' ability to make claims against it, should that occur before the aforementioned determination has been made;

4. *'credit institution'* shall mean an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;

5. *'branch'* shall mean a place of business which forms a legally dependent part of a credit institution and which conducts directly all or some of the operations inherent in the business of credit institutions; any number of branches set up in the same Member State by a credit institution which has its head office in another Member State shall be regarded as a single branch.

Article 2

The following shall be excluded from any repayment by guarantee schemes:

– subject to Article 8 (3), deposits made by other credit institutions on their own behalf and for their own account,

all instruments which would fall within the definition of 'own funds' in Article 2 of Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions [1],

deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [2].

Article 3

1. Each Member State shall ensure that within its territory one or more deposit-guarantee schemes are introduced and officially recognized. Except in the circumstances envisaged in the second subparagraph and in paragraph 4, no credit institution authorized in that Member State pursuant to Article 3 of Directive 77/780/EEC may take deposits unless it is a member of such a scheme.

A Member State may, however, exempt a credit institution from the obligation to belong to a deposit guarantee scheme where that credit institution belongs to a system which protects the credit institution itself and in particular ensures its liquidity and solvency, thus guaranteeing protection for depositors at least equivalent to that provided by a deposit-guarantee scheme, and which, in the opinion of the competent authorities, fulfils the following conditions:

— the system must be in existence and have been officially recognized when this Directive is adopted,

— the system must be designed to prevent deposits with credit institutions belonging to the system from becoming unavailable and have the resources necessary for that purpose at its disposal,

— the system must not consist of a guarantee granted to a credit institution by a Member State itself or by any of its local or regional authorities,

the system must ensure that depositors are informed in accordance with the terms and conditions laid down in Article 9.

Those Member States which make use of this option shall inform the Commission accordingly; in particular, they shall notify the Commission of the characteristics of any such protective systems and the credit institutions covered by them and of any subsequent changes in the information supplied. The Commission shall inform the Banking Advisory Committee thereof.

2. If a credit institution does not comply with the obligations incumbent on it as a member of a deposit-guarantee scheme, the competent authorities which issued its authorization shall be notified and, in collaboration with the guarantee scheme, shall take all appropriate measures - including the imposition of sanctions to ensure that the credit institution complies with its obligations.

3. If those measures fail to secure compliance on the part of the credit institution, the scheme may, where national law permits the exclusion of a member, with the express consent of the competent authorities, give not less than 12 months' notice of its intention of excluding the credit institution from membership of the scheme. Deposits made before the expiry of the notice period shall continue to be fully covered by the scheme. If, on the expiry of the notice period, the credit institution has not complied with its obligations, the guarantee scheme may, again having obtained the express consent of the competent authorities, proceed to exclusion.

4. Where national law permits, and with the express consent of the competent authorities which issued its authorization, a credit institution excluded from a deposit-guarantee scheme may continue to take deposits if, before its exclusion, it has made alternative guarantee arrangements which ensure that depositors will enjoy a level and scope of protection at least equivalent to that offered by the officially recognized scheme.

5. If a credit institution the exclusion of which is proposed under paragraph 3 is unable to make alternative arrangements which comply with the conditions prescribed in paragraph 4, then the competent authorities which issued its authorization shall revoke it forthwith.

Article 4

1. Deposit guarantee schemes introduced and officially recognized in a Member State in accordance with

[1] OJ No L 124, 5. 5. 1989, p. 16. Directive is last amended by Directive 92/16/EEC (OJ No L 75, 21. 3. 1992, p. 48).
[2] OJ No L 166, 28. 6. 1991, p. 77.

Article 3 (1) shall cover the depositors at branches set up by credit institutions in other Member States.

Until 31 December 1999 neither the level nor the scope, including the percentage, of cover provided shall exceed the maximum level or scope of cover offered by the corresponding guarantee scheme within the territory of the host Member State.

Before that date, the Commission shall draw up a report on the basis of the experience acquired in applying the second subparagraph and shall consider the need to continue those arrangements. If appropriate, the Commission shall submit a proposal for a Directive to the European Parliament and the Council, with a view to the extension of their validity.

2. Where the level and/or scope, including the percentage, of cover offered by the host Member State guarantee scheme exceeds the level and/or scope of cover provided in the Member State in which a credit institution is authorized, the host Member State shall ensure that there is an officially recognized deposit-guarantee scheme within its territory which a branch may join voluntarily in order to supplement the guarantee which its depositors already enjoy by virtue of its membership of its home Member State scheme.

The scheme to be joined by the branch shall cover the category of institution to which it belongs or most closely corresponds in the host Member State.

3. Member States shall ensure that objective and generally applied conditions are established for branches' membership of a host Member State's scheme in accordance with paragraph 2. Admission shall be conditional on fulfilment of the relevant obligations of membership, including in particular payment of any contributions and other charges. Member States shall follow the guiding principles set out in Annex II in implementing this paragraph.

4. If a branch granted voluntary membership under paragraph 2 does not comply with the obligations incumbent on it as a member of a deposit-guarantee scheme, the competent authorities which issued the authorization shall be notified and, in collaboration with the guarantee scheme, shall take all appropriate measures to ensure that the aforementioned obligations are complied with.

If those measures fail to secure the branch's compliance with the aforementioned obligations, after an appropriate period of notice of not less than 12 months the guarantee scheme may, with the consent of the competent authorities which issued the authorization, exclude the branch. Deposits made before the date of exclusion shall continue to be covered by the voluntary scheme until the dates on which they fall due. Depositors shall be informed of the withdrawal of the supplementary cover.

5. The Commission shall report on the operation of paragraphs 2, 3 and 4 no later than 31 December 1999 and shall, if appropriate, propose amendments thereto.

Article 5

Deposits held when the authorization of a credit institution authorized pursuant to Article 3 of Directive 77/780/EEC is withdrawn shall continue to be covered by the guarantee scheme.

Article 6

1. Member States shall check that branches established by a credit institution which has its head office outwith the Community have cover equivalent to that prescribed in this Directive.

Failing that, Member States may, subject to Article 9 (1) of Directive 77/780/EEC, stipulate that branches established by a credit institution which has its head office outwith the Community must join deposit-guarantee schemes in operation within their territories.

2. Actual and intending depositors at branches established by a credit institution which has its head office outwith the Community shall be provided by the credit institution with all relevant information concerning the guarantee arrangements which cover their deposits.

3. The information referred to in paragraph 2 shall be made available in the official language or languages of the Member State in which a branch is established in the manner prescribed by national law and shall be drafted in a clear and comprehensible form.

Article 7

1. Deposit-guarantee schemes shall stipulate that the aggregate deposits of each depositor must be covered up to ECU 20 000 in the event of deposits' being unavailable.

Until 31 December 1999 Member States in which, when this Directive is adopted, deposits are not covered up to ECU 20 000 may retain the maximum amount laid down in their guarantee schemes, provided that this amount is not less than ECU 15 000.

2. Member States may provide that certain depositors or deposits shall be excluded from guarantee or shall be granted a lower level of guarantee. Those exclusions are listed in Annex I.

3. This Article shall not preclude the retention or adoption of provisions which offer a higher or more comprehensive cover for deposits. In particular, deposit-guarantee schemes may, on social considerations, cover certain kinds of deposits in full.

4. Member States may limit the guarantee provided for in paragraph 1 or that referred to in paragraph 3 to a specified percentage of deposits. The percentage guaranteed must, however, be equal to or exceed 90 % of aggregate deposits until the amount to be paid under the guarantee reaches the amount referred to in paragraph 1.

5. The amount referred to in paragraph 1 shall be reviewed periodically by the Commission at least once every five years. If appropriate, the Commission shall submit to the European Parliament and to the Council a proposal for a Directive to adjust the amount referred to in paragraph 1, taking account in particular of developments in the banking sector and the economic and monetary situation in the Community. The first review shall not take place until five years after the end of the period referred to in Article 7 (1), second subparagraph.

6. Member States shall ensure that the depositor's rights to compensation may be the subject of an action by the depositor against the deposit-guarantee scheme.

Article 8

1. The limits referred to in Article 7 (1), (3) and (4) shall apply to the aggregate deposits placed with the same credit institution irrespective of the number of deposits, the currency and the location within the Community.

2. The share of each depositor in a joint account shall be taken into account in calculating the limits provided for in Article 7 (1), (3) and (4).

In the absence of special provisions, such an account shall be divided equally amongst the depositors.

Member States may provide that deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, may be aggregated and treated as if made by a single depositor for the purpose of calculating the limits provided for in Article 7 (1), (3) and (4).

3. Where the depositor is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on which the competent authorities make the determination described in Article 1 (3) (i) or the judicial authority makes the ruling described in Article 1 (3) (ii). If there are several persons who are absolutely entitled, the share of each under the arrangements subject to which the sums are managed shall be taken into account when the limits provided for in Article 7 (1), (3) and (4) are calculated.

This provision shall not apply to collective investment undertakings.

Article 9

1. Member States shall ensure that credit institutions make available to actual and intending depositors the information necessary for the identification of the deposit-guarantee scheme of which the institution and its branches are members within the Community or any alternative arrangement provided for in Article 3 (1), second subparagraph, or Article 3 (4). The depositors shall be informed of the provisions of the deposit-guarantee scheme or any alternative arrangement applicable, including the amount and scope of the cover offered by the guarantee scheme. That information shall be made available in a readily comprehensible manner.

Information shall also be given on request on the conditions for compensation and the formalities which must be completed to obtain compensation.

2. The information provided for in paragraph 1 shall be made available in the manner prescribed by national law in the official language or languages of the Member State in which the branch is established.

3. Member States shall establish rules limiting the use in advertising of the information referred to in paragraph 1 in order to prevent such use from affecting the stability of the banking system or depositor confidence. In particular, Member States may restrict such advertising to a factual reference to the scheme to which a credit institution belongs.

Article 10

1. Deposit-guarantee schemes shall be in a position to pay duly verified claims by depositors in respect of unavailable deposits within three months of the date on which the competent authorities make the determination described in Article 1 (3) (i) or the judicial authority makes the ruling described in Article 1 (3) (ii).

2. In wholly exceptional circumstances and in special cases a guarantee scheme may apply to the competent authorities for an extension of the time limit. No such extension shall exceed three months. The competent authorities may, at the request of the guarantee scheme, grant no more than two further extensions, neither of which shall exceed three months.

3. The time limit laid down in paragraphs 1 and 2 may not be invoked by a guarantee scheme in order to

deny the benefit of guarantee to any depositor who has been unable to assert his claim to payment under a guarantee in time.

4. The documents relating to the conditions to be fulfilled and the formalities to be completed to be eligible for a payment under the guarantee referred to in paragraph 1 shall be drawn up in detail in the manner prescribed by national law in the official language or languages of the Member State in which the guaranteed deposit is located.

5. Notwithstanding the time limit laid down in paragraphs 1 and 2, where a depositor or any person entitled to or interested in sums held in an account has been charged with an offence arising out of or in relation to money laundering as defined in Article 1 of Directive 91/308/EEC, the guarantee scheme may suspend any payment pending the judgment of the court.

Article 11

Without prejudice to any other rights which they may have under national law, schemes which make payments under guarantee shall have the right of subrogation to the rights of depositors in liquidation proceedings for an amount equal to their payments.

Article 12

Notwithstanding Article 3, those institutions authorized in Spain or in Greece and listed in Annex III shall be exempt from the requirement to belong to a deposit guarantee scheme until 31 December 1999.

Such credit institutions shall expressly alert their actual and intending depositors to the fact that they are not members of any deposit-guarantee scheme.

During that time, should any such credit institution establish or have established a branch in another Member State, that Member State may require that branch to belong to a deposit-guarantee scheme set up within its territory under conditions consonant with those prescribed in Article 4 (2), (3) and (4).

Article 13

In the list of authorized credit institutions which it is required to draw up pursuant to Article 3 (7) of Directive 77/780/EEC the Commission shall indicate the status of each credit institution with regard to this Directive.

Article 14

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 1 July 1995. They shall forthwith inform the Commission thereof.

When the 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 reference shall be laid down by the Member States.

2. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 15

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 16

This Directive is addressed to the Member States.

Done at Brussels, 30 May 1994.

For the European Parliament	*For the Council*
The President	*The President*
E. KLEPSCH	G. ROMEOS

ANNEX I

List of exclusions referred to in Article 7 (2)

1. Deposits by financial institutions as defined in Article 1 (6) of Directive 89/646/EEC.

2. Deposits by insurance undertakings.

3. Deposits by government and central administrative authorities.

4. Deposits by provincial, regional, local and municipal authorities.

5. Deposits by collective investment undertakings.

6. Deposits by pension and retirement funds.

7. Deposits by a credit institution's own directors, managers, members personally liable, holders of at least 5 % of the credit institution's capital, persons responsible for carrying out the statutory audits of the credit institution's accounting documents and depositors of similar status in other companies in the same group.

8. Deposits by close relatives and third parties acting on behalf of the depositors referred to in 7.

9. Deposits by other companies in the same group.

10. Non-nominative deposits.

11. Deposits for which the depositor has, on an individual basis, obtained from the same credit institution rates and financial concessions which have helped to aggravate its financial situation.

12. Debt securities issued by the same institution and liabilities arising out of own acceptances and promissory notes.

13. Deposits in currencies other than:

- those of the Member States,

- ecus.

14. Deposits by companies which are of such a size that they are not permitted to draw up abridged balance sheets pursuant to Article 11 of the Fourth Council Directive (78/660/EEC) of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (1).

(1) OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

ANNEX II

Guiding principles

Where a branch applies to join a host Member State scheme for supplementary cover, the host Member State scheme will bilaterally establish with the home Member State scheme appropriate rules and procedures for paying compensation to depositors at that branch. The following principles shall apply both to the drawing up of those procedures and in the framing of the membership conditions applicable to such a branch (as referred to in Article 4 (2)):

(a) the host Member State scheme will retain full rights to impose its objective and generally applied rules on participating credit institutions; it will be able to require the provision of relevant information and have the right to verify such information with the home Member State's competent authorities;

(b) the host Member State scheme will meet claims for supplementary compensation upon a declaration from the home Member State's competent authorities that deposits are unavailable. The host Member State scheme will retain full rights to verify a depositor's entitlement according to its own standards and procedures before paying supplementary compensation;

(c) home Member State and host Member State schemes will cooperate fully with each other to ensure that depositors receive compensation promptly and in the correct amounts. In particular, they will agree on how the existence of a counterclaim which may give rise to set-off under either scheme will affect the compensation paid to the depositor by each scheme;

(d) host Member State schemes will be entitled to charge branches for supplementary cover on an appropriate basis which takes into account the guarantee funded by the home Member State scheme. To facilitate charging, the host Member State scheme will be entitled to assume that its liability will in all circumstances be limited to the excess of the guarantee it has offered over the guarantee offered by the home Member State regardless of whether the home Member State actually pays any compensation in respect of deposits held within the host Member State's territory.

ANNEX III

List of credit institutions mentioned in Article 12

(a) Specialized classes of Spanish institutions, the legal status of which is currently undergoing reform, authorized as

— Entidades de Financiación o Factoring,

— Sociedades de Arrendamiento Financiero,

— Sociedades de Crédito Hipotecario.

(b) The following Spanish state institutions:

— Banco de Crédito Agrícola, SA,

— Banco Hipotecario de España, SA,

— Banco de Crédito Local, SA.

(c) The following Greek credit cooperatives:

— Lamia Credit Cooperative,

— Ioannina Credit Cooperative,

— Xylocastron Credit Cooperative,

as well as those of the credit cooperatives of a similar nature listed below which are authorized or in the process of being authorized on the date of the adoption of this Directive:

— Chania Credit Cooperative,

— Irakhon Credit Cooperative,

— Magnissia Credit Cooperative,

— Larissa Credit Cooperative,

— Patras Credit Cooperative,

— Thessaloniki Credit Cooperative.

I . g)**(Amended) proposal for a Council Directive concerning the reorganization and the winding-up of credit institutions and deposit-guarantee schemes (COM(85)788, COM(88)4 (SYN 46))**
(OJ No C 36, 08.02.1988, p. 1-22)

Title I : Scope and definitions (Art. 1-3)

Title II : Reorganization measures (Art. 4-10)

A. Credit institutions having their head office within the Community (Art. 4-7)

B. Credit institutions having their head office outside the Community (Art. 8)

C. Adjustment of this title to changes in national legislation (Art.9 and 10)

Title III : Winding-up (Art. 11-16)

A. Credit institutions having their head office within the Community (Art.11-14)

B. Credit institutions having their head office outside the Community (Art. 15)

C. Adjustment of this Title to changes in national legislation (Art. 16)

Title IV : Deposit-guarantee schemes (Art. 17)

Title V : Final provisions (Art. 18 and 19)

Annex I : List of the reorganization measures provided in Article 2(1)

Annex II : List of winding-up procedures provided for in Article 2(3)

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive concerning the reorganization and the winding-up of credit institutions and deposit-guarantee schemes (1)

COM(88) 4 final

(Submitted by the Commission to the Council pursuant to the third paragraph of Article 149 of the Treaty on 11 January 1988)

(88/C 36/01)

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Council Directive on the coordination of laws, regulations and administrative provisions relating to the reorganization and the winding-up of credit institutions	Council Directive on the coordination of laws, regulations and administrative provisions relating to the reorganization and the winding-up of credit institutions *and deposit-guarantee schemes*
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	
Having regard to the Treaty establishing the European Economic Community, and in particular the third sentence of Article 57 (2) thereof,	Visas unchanged
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, in accordance with the objectives of the Treaty, the harmonious development of economic activities throughout the Community should be promoted through the elimination of any restrictions on freedom of establishment and the freedom to provide services within the Community;	First nine recitals unchanged
Whereas, at the same time as those restrictions are eliminated, consideration should be given to the situation which might arise if a credit institution runs into difficulties, particularly where that institution has branches in other Member States;	

(1) OJ No C 356, 31. 12. 1985, p. 55.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Whereas the existing structure of the credit sector, where the taking up and pursuit of business are subject to supervision by the authorities in all the Member States of the Community, justifies the provision of specific measures in respect of the reorganization and winding up credit institutions;	
Whereas there is a tendency in the laws and practices in force in the Member States to institute reorganization procedures, aimed at preventing credit institutions from becoming insolvent, as soon as financial difficulties become apparent, so as to maintain savers' confidence in the banking system;	
Whereas it would be very difficult to attempt to unify those laws and practices without first securing mutual recognition by the Member States of the achievements of each in resolving the financial difficulties of its own credit institutions;	
Whereas implementation of reorganization measures in respect of a credit institution operating in several Member States should be entrusted to the competent authorities of one Member State, namely that in which the credit institution has its head office; whereas those authorities must be empowered to enforce their own laws outside their national territory in consultation, as appropriate, with the competent authorities of the other Member States concerned;	
Whereas reorganization cannot be achieved unless all the legal obstacles which might prevent the reorganization measures taken by the authorities of the home country from being effective against branches are eliminated;	
Whereas it is desirable, and sometimes necessary, to notify creditors and shareholders of the implementation of certain reorganization measures in countries where branches are situated, particularly when such measures could hinder them from exercising certain of their rights,	
Whereas it is essential to provide for a procedure to enable the Directive to be swiftly adjusted to changes in national rules on reorganization measures, which must continue to evolve at national level in the light of experience; whereas it is desirable to extend the responsibilities of the Advisory Committee set up under Council Directive 77/780/EEC (1) to this end, by empowering it to give an opinion on whether such changes should be adopted or rejected at Community level;	
Whereas in the absence of reorganization measures, or in the event of such measures failing, the credit institutions in difficulty must be wound up; whereas certain provisions should be made in such cases for coordinating the banking supervisory authorities' role in applying the winding-up measures,	Whereas in the absence of reorganization measures, or in the event of such measures failing, the credit institutions in difficulty must be wound up; **whereas pending the conclusion, on the basis of Article 220 of the EEC Treaty, of a Convention on bankruptcy, winding-up arrangements, compositions and similar proceedings, it is necessary to**

(1) OJ No L 322, 17. 12. 1977, p. 30.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	coordinate the main provisions applicable when a credit institution is wound up; whereas certain provisions should be made in such cases for coordinating the banking supervisory authorities' role in applying the winding-up measures;
Whereas the important role played by the competent authorities in implementing reorganization measures before winding-up commences must continue after winding-up has commenced so that the winding-up operations may be properly carried out;	**11th to 17th recitals unchanged**
Whereas withdrawal of authorization to pursue the businesss of banking must be one of the necessary effects of winding-up credit institutions; whereas the competent authorities may, however, maintain such authorization in certain exceptional cases in order to facilitate the winding-up operations;	
Whereas it is acknowledged that, while it is pursuing its business, a credit institution and its branches form a single entity whose liquidity position and solvency are subject to supervision by the competent authorities of the home country; whereas it would be inexpedient to abandon this rule at a time when a credit institution is being wound up;	
Whereas equal treatment of creditors can be guaranteed only in so far as the credit institution is wound up according to the principles of unity and universality, which require that the administrative authorities and courts of a single State have jurisdiction, that the home country's law on winding-up be applied and that that law effective outside the territory of the State concerned;	
Whereas, however, winding-up must be governed by particular rules when an institution is solvent; whereas voluntary winding-up according to the statutory provisions presupposes such solvency; whereas provision should be made for the competent authorities to be empowered to ensure that the institution is solvent throughout the winding-up period;	
Whereas it should be made possible, by means of certain adjustments, for the competent authorities' role to be coordinated also in respect of branches of credit institutions whose head office is outside the Comunity;	
Whereas depositors' interests in the event of an insolvent credit institution being wound up must be safeguarded by the guarantee schemes existing in the European Community, without discrimination in a given territory between branches of national or Community credit institutions and also without discrimination in a given institution between deposits made in the State where the head office is situated and those made in branches set up in other States, where no deposit-guarantee scheme exists in those States;	
	Whereas introduction of a deposit-guarantee scheme should be coordinated at a later stage, by means of a Directive, in the light of the experience gained during implementation of the provisions contained in the Commission's recommendation

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	of 22 December 1986 concerning the introduction of deposit-guarantee schemes in the Community (87/63/EEC) published in OJ No L 33, 4. 2. 1987,
HAS ADOPTED THIS DIRECTIVE:	
TITLE I	TITLE I
Scope and definitions	Scope and definitions
Article 1	*Article 1*
1. This Directive shall apply to credit institutions and their branches as defined in the first and third indents of Article 1 of Directive 77/780/EEC, due regard being had to the conditions and exemptions laid down in Article 2 of that Directive.	1. **This Directive shall apply to credit institutions and their branches set up in a Member State other than that in which they have their head office, as defined in the first and third indents of Article 1 of Directive 77/780/EEC, due regard being had to the conditions and exemptions laid down in Article 2 of that Directive.**
2. The provisions of this Directive concerning the branches of a credit institution whose head office is outside the Community shall apply only where that institution has branches in at least two Member States of the Community.	Unchanged
Article 2	*Article 2*
1. For the purposes of this Directive, 'reorganization measures' means measures which are intended to safeguard or restore the financial situation of a credit institution *and which satisfy the following conditions:*	1. For the purposes of this Directive, 'reorganization measures' means **the measures included in the list set out in Annex I in so far as they are intended to safeguard or restore** the financial situation of a credit institution.
(a) *they are included in the list set out in the Annex to this Directive,*	
(b) *they are designed to avoid the opening of a winding-up procedure,*	
(c) *they were decided on before any declaration that the credit institution was insolvent.*	
2. The following shall not be considered to be reorganization measures, even if they are included in the list set out in the Annex.	Unchanged
(a) measures taken as part of the normal supervision of credit institutions as defined in Article 7 of Directive 77/780/EEC, and measures intended to deal with infringements of laws or regulations;	
(b) measures taken in connection with bankruptcy proceedings, an arrangement or any other winding-up procedure already initiated.	
3. The measures referred to in paragraph 1 and the authorities responsible for implementing them shall be determined by the laws and regulations set out in the Annex.	3. **For the purposes of this Directive, 'winding-up procedures' means the procedures listed in Annex II.**

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	4. For the purposes of this Directive, 'deposit-guarantee schemes' means all provisions designed to guarantee appropriate compensation for depositors or to protect them against any loss.
	5. The measures referred to in paragraph 1 and the winding-up procedures referred to in paragraph 3 as well as the authorities responsible for implementing them shall be determined by laws and regulations set out in Annexes I and II.
Article 3	*Article 3*
For the purposes of this Directive:	For the purposes of this Directive:
— 'home country' means the Member State in which a credit institution has its head office,	— Unchanged
— 'host country' means any Member State — other than that defined as being the home country — in which a credit institution has set up a branch within the meaning of the third indent of Article 1 of Directive 77/780/EEC,	— Unchanged
— 'competent authorities' means the authorities empowered to grant and withdraw authorization and/or supervise the activities of credit institutions pursuant to Articles 3, 4, 6, 7 and 8 of Directive 77/780/EEC and any other authority listed in the Annex to this Directive as being responsible for implementing the reorganization measures.	— **'competent authorities' means the authorities empowered to grant and withdraw authorization and/or supervise the activities of credit institutions pursuant to Articles 3, 4, 6, 7 and 8 of Directive 77/780/EEC and any other authority listed in the Annex to this Directive as being responsible for implementing the reorganization measures or winding-up procedures.**
TITLE II	TITLE II
Reorganization measures	**Reorganization measures**
A. *Credit institutions having their head office within the Community*	A. *Credit institutions having their head office within the Community*
Article 4	*Article 4*
1. The authorities or courts of the home country shall be empowered to decide, in accordance with the rules, procedures and practices in force in their territory, on the implementation of one or more reorganization measures in a credit institution and its branches.	Unchanged
2. The reorganization measures decided on by the competent authorities or court in the home country shall be fully effective as against the governing bodies and creditors of branches situated in the other Member States, even where the rules of the host country applicable to them do not make provision for such measures or make their implementation subject to conditions which are not fulfilled.	Unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
3 Decisions taken by the competent authorities or court in the home country to apply one or more reorganization measures shall preclude the application or maintenance by the competent authorities or court in the host country of any reorganization measure within the meaning of Article 2, unless a decision to the contrary is taken by the competent authorities of the home country.	Unchanged
Article 5	*Article 5*
The competent authorities of the home country shall, before adopting any reorganization measure, inform, by any available means, the competent authorities of the host country, of their intention and consult them on the effects of such a measure in the host country, unless the measure concerned is clearly not likely to have any significant effect on a branch situated in another Member State.	Unchanged
Article 6	*Article 6*
Where the competent authorities of the host country deem it necessary to implement in their territory one or more reorganization measures within the meaning of Article 2, they shall inform the competent authorities of the home country accordingly.	Unchanged
Where, upon receipt of such information, the competent authorities of the home country consider that the difficulties encountered by the branch are not such as to justify the application of Article 4 (1) and (2), they shall so inform the authorities of the host country, which may decide to apply one or more reorganization measures in their territory.	Unchanged
Article 7	*Article 7*
1 Where implementation of the reorganization measures decided on pursuant to Article 4 (1) and (2) directly affects the rights of creditors established in a host country and where an appeal is possible in the home country against the decision ordering the measure, the competent authorities of the home country may, should they deem it necessary, publish at the expense of the credit institution an extract from their decision in the *Offical Journal of the European Communities* and in two nationally distributed newspapers in each host country.	1. Where implementation of the reorganization measures decided on pursuant to Article 4 (1) and (2) is likely directly to affect the rights of any creditors including shareholders established in a host country and where an appeal is possible in the home country against the decision ordering the measure, the competent authorities of the home country may, should they deem it necessary, publish at the expense of the credit institution an extract from their decision in the *Official Journal of the European Communities* and in two nationally distributed newspapers in each host country.
2 The competent authorities of the home country may, should they deem it expedient, notify the measure directly and individually to creditors resident in the Community whose rights are affected.	Unchanged
3. The extract from the decision to be published or the notification shall specify, in the national language or languages of the States concerned, the purpose and legal basis	

ORIGINAL PROPOSAL	AMENDED PROPOSAL
of the decision taken, the time limits for lodging an appeal and the full address of the authorities or court competent to examine an appeal.	Unchanged
4. The reorganization measures shall apply irrespective of the publicity measures prescribed in paragraphs 1 to 3 and shall be fully effective as against creditors, unless the competent authorities of the home country or the law of that country governing the measures provide otherwise.	Unchanged
5. Except in the case of individual notification, the time for lodging an appeal shall run from publication in the *Official Journal of the European Communities*.	Unchanged
B. *Credit institutions having their head office outside the Community*	B. *Credit institutions having their head office outside the Community*
Article 8	*Article 8*
1. Pending subsequent coordination of laws, regulations and administrative provisions applying to the branches of credit institutions having their head office outside the Community, the authorities and courts of the host country shall retain the right to implement reorganization measures in accordance with the rules, procedures and practices in force in their territory, unless provision is made to the contrary in agreements concluded with the home country, in accordance with the Treaty, on the basis of the principle of reciprocity.	Unchanged
2. However, the competent authority of the host country of a branch of a credit institution having its head office outside the Community which deems it necessary to implement one or more reorganization measures within the meaning of Article 2 shall, before adopting such measures, so inform, by all available means, the competent authorities of the other host countries in which the institution has set up branches included in the list mentioned in Article 3 (7) of Directive 77/780/EEC and published each year in the *Official Journal of the European Communities*.	Unchanged
3. In cases of extreme urgency, the information referred to in paragraph 2 may be replaced by notification of the measure, which must be made without delay to the competent authorities of the host country.	Unchanged
4. The competent authorities of another host country may decide, save where the agreements referred to in paragraph 1 are applicable, that the reorganization measures of which they are informed, through the procedure referred to in paragraph 2 or the notification referred to in paragraph 3, shall take effect as against the governing bodies and creditors of branches situated in that host country, even if the rules applicable to them, by virtue of paragraph 1, do not provide for such measures or make their implementation subject to conditions which are not fulfilled.	Unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
5. The publicity measures entrusted under Article 7 (1) and (2) to the competent authorities of the home country shall, in the event of application of the provisions of paragraph 4 of this Article, be entrusted to the competent authority of the host country referred to in paragraph 2.	Unchanged
C. *Adjustment of the Directive to changes in national legislation*	C. *Adjustment of* this Title *to changes in national legislation*
Article 9	*Article 9*
1. The list of reorganization measures given in the Annex shall be amended or supplemented in accordance with the procedure laid down in this Article.	1. The list of reorganization measures given in Annex I shall be amended or supplemented in accordance with the procedure laid down in this Article.
2. If a Member State wishes to make amendments or additions to the annexed list, it shall notify the proposed measure to the Commission, stating whether or not it involves provisions that may affect the rights of creditors.	2. If a Member State wishes to make amendments or additions in Annex I, in accordance with its own legislation, it shall notify the draft of the proposed measure to the Commission.
3. A Commission representative shall ask the Chairman of the Banking Advisory Committee set up by Directive 77/780/EEC, hereinafter referred to as 'the Committee', to refer the proposed measure to the Committee, asking the Committee to hold an emergency meeting if he considers that the situation so requires.	3. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representatives 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.
4. The Committee shall deliver its opinion on the measure by a qualified majority of two-thirds of the votes; if, however, the proposed amendment concerns a measure that may affect the rights of creditors, the Committee shall deliver its opinion unanimously.	4. 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 within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
5. Where the Committee delivers a favourable opinion on the amendment to the list, the Commission shall adopt the measure proposed.	5. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.
6. Where the Committee does not deliver such an opinion, the Commission shall without delay present to the Council, which shall act by a qualified majority, a proposal on the measure to be adopted.	6. 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 the Council has not acted within six months of such referral, the proposed measure shall be adopted by the Commission.	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 in no case may exceed three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.
This provision shall not apply where the measure may affect the rights of creditors, in that case, the Commission shall present to the Council a proposal for a Directive in the manner prescribed in Article 149 of the Treaty.	

ORIGINAL PROPOSAL	AMENDED PROPOSAL
7. The Member States may adopt the proposed measures without awaiting the decisions of the Committee and of the Council; however, decisions taken pursuant to the measure shall not be covered by the provisions of this Directive, and in particular Article 4 (2) and (3).	Unchanged
Article 10	*Article 10*
Each Member State shall ensure that there are no legal impediments preventing any reorganization measures that may be decided on, in accordance with Article 4, by the competent authorities or court of the home country from being rendered applicable to branches which credit institutions, having their head office in another Member State, have set up in its territory; it shall consequently adopt, with due regard to the general principles of its own system, the laws, regulations and administrative provisions necessary to this effect.	Unchanged
TITLE III	TITLE III
Winding-up	**Winding-up**
A. *Credit institutions having their head office within the Community*	A. *Credit institutions having their head office within the Community*
Article 11	*Article 11*
1 The competent authorities of the home country shall be consulted on any application from creditors, the debtor or the representative of the State for a compulsory winding-up procedure to be opened.	Unchanged
2 The business of the credit institution shall be wound up in accordance with the law of the home country in so far as this Directive *and the Convention on bankruptcy, winding-up, arrangements, compositions and similar proceeding* do not provide otherwise.	2. The business of the credit institution shall be wound up in accordance with the law of the home country in so far as this Directive does not provide otherwise.
3. Decisions on the winding-up of a credit institution taken by the administrative authorities or courts, or winding-up agencies, shall also be fully effective against the credit institutions' branches situated in other Member States and shall preclude the opening of any other winding-up procedure in respect of them, subject to the provisions of Article 12 (2).	3. Decisions on the winding-up of a credit institution taken by the administrative authorities or courts, or winding-up agencies of the home country shall also be fully effective against the credit institution's branches situated in other Member States and shall preclude the opening of any other winding-up procedure in respect of them, subject to the provisions of Article 12 (2).
Article 12	*Article 12*
1 The competent authorities of the home country shall be consulted prior to any voluntary winding-up decision taken by the governing bodies of a credit institution.	Unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
2. The voluntary winding-up of a credit institution shall not preclude the opening, at the request of the competent authorities of the home country, of a procedure for administrative or compulsory winding-up, if the governing bodies do not carry out such winding-up in a satisfactory manner, or there is good reason to believe that the institution is not in a position to fulfil its obligations to its creditors.	
Article 13	*Article 13*
1 Where a winding-up procedure is opened in respect of a credit institution in the absence or following the failure of reorganization measures, the competent authorities of the home country shall withdraw the authorization of the institution in accordance with the procedure provided for in Article 8 of Directive 77/780/EEC.	Unchanged
2. However, exceptionally, the withdrawal of authorization shall not prevent the person or persons entrusted with the winding-up from carrying on some of the activities of the credit institution with the consent and under the supervision of the competent authorities of the home country, in so far as this is necessary for the purposes of the winding-up. This provision shall be applicable in the host country only if the law on the withdrawal of banking authorization does not provide otherwise.	
3 In the event of voluntary winding-up, the authorization provided for in Article 3 of Directive 77/780/EEC may be maintained until completion of the winding-up operations provided the institution continues to satisfy the conditions of the authorization.	
Article 14	*Article 14*
1 Winding-up shall be carried out under the supervision of the competent authorities of the home country in collaboration with the competent authorities of the host country	Unchanged
2 Liquidators shall be entitled to exercise in the territory of all the Member States all the powers which they are entitled to exercise in the territory of the Member State in which the winding-up procedure is opened. However, even if the law of the Member State in which the winding-up procedure is opened does not provide for the possibility of more than one liquidator being appointed, the competent authorities of a host country may, if they deem it necessary, request the appointment of a liquidator from among the persons exercising the functions of liquidator in their territory; similarly, where the law of the Member State in which the winding-up procedure is opened permits the delegation of certain powers to other persons, such persons shall, at the request of the competent authorities of the host country be chosen from among the persons able to exercise the functions of liquidator in that country.	Unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	3. The winding-up procedure shall be announced at the request of the liquidator or liquidators, through publication of an extract from the winding-up decision in the *Official Journal of the European Communities* and two national newspapers in each of the host countries.
B. *Credit institutions having their head office outside the Community*	B. *Credit institutions having their head office outside the Community*
Article 15	*Article 15*
1. Where the law of the host country provides for the possibility of winding-up a branch of a credit institution having its head office outside the Community, such winding-up shall be decided on by the competent authorities of the host country.	Unchanged
2. The competent authorities of the host country referred to in paragraph 1 shall withdraw the authorization of the branch if the branch was granted a separate authorization in accordance with Article 4 (4) of Directive 77/780/EEC.	
3. The competent authorities referred to in paragraphs 1 and 2 shall inform the competent authorities of the other host countries that authorization has been withdrawn and a winding-up procedure opened.	
4. The competent authorities of the host countries other than the host country referred to paragraphs 1 and 2 may decide to withdraw any separate authorization granted to the branch set up in their territory.	
5. Exceptionally, the withdrawal of authorization shall not prevent the person or persons entrusted with the winding-up from carrying on certain of the activities of the branch with the consent of the competent authorities and/or under the supervision of the competent courts, in so far as the law of the host country so permits.	
6. Withdrawal of authorization shall not bring to an end the supervision of the activities of a branch by the competent authorities of the host country.	
	C. *Adjustment of this Title to changes in national legislation*
	Article 16
	Any amendments to the list of national procedures contained in Annex II shall be notified to the Commission. The latter will ensure that Annex II is updated and published without delay in the *Official Journal of the European Communities*.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
TITLE IV	TITLE IV
Deposit-guarantee schemes	**Deposit-guarantee schemes**
Article 16	*Article 17*
1. Member States shall ensure that the deposit-guarantee schemes that exist in their territory cover the deposits of branches of institutions having their head office in another Member State.	Unchanged
2. As a transitional measure, pending entry into force of a deposit-guarantee scheme in all Member States, the latter shall ensure that the deposit-guarantee schemes, in which the institutions that have their head office in their territory take part, extend cover to deposits received by branches set up in host countries within the Community which have no deposit-guarantee scheme, under the same conditions as those laid down to guarantee deposits received in the home country.	
TITLE V	TITLE V
Final provisions	**Final provisions**
Article 17	*Article 18*
1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1990. They shall forthwith inform the Commission thereof.	Unchanged
Member States may stipulate that such provisions shall not apply until two years after that date.	
2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.	
Article 18	*Article 19*
This Directive is addressed to the Member States.	Unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
ANNEX	*ANNEX I*
LIST OF THE REORGANIZATION MEASURES PROVIDED IN ARTICLE 2 (1) OF THE DRAFT DIRECTIVE ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO THE REORGANIZATION AND THE WINDING-UP OF CREDIT INSTITUTIONS	**LIST OF THE REORGANIZATION MEASURES PROVIDED IN ARTICLE 2 (1) IN THE DRAFT DIRECTIVE ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO THE REORGANIZATION AND THE WINDING-UP OF CREDIT INSTITUTIONS *AND DEPOSIT-GUARANTEE SCHEMES***
BELGIUM	BELGIUM
Banks	**Banks**
— On-the-spot investigations and expert appraisals:	Unchanged
— Article 19, paragraph 3, 2°, and paragraph 4, of Royal Decree No 185 of 9 July 1935 on the supervision of banks and the rules on issues of stocks and securities (penal sanction: Article 42, 9°, of the Decree).	
— Competent authority responsible for deciding on the investigation or appraisal: Banking Commission ('Commission Bancaire').	
— Competent authorities responsible for conducting the investigation or appraisal: Banking Commission and the Banque Nationale de Belgique, at the request of the Banking Commission.	
— Appointment of a special auditor	
— Article 25, § 1, paragraphs 1 and 2, 1°, and § 2, of Royal Decree No 185 of 9 July 1935 (penal sanction for persons carrying out acts without the authorization of the special auditor: Article 42, 2° *bis*, of the Royal Decree).	
— Competent authority responsible for appointing the special auditor: Banking Commission.	
— Suspension of all or part of a credit institution's activities:	
— Article 25, § 1, paragraphs 1 and 2, 2°, and § 3, of Royal Decree No 185 of 9 July 1935 (penal sanction for persons carrying out acts in contravention of suspension decision: Article 42, 2° *bis*, of the Royal Decree)	
— Competent authority responsible for suspending activities: Banking Commission, an appeal may be made to the Ministry of Finance, which confirms or reverses the decision	
Private savings banks	**Private savings banks**
— On-the-spot investigations and expert appraisals.	Unchanged
— Article 16, paragraph 4, 2°, and paragraph 5, of the provisions concerning the supervision of private savings banks, coordinated by the Royal Decree of 23 June 1967 (penal sanction: Article 35 of the coordinated provisions).	
— Competent authority responsible for deciding on the investigation or expert appraisal: Banking Commission.	
— Competent authorities responsible for carrying out the investigation or expert appraisal: the Banking Commission and the Banque Nationale de Belgique, at the request of the Banking Commission.	

ORIGINAL PROPOSAL	AMENDED PROPOSAL
— Appointment of a special auditor:	
— Article 17 *bis*, § 1, paragraphs 1 and 2, 1°, and § 2, of the coordinated provisions (penal sanction. Article 32, 4°, of the coordinated provisions).	
— Competent authority: Banking Commission.	
— Suspension of all or part of a credit institution's activities:	
— Article 17 *bis*, § 1, paragraphs 1 and 2, 2°, and § 3, of the coordinated provisions (penal sanction: Article 32, 4°, of the coordinated provisions).	
— Competent authority and appeal: Banking Commission; an appeal may be made to the Ministry of Finance, which confirms or reverses the decision.	
— The King has the power, in the Decree revoking a private savings bank's authorization to operate, to take appropriate measures to safeguard the rights of depositors (especially the transfer of privileged savings funds and encumbered assets): Article 23 of the coordinated provisions.	
Undertakings governed by Chapter 1 of the Law of 10 June 1964	**Undertakings governed by Chapter 1 of the Law of 10 June 1964**
— On-the-spot investigations and expert appraisals:	**Unchanged**
— Article 6, § 1, paragraph 3, 2°, and paragraph 4, of the Law of 10 June 1964 on the raising of funds from the public (penal sanction: Article 13, 4°, of the Law).	
— Competent authority responsible for deciding on the investigation or expert appraisal: Banking Commission	
— Competent authorities responsible for carrying out the investigation or expert appraisal: Banking Commission and the Banque Nationale de Belgique at the request of the Banking Commission.	
— Appointment of a special auditor:	
— Article 9 *bis*, § 1, paragraphs 1 and 2, 2°, and § 2, of the Law (penal sanction Article 13, 5°, of the Law)	
— Competent authority Banking Commission.	
— Suspension of all or part of a credit institution's activities:	
— Article 9 *bis*, § 1, paragraphs 1 and 2, 2° and § 3, of the Law (penal sanction Article 13, 4°, of the Law).	
— Competent authority and appeal: Banking Commission; an appeal may be made to the Ministry of Finance, which confirms or reverses the decision.	
Public credit institutions/Savings Bank of the General Savings and Pension Fund ("Caisse d'Epargne de la Caisse Générale d'Épargne et de Retraite")	**Public credit institutions/Savings Bank of the General Savings and Pension Fund ("Caisse d'Épargne de la Caisse Générale d'Épargne et de Retraite")**
On the spot investigations and expert appraisal	— On-the-spot investigations and expert appraisal.
— Article 1, paragraph 2, of Royal Decree No 2 on the supervision of the Savings Banks of the General Savings and Pensions Fund	— Article 1, paragraph 2, of Royal Decree No 2 of 24 December 1980 on the supervision of the Savings Bank of the General Savings and Pensions Fund, which made applicable to it Article 19, paragraphs 2 to 5, of Royal Decree No 185 of 9 July 1935.
— Competent authority responsible for deciding on the investigation or expert appraisal: Banking Commission.	**Unchanged**

ORIGINAL PROPOSAL	AMENDED PROPOSAL
— Competent authorities responsible for carrying out the investigation or expert appraisal: the Banking Commission and the Banque Nationale de Belgique, at the request of the Banking Commission.	Unchanged
— Other measures:	
— No special measures; responsibility of Parliament and the government.	— **Advice to managers of the Savings Bank of the General Savings and Pensions Fund:**
	— **Article 3 of Royal Decree No 2 of 24 December 1980.**
	— **Competent authority: Banking Commission.**
DENMARK	**DENMARK**
Article 46 of Law No 35 of 30 January 1981.	Unchanged
The supervisory authorities for banks and savings banks can declare cessation of payments for banks or savings banks, when it is necessary in the interests of the depositors. The declaration cannot be revoked by the bank or savings bank without the agreement of the supervisory authorities.	
The declaration should be sent to the Court 'skifteretten' which is a part of the Court system.	
GERMANY	**GERMANY**
Measures taken pursuant to Section 46 of the Banking Act:	Unchanged
— instructions issued to directors,	
— prohibition or limitation of the right to make payments,	
— prohibition or limitation of the right to act as director or proprietor,	
appointment of persons responsible for supervising the institution	
Measures taken pursuant to Section 46a of the Banking Act (1):	
ban on making payments or disposing of property,	
— closure of a credit institution's counters for business with customers,	
— ban on acceptance of payments not intended for the discharge of debts to a credit institution.	
Competent authority Federal Banking Supervisory Office (Bundesaufsichtsamt fur das Kreditwesen).	
	SPAIN
	— **Temporary suspension of directors:**
	— **Royal Decree 5/1978 of 6 March 1978.**
	— **Royal Decree 18/1982 of 24 September 1982.**
	Extension to savings and Cooperative Banks of this disposition:
	— **Royal Decrees 2575 and 2576/1982 of 1 October 1982.**
	Competent authority: Bank of Spain.

(1) These measures are also listed in Article 1 (b) of the Protocol to the draft Convention on bankruptcy, winding-up, arrangements, compositions and similar proceedings

ORIGINAL PROPOSAL	AMENDED PROPOSAL
FRANCE	**FRANCE**
Measures provided for by Law No 84/46 of 24 January 1984 concerning the activity and supervision of credit institutions.	**Unchanged**
Measures to be taken by the Banking Commission ('Commission Bancaire'):	
— injunctions (Article 43),	
— appointment of a temporary administrator (Article 44),	
— prohibition of certain operations and other limitations on activity (Article 45, § 3),	
— temporary suspension or compulsory resignation of one or more of the persons responsible for actually determining the general patterns of the activity of credit institutions (Article 45, § 4 and 5).	
Measures to be taken by the Governor of the Banque de France:	
— organization of the assistance of all credit institutions with a view to taking the measures necessary for protecting the interests of depositors and third parties, for the functioning of the banking system and for preserving the reputation of local banking (Article 52).	
GREECE	**GREECE**
Measures provided for by:	Unchanged
(a) Law 1665/1951 organizing the Banking Prudential Control, the administrative winding up of banks, the appointment of a Commissioner, liquidation and revocation of licence;	
(b) Law 236/75 organizing the appointment of a temporary Commissioner in cases of special urgency and importance;	
(c) Law 431/76 providing for compulsory doubling of share capital of banks under certain conditions considered as constituting a state of insolvency;	
(d) Law 2292/1953 (especially Articles 10 to 12) dealing with compulsory mergers of banking corporations.	
A. *Measures to be taken by the Bank of Greece under General Law 1266/1982*	
(i) Compulsory increase of capital (Law 1665/1951, Article 6).	
(ii) Appointment of a Commissioner (Law 1665/1951, Article 8).	
(iii) Appointment of a temporary Commissioner in cases of special importance and urgency (Law 236/75).	
(iv) Obligatory increase (doubling) of share capital by banks who have been placed repeatedly under a Commissioner or temporary Commissioner and whose share capital and surplus is less than 1/70 of the total of their deposits (Law 431/76).	
B. *Measures to be taken by the Government (Council of Ministers and Minister of Commerce)*	
Compulsory merger of banks and compulsory increase of initial share capital by one-third at least (Law 2292/1953, Articles 10 to 12).	

ORIGINAL PROPOSAL	AMENDED PROPOSAL
IRELAND	**IRELAND**
Measures relating to licensed banks where the legislative references are to the Central Bank Act, 1971, and where the competent authority is the Central Bank of Ireland: — suspension of the right to receive deposits and make payments (Section 21), — restriction of the scope of authorization (Section 10), — prohibition or restriction of advertising concerning deposits (Section 22). Measures relating to building societies where the legislative references are to the Building Societies Act, 1976 and where the competent authority is the Registrar of Friendly Societies: — restriction on authorization (Section 11), — loans from one society to another (Section 24), — union of societies (Section 25), — transfer of and undertaking to fulfil engagements (Section 26), — confirmation and registration of union under Section 25 or transfer of undertaking under Section 26 (Section 27), — power of registrar to appoint an inspector or call a special meeting (Section 29), — power of registrar to suspend the raising of funds and making of payments (Section 31), — power of registrar to suspend and control advertising (Section 32).	Unchanged
ITALY	**ITALY**
(a) Request for information of the economic situation of the credit institution or its branches (Section 31 of the Banking Act). Competent authority: Banca d'Italia. (b) Investigations at the credit insntution and its branches (Section 31 of the Banking Act) Competent authority: Banca d'Italia. (c) Convening of shareholders' meetings and governing bodies of the credit institutions with a view to taking special measures (Section 35 of the Banking Act). Competent authority: Banca d'Italia. (d) Withdrawal of internal administrative and supervisory bodies and appointment in their place of special bodies for the reorganization of the credit institution (Section 57 of the Banking Act). Competent authority. Ministry of the Treasury on a proposal from the Banca d'italia (for appointment of the special bodies, only the Banca d'Italia). (e) Temporary suspension of payments and of any executive procedure in respect of the credit institution during the special administration referred to at (d) (Section 63 of the Banking Act). Competent authority: Banca d'Italia.	Unchanged

ORIGINAL PROPOSAL	AMENDED PROPOSAL
(f) Temporary suspension of the functions of the credit institution's administrative and supervisory bodies and appointment of an official of the Banking Supervisory Authority to perform tasks in their place (Section 66 of the Banking Act). Competent authority: Banca d'Italia.	
(g) Withdrawal of the authorization to operate in respect of the credit institution's individual branches on account of administrative shortcomings (Section 34 of the Banking Act). Competent authority: Interministerial Committee for Credit and Savings (Comitato interministeriale per il credito ed il risparmio).	
LUXEMBOURG	LUXEMBOURG
Measures provided for by the Law of 10 August 1982 organizing 1. the right of the Luxembourg Monetary Institute ('Institut Monétaire Luxembourgeois') to suspend credit institutions; 2. suspension of payments; supervised administration and the winding-up of credit institutions. Measures to be taken by the Luxembourg Monetary Institute: — injunctions (in the event of a crisis) (Article 2), — suspension of directors (Article 3) (not applicable to institutions governed by Luxembourg public law), — total or partial suspension of activities (Article 3). Measures to be taken by the district court ('Tribunal d'Arrondissement') sitting as a commercial court (where appropriate, at the request of the Luxembourg Monetary Institute). — suspension of payments and supervised administration (Articles 7 to 10) (not applicable to institutions governed by Luxembourg public law).	Unchanged
NETHERLANDS	NETHERLANDS
Measures provided by the law of 13 April 1978 concerning the supervision of credit institutions: — injunctions, — secret trusteeship (Part III, Section 24), — emergency regulations (Part V, Section 31). Competent authority: Central Bank (De Nederlandsche Bank).	Unchanged
	PORTUGAL
	Measures available to the Ministry of Finance after consultation with the Bank of Portugal: **— temporary exemption from certain legal obligations and the granting of monetary assistance for institutions in crisis (Decree Law 51/84 of 11 February 1984, Article 34),** **— power to grant a special 90-day rehabilitation period for credit institutions which have suspended payments and to appoint a government trustee,**

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	— power to appoint an official responsible for the normal operation of a 'caixa economica' (Decree Law 136/79 of 18 May 1979, Article 23 relating to caixas economicas).
	Measures available to the Council of Ministers following proposals from the Ministry of Finance relating to measures under Article 34 of the Decree Law of 11 February 1984 (see above):
	— power to appoint delegates, administrators or an administrative Committee responsible for managing the institution,
	— power to suspend existing directors from their duties.
UNITED KINGDOM	UNITED KINGDOM
Measures available to the Bank of England:	Unchanged
— the power to appoint one or more competent persons to investigate and report on the state and conduct of the business of an authorized institution (Banking Act 1979, Section 17),	
— the power to revoke outright an institution's authorization (Banking Act 1979, Section 7 (1) (a)),	
— the power to revoke an institution's authorization and to grant in its place a conditional licence (Banking Act 1979, Section 7 (1) (a) and Section 10),	
— the power, when revoking outright an institution's authorization, to give directions as to conduct of the business (Banking Act 1979, Sections 8 and 9).	

ANNEX II (new)

LIST OF THE WINDING-UP PROCEDURES PROVIDED FOR IN ARTICLE 2 (3) OF THE DRAFT DIRECTIVE ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO THE REORGANIZATION AND THE WINDING-UP OF CREDIT INSTITUTIONS AND DEPOSIT-GUARANTEE SCHEMES

BELGIUM

— Faillite — faillissement:

Article 437 *et seq.* of Volume III of the Commercial Code.

— Competent authority: Commercial Court

DENMARK

— Konkurs:

— Law No 444 of 28 August 1984.

— Law No 374 of 15 August 1985 which provides that the above Law is applicable to banks, savings banks and cooperatives.

— Competent authority: Skifteretten

GERMANY

— Konkurs:

Section 46a of the Banking Act, as at 20 December 1984.

— Competent authority: Federal Banking Supervisory Office (Bundesaufsichtsamt für das Kreditwesen).

— Freiwillige liquidation:

— Section 38 (2) of the Banking Act.

— Section 131 *et seq.* and Section 145 *et seq.*, in the case of an offene Handelsgesellschaft.

— Section 262 *et seq.*, in the case of an Aktiengesellschaft.

— Section 60 and Section 78 *et seq.*, in the case of a Genossenschaft.

SPAIN

1. *Quiebra*

Articles 870 to 941 of the Commercial Code

2. *Suspensión di pagos*

— Law of 26 July 1922.

— Competent authorities: judicial authorities.

3. *Liquidación administrativa (following withdrawal of authorization)*

— Section 57a of the Banking Act of 31 December 1946 (as supplemented by Article 4 (3) of Royal Decree Law 1298/1986 of 28 June 1986).

— Competent authorities: Directorate-General for the Treasury and Fiscal Policy of the Ministry of Economic Affairs and Enterprises — Banco de España.

4. *Liquidación*

— Savings banks: Articles 140 to 146 of Royal Decree Law 2532/1929 of 21 November 1929.

— Credit cooperatives: Articles 103 to 115 of Law 3/1987 of 2 April 1987.

— Other credit institutions: Articles 150 to 171 of the Law governing public limited liability companies of 17 July 1981.

FRANCE

— Redressement judiciaire and liquidation judiciaire:

— Law No 85/98 of 25 January 1985 (Title III).

— Articles 119 *et seq.* of Decree No 85/1388 of 27 December 1985.

— Competent authorities: Commercial Court.

GREECE

— ΑΝ 1665/1951 «περί λειτουργίας και ελέγχου Τραπεζών», άρθρο 9 (εκκαθάριση).

— Αρμοδια αρχή: «η νομισματική επιτροπή».

— Law 1665/1951 of 27 January 1951 'on the functioning and control of banks', Article 9 (liquidation).

— Competent authority: the Monetary Commission.

IRELAND

— Bankruptcy.

— Compulsory winding-up.

— Creditors' voluntary winding-up (Companies Act 1963, Section VI).

— Liquidation of banks (Central Bank Act 1971, Sections 28 to 31).

For Building Societies

— Compulsory winding-up.

— Creditors' voluntary winding-up (Building Societies Act 1976, Section 95).

— Housing (Miscellaneous Provisions) Act 1979, Section 20.

— Land Act 1984 (Section 4 (2)).

— Age of Majority Act 1985.

Competent authority:

— Competent authority responsible for granting or withdrawing authorization and supervising the activities of credit institutions.

— The High Court, in cases of bankruptcy.

For Building Societies: Registrar of Friendly Societies who is also the Registrar of Building Societies (Building Societies Act 1976, Section 85).

ITALY

— Concordato preventivo:
  — Articles 160 to 186 of the Decree of 16 March 1942.
  — Subparagraph 2 (d) of Article 35 of the Decree Law of 12 March 1936, as amended.
  — Competent authority: judicial authority.

— Liquidazione coatta amministrativa:
  — Articles 67 to 86 of the Decree-Law of 12 March 1936.
  — Articles 194 to 215 of the Decree of 16 March 1942, as amended.

— Competent authorities: Banca d'Italia, Ministry of the Treasury and the Interministerial Committee for Credit and Savings.

— Liquidazione volontaria:
  — Article 86a of the Decree of 12 March 1936, as amended.

LUXEMBOURG

— Dissolution and liquidation of credit institutions:
  — Article 2 of the Law of 10 August 1982.
  — Competent authorities: the district court sitting as a commercial court at the request of the Procureur d'État or the Commissaire au contrôle des banques.

— Voluntary winding-up:
  — Article 12 of the Law of 10 August 1982

NETHERLANDS

— Vrijwillige solvente liquidatie ingevolge statutaire ontbinding:

en

— Gedwongen solvente liquidatie na intrekking van de vergunning:
  — Articles 22 and 23 of Title 1 and Articles 166 to 173 of Title 3 of Volume II of the Civil Code, concerning the winding-up of (solvent) persons.
  — Competent authority: the credit institution itself.

  Solvente liquidatie tijdens de noodregeling:
  — Paragraphs 1 and 6 of Article 36 of the Law concerning the supervision of credit institutions which provides that the abovementioned provisions of the Civil Code are applicable.
  — Competent authority: the trustees.

— Insolvente liquidatie na faillietverklaring van de kredietinstelling:
  — Law on bankruptcy of 30 September 1893 and amendments S 140, Articles 1 to 212 of Title I.
  — Competent authority: the Court.

PORTUGAL

— Rules governing the winding-up of banking institutions:
  — Article 11 *et seq.* of Decree Law No 30—689 of 27 August 1940.
  — Competent authority: Minister of Finance.

— Liquidação na sequência de revojação de autorização:
  — Competent authority: Minister of Finance.

— Cooperative banks:
  — Articles 75 and 77 of Decree Law No 454/80 of 9 October 1980-which refer to the general rules governing the bankruptcy procedure.
  — Article 1245 *et seq.* of Chapter XV of Decree Law No 44/129 of 28 December 1961.
  — Sale of property: Article 882 *et seq.*

UNITED KINGDOM

— Compulsory winding-up (Insolvency Act 1986, Section 4).

— Creditors' voluntary winding-up.

— Corporate voluntary arrangements (Insolvency Act 1986, Section 1).

— Corporate arrangements and reconstructions (Companies Act 1985, Section 13).

For Building Societies (Building Societies Act 1986, Section 10):

— Compulsory winding-up.

— Creditors' voluntary winding-up.

— Dissolution by consent of an appropriate majority of the society's members.

Competent authority: judicial authority.

Voluntary liquidation (Insolvency Act 1986, Section 4).

I.h) 91/308/EEC

Council Directive of 10 June 1991 on prevention of use of the financial system for the purpose of money laundering
(OJ L 166 28 06 1991 p 77 - 83)

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 10 June 1991

on prevention of the use of the financial system for the purpose of money laundering

(91/308/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2), first and third sentences, and Article 100a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas when credit and financial institutions are used to launder proceeds from criminal activities (hereinafter referred to as 'money laundering'), the soundness and stability of the institution concerned and confidence in the financial system as a whole could be seriously jeopardized, thereby losing the trust of the public;

Whereas lack of Community action against money laundering could lead Member States, for the purpose of protecting their financial systems, to adopt measures which could be inconsistent with completion of the single market; whereas, in order to facilitate their criminal activities, launderers could try to take advantage of the freedom of capital movement and freedom to supply financial services which the integrated financial area involves, if certain coordinating measures are not adopted at Community level;

Whereas money laundering has an evident influence on the rise of organized crime in general and drug trafficking in particular; whereas there is more and more awareness that combating money laundering is one of the most effective means of opposing this form of criminal activity, which constitutes a particular threat to Member States' societies;

Whereas money laundering must be combated mainly by penal means and within the framework of international cooperation among judicial and law enforcement authorities, as has been undertaken, in the field of drugs, by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted on 19 December 1988 in Vienna (hereinafter referred to as the 'Vienna Convention') and more generally in relation to all criminal activities, by the Council of Europe Convention on laundering, tracing, seizure and confiscation of proceeds of crime, opened for signature on 8 November 1990 in Strasbourg;

Whereas a penal approach should, however, not be the only way to combat money laundering, since the financial system can play a highly effective role; whereas reference must be made in this context to the recommendation of the Council of Europe of 27 June 1980 and to the declaration of principles adopted in December 1988 in Basle by the banking supervisory authorities of the Group of Ten, both of which constitute major steps towards preventing the use of the financial system for money laundering;

(1) OJ No C 106, 28. 4. 1990, p. 6; and OJ No C 319, 19. 12. 1990, p. 9.
(2) OJ No C 324, 24. 12. 1990, p. 264, and OJ No C 129, 20. 5. 1991.
(3) OJ No C 332, 31. 12. 1990, p. 86.

Whereas money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised , whereas measures exclusively adopted at a national level, without taking account of international coordination and cooperation, would have very limited effects ;

Whereas any measures adopted by the Community in this field should be consistent with other action undertaken in other international fora ; whereas in this respect any Community action should take particular account of the recommendations adopted by the financial action task force on money laundering, set up in July 1989 by the Paris summit of the seven most developed countries ;

Whereas the European Parliament has requested, in several resolutions, the establishment of a global Community programme to combat drug trafficking, including provisions on prevention of money laundering ;

Whereas for the purposes of this Directive the definition of money laundering is taken from that adopted in the Vienna Convention ; whereas, however, since money laundering occurs not only in relation to the proceeds of drug-related offences but also in relation to the proceeds of other criminal activities (such as organized crime and terrorism), the Member States should, within the meaning of their legislation. extend the effects of the Directive to include the proceeds of such activities, to the extent that they are likely to result in laundering operations justifying sanctions on that basis ;

Whereas prohibition of money laundering in Member States' legislation backed by appropriate measures and penalties is a necessary condition for combating this phenomenon ,

Whereas ensuring that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, exceeding certain thresholds, are necessary to avoid launderers' taking advantage of anonymity to carry out their criminal activities ; whereas such provisions must also be extended, as far as possible, to any beneficial owners ;

Whereas credit and financial institutions must keep for at least five years copies or references of the identification documents required as well as supporting evidence and records consisting of documents relating to transactions or copies thereof similarly admissible in court proceedings under the applicable national legislation for use as evidence in any investigation into money laundering ;

Whereas ensuring that credit and financial institutions examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering is necessary in order to preserve the soundness and integrity of the financial system as well as to contribute to combating this phenomenon ; whereas to this end they should pay special attention to transactions with third countries which do not apply comparable standards against money laundering to those established by the Community or to other equivalent standards set out by international fora and endorsed by the Community ;

Whereas, for those purposes, Member States may ask credit and financial institutions to record in writing the results of the examination they are required to carry out and to ensure that those results are available to the authorities responsible for efforts to eliminate money laundering ;

Whereas preventing the financial system from being used for money laundering is a task which cannot be carried out by the authorities responsible for combating this phenomenon without the cooperation of credit and financial institutions and their supervisory authorities ; whereas banking secrecy must be lifted in such cases ; whereas a mandatory system of reporting suspicious transactions which ensures that information is transmitted to the abovementioned authorities without alerting the customers concerned, is the most effective way to accomplish such cooperation ; whereas a special protection clause is necessary to exempt credit and financial institutions, their employees and their directors from responsibility for breaching restrictions on disclosure of information ;

Whereas the information received by the authorities pursuant to this Directive may be used only in connection with combating money laundering ; whereas Member States may nevertheless provide that this information may be used for other purposes ;

Whereas establishment by credit and financial institutions of procedures of internal control and training programmes in this field are complementary provisions without which the other measures contained in this Directive could become ineffective ;

Whereas, since money laundering can be carried out not only through credit and financial institutions but also through other types of professions and categories of undertakings, Member States must extend the provisions of this Directive in whole or in part, to include those professions and undertakings whose activities are particularly likely to be used for money laundering purposes ;

Whereas it is important that the Member States should take particular care to ensure that coordinated action is taken in the Community where there are strong grounds

for believing that professions or activities the conditions governing the pursuit of which have been harmonized at Community level are being used for laundering money;

Whereas the effectiveness of efforts to eliminate money laundering is particularly dependent on the close coordination and harmonization of national implementing measures; whereas such coordination and harmonization which is being carried out in various international bodies requires, in the Community context, cooperation between Member States and the Commission in the framework of a contact committee;

Whereas it is for each Member State to adopt appropriate measures and to penalize infringement of such measures in an appropriate manner to ensure full application of this Directive,

HAS ADOPTED THIS DIRECTIVE

Article 1

For the purpose of this Directive:

- 'credit institution' means a credit institution, as defined as in the first indent of Article 1 of Directive 77/780/EEC (1), as last amended by Directive 89/646/EEC (2), and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices outside the Community,

- 'financial institution' means an undertaking other than a credit institution whose principal activity is to carry out one or more of the operations included in numbers 2 to 12 and number 14 of the list annexed to Directive 89/646/EEC, or an insurance company duly authorized in accordance with Directive 79/267/EEC (3), as last amended by Directive 90/619/EEC (4), in so far as it carries out activities covered by that Directive; this definition includes branches located in the Community of financial institutions whose head offices are outside the Community,

- 'money laundering' means the following conduct when committed intentionally:

  - the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action,

  - the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity,

  - the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity,

  - participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing paragraphs.

Knowledge, intent or purpose required as an element of the abovementioned activities may be inferred from objective factual circumstances.

Money laundering shall be regarded as such even where the activities which generated the property to be laundered were perpetrated in the territory of another Member State or in that of a third country.

- 'Property' means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interests in such assets.

- 'Criminal activity' means a crime specified in Article 3 (1) (a) of the Vienna Convention and any other criminal activity designated as such for the purposes of this Directive by each Member State.

- 'Competent authorities' means the national authorities empowered by law or regulation to supervise credit or financial institutions.

Article 2

Member States shall ensure that money laundering as defined in this Directive is prohibited.

Article 3

1. Member States shall ensure that credit and financial institutions require identification of their customers by means of supporting evidence when entering into business relations, particularly when opening an account or savings accounts, or when offering safe custody facilities.

2. The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1, involving a sum amounting to ECU 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached.

(1) OJ No L 322, 17. 12. 1977, p. 30
(2) OJ No L 386, 30. 12. 1989, p. 1
(3) OJ No L 63, 13. 3. 1979, p. 1
(4) OJ No L 330, 29. 11. 1990, p. 50

3. By way of derogation from paragraphs 1 and 2, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive 79/267/EEC, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed ECU 1 000 or where a single premium is paid amounting to ECU 2 500 or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the ECU 1 000 threshold, identification shall be required.

4. Member States may provide that the identification requirement is not compulsory for insurance policies in respect of pension schemes taken out by virtue of a contract of employment or the insured's occupation, provided that such policies contain no surrender clause and may not be used as collateral for a loan.

5. In the event of doubt as to whether the customers referred to in the above paragraphs are acting on their own behalf, or where it is certain that they are not acting on their own behalf, the credit and financial institutions shall take reasonable measures to obtain information as to the real identity of the persons on whose behalf those customers are acting.

6. Credit and financial institutions shall carry out such identification, even where the amount of the transaction is lower than the threshold laid down, wherever there is suspicion of money laundering.

7. Credit and financial institutions shall not be subject to the identification requirements provided for in this Article where the customer is also a credit or financial institution covered by this Directive.

8. Member States may provide that the identification requirements regarding transactions referred to in paragraphs 3 and 4 are fulfilled when it is established that the payment for the transaction is to be debited from an account opened in the customer's name with a credit institution subject to this Directive according to the requirements of paragraph 1.

Article 4

Member States shall ensure that credit and financial institutions keep the following for use as evidence in any investigation into money laundering:

— in the case of identification, a copy or the references of the evidence required, for a period of at least five years after the relationship with their customer has ended,

— in the case of transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of at least five years following execution of the transactions.

Article 5

Member States shall ensure that credit and financial institutions examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering.

Article 6

Member States shall ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering:

— by informing those authorities, on their own initiative, of any fact which might be an indication of money laundering,

— by furnishing those authorities, at their request, with all necessary information, in accordance with the procedures established by the applicable legislation.

The information referred to in the first paragraph shall be forwarded to the authorities responsible for combating money laundering of the Member State in whose territory the institution forwarding the information is situated. The person or persons designated by the credit and financial institutions in accordance with the procedures provided for in Article 11 (1) shall normally forward the information.

Information supplied to the authorities in accordance with the first paragraph may be used only in connection with the combating of money laundering. However, Member States may provide that such information may also be used for other purposes.

Article 7

Member States shall ensure that credit and financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities referred to in Article 6. Those authorities may, under conditions determined by their national legislation, give instructions not to execute the operation. Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money-laundering operation, the institutions concerned shall apprise the authorities immediately afterwards.

Article 8

Credit and financial institutions and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out.

Article 9

The disclosure in good faith to the authorities responsible for combating money laundering by an employee or director of a credit or financial institution of the information referred to in Articles 6 and 7 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the credit or financial institution, its directors or employees in liability of any kind.

Article 10

Member States shall ensure that if, in the course of inspections carried out in credit or financial institutions by the competent authorities, or in any other way, those authorities discover facts that could constitute evidence of money laundering, they inform the authorities responsible for combating money laundering.

Article 11

Member States shall ensure that credit and financial institutions :

1. establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering,

2. take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special training programmes to help them recognize operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.

Article 12

Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the credit and financial institutions referred to in Article 1, which engage in activities which are particularly likely to be used for money-laundering purposes.

Article 13

1. A contact committee (hereinafter referred to as 'the Committee') shall be set up under the aegis of the Commission. Its function shall be :

(a) without prejudice to Articles 169 and 170 of the Treaty, to facilitate harmonized implementation of this Directive through regular consultation on any practical problems arising from its application and on which exchanges of view are deemed useful ;

(b) to facilitate consultation between the Member States on the more stringent or additional conditions and obligations which they may lay down at national level ;

(c) to advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments deemed necessary, in particular to harmonize the effects of Article 12 ;

(d) to examine whether a profession or a category of undertaking should be included in the scope of Article 12 where it has been established that such profession or category of undertaking has been used in a Member State for money laundering.

2. It shall not be the function of the Committee to appraise the merits of decisions taken by the competent authorities in individual cases.

3. The Committee shall be composed of persons appointed by the Member States and of representatives of the Commission. The secretariat shall be provided by the Commission. The chairman shall be a representative of the Commission. It shall be convened by its chairman, either on his own initiative or at the request of the delegation of a Member State.

Article 14

Each Member State shall take appropriate measures to ensure full application of all the provisions of this Directive and shall in particular determine the penalties to be applied for infringement of the measures adopted pursuant to this Directive.

Article 15

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering.

Article 16

1. Member States shall bring into force the laws, regulations and administrative decisions necessary to comply with this Directive before 1 January 1993 at the latest.

2. Where 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 the main provisions of national law which they adopt in the field governed by this Directive.

Article 17

One year after 1 January 1993, whenever necessary and at least at three yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.

Article 18

This Directive is addressed to the Member States.

Done at Luxembourg, 10 June 1991.

For the Council

The President

J.-C. JUNCKER

Statement by the representatives of the Governments of the Member States meeting within the Council

The representatives of the Governments of the Member States, meeting within the Council,

Recalling that the Member States signed the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances, adopted on 19 December 1988 in Vienna;

Recalling also that most Member States have already signed the Council of Europe Convention on laundering, tracing, seizure and confiscation of proceeds of crime on 8 November 1990 in Strasbourg;

Conscious of the fact that the description of money laundering contained in Article 1 of Council Directive 91/308/EEC (1) derives its wording from the relevant provisions of the aforementioned Conventions;

Hereby undertake to take all necessary steps by 31 December 1992 at the latest to enact criminal legislation enabling them to comply with their obligations under the aforementioned instruments.

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(1) See page 77 of this Official Journal.

II. PRUDENTIAL SUPERVISION DIRECTIVES

II .a) 92/30/EEC
Council Directive of 6 April 1992 on the supervision of credit institutions on a consolidated basis
(OJ No L 110, 28.04.1992, p. 52-58)

Corrigendum
OJ L 280 24.09 1992. p. 54

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/30/EEC

of 6 April 1992

on the supervision of credit institutions on a consolidated basis

THE COMMISSION 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 proposal from the Commission,

In cooperation with the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas Council Directive 83/350/EEC of 13 June 1983 on the supervision of credit institutions on a consolidated basis (3) established the necessary framework for the introduction of supervision of credit institutions on a consolidated basis; whereas, following the transposition of that Directive into the national law of the Member States, the principle of supervision on a consolidated basis is now applied throughout the Community;

Whereas, in order to be effective, supervision on a consolidated basis must be applied to all banking groups, including those the parent undertakings of which are not credit institutions; whereas the competent authorities must hold the necessary legal instruments to be able to exercise such supervision;

Whereas, in the case of groups with diversified activities the parent undertakings of which control at least one credit institution subsidiary, the competent authorities must be able to assess the financial situation of a credit institution in such a group; whereas, pending subsequent coordination, the Member States may lay down appropriate methods of consolidation for the achievement of the objective of this Directive; whereas the competent authorities must at least have the means of obtaining from all undertakings within a group the information necessary for the performance of their function; whereas cooperation between the authorities responsible for the supervision of different financial sectors must be established in the case of groups of undertakings carrying on a range of financial activities;

Whereas rules limiting the risks taken by a credit institution on the mixed-activity holding company of which it is a subsidiary, as well as those taken on the other subsidiaries of the same mixed-activity holding company, can be particularly useful; whereas it would, however, appear to be preferable to settle this question in a more systematic manner in the framework of a future Directive on the limitation of large exposures;

Whereas the Member States can, furthermore, refuse or withdraw banking authorization in the case of certain group structures considered inappropriate for carrying on banking activities, in particular because such structures could not be supervised effectively; whereas in this respect the competent authorities have the powers mentioned in Article 8 (1) (c) of the First Council Directive (77/780/EEC) of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (4) and in Articles 5 and 11 of the Second Council Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (5), in order to ensure the sound and prudent management of credit institutions;

(1) OJ No C 326, 16. 12. 1991, p. 106, and OJ No C 94, 13. 4. 1992.
(2) OJ No C 102, 18. 4. 1991, p. 19.
(3) OJ No L 193, 18. 7. 1983, p. 18.
(4) OJ No L 322, 17. 12. 1977, p. 30. Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).
(5) OJ No L 386, 30. 12. 1989, p. 1.

Whereas the Member States can equally apply appropriate supervision techniques to groups with structures not covered by this Directive; whereas, if such structures become common, this Directive should be extended to cover them;

Whereas supervision on a consolidated basis must take in all activities defined in the Annex to Directive 89/646/EEC; whereas all undertakings principally engaged in such activities must therefore be included in supervision on a consolidated basis; whereas, as a result, the definition of a financial institution given in Directive 83/350/EEC must be widened to cover such activities;

Whereas, regarding the consolidation of financial institutions involved in activities principally subject to market risks and subject to particular rules of supervision, the coordination of the methods for the consolidated supervision of market risks is possible in the framework of Community harmonization of capital adequacy of investment firms and credit institutions, for which the Commission has introduced a proposal for a Directive; whereas such harmonization concerns, *inter alia*, the conditions which must be applied when offsetting opposing positions in the group and the case where these financial institutions are subject to specific supervisory rules regarding their financial stability; whereas this implies that, until the future Directive on capital adequacy to cover market risks is brought into effect, the competent authorities shall include in consolidated supervision financial institutions which are principally exposed ot market risks, in accordance with methods determined by those authorities in the light of the particular nature of the risks involved;

Whereas, following the adoption of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [1], which, together with the Seventh Council Directive (83/349/EEC) of 13 June 1983 on consolidated accounts [2], established the rules of consolidation applicable to consolidated accounts published by credit institutions, it is now possible to define more precisely the methods to be used in prudential supervision exercised on a consolidated basis;

Whereas this Directive is fully in keeping with the objectives defined in the Single European Act; whereas it will, in particular, ensure the homogeneous application throughout the Community of prudential rules established by other Community legislation, which must be observed on a consolidated basis; whereas this Directive is, in particular, necessary for the correct application of Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions [3];

Whereas supervision of credit institutions on a consolidated basis must be aimed at, in particular, protecting the interests of the depositors of the said institutions and at ensuring the stability of the financial system;

Whereas it is desirable that agreement should be reached, on the basis of reciprocity, between the Community and third countries with a view to allowing the practical exercise of consolidated supervision over the largest possible geographical area;

Whereas the amendments to be made to Directive 83/350/EEC are so considerable that it is preferable that it be wholly replaced by this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purposes of this Directive:

— *credit institution* shall mean a credit institution within the meaning of the first indent of Article 1 of Directive 77/780/EEC, or any private or public undertaking which corresponds to the definition in the first indent of Article 1 of Directive 77/780/EEC and has been authorized in a third country,

— *financial institution* shall mean an undertaking, other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities referred to in numbers 2 to 12 of the list appearing in the Annex to Directive 89/646/EEC,

— *financial holding company* shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, one at least of such subsidiaries being a credit institution,

— *mixed-activity holding company* shall mean a parent undertaking, other than a financial holding company or a credit institution, the subsidiaries of which include at least one credit institution,

— *ancillary banking services* undertaking shall mean an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institution,

— *participation* shall mean the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking,

[1] OJ No L 372, 31. 12. 1986, p. 1.
[2] OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).
[3] OJ No L 124, 5. 5. 1989, p. 16.

— *parent undertaking* shall mean a parent undertaking within the meaning of Article 1 (1) of the Directive 83/349/EEC and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking,

— *subsidiary* shall mean a subsidiary undertaking within the meaning of Article 1 (1) of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent,

— *competent authorities* shall mean the national authorities which are empowered by law or regulation to supervise credit institutions.

Article 2

Scope

This Directive shall apply to credit institutions that have obtained the authorization referred to in Article 3 of Directive 77/780/EEC, financial holding companies and mixed-activity holding companies which have their head offices in the Community.

The institutions permanently excluded by Article 2 of Directive 77/780/EEC, with the exception, however, of the Member States' central banks, shall be treated as financial institutions for the purposes of this Directive.

Article 3

Supervision on a consolidated basis of credit institutions

1. Every credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such institutions shall be subject, to the extent and in the manner prescribed in Article 5, to supervision on the basis of its consolidated financial situation. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6.

2. Every credit institution the parent undertaking of which is a financial holding company shall be subject, to the extent and in the manner prescribed in Article 5, to supervision on the basis of the consolidated financial situation of that financial holding company. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6. The consolidation of the financial situation of the financial holding company shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the financial holding company standing alone.

3. The Member States or the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 4 may decide in the cases listed below that a credit institution, financial institution or auxiliary banking services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation :

— if the undertaking that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information,

— if, in the opinion of the competent authorities, the undertaking that should be included is of negligible interest only with respect to the objectives of monitoring credit institutions and in all cases if the balance sheet total of the undertaking that should be included is less than the smaller of the following two amounts : ECU 10 million or 1 % of the balance sheet total of the parent undertaking or the undertaking that holds the participation. If several undertakings meet the above criteria, they must nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the aforementioned objectives, or

— if, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking that should be included would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.

4. When the competent authorities of a Member State do not include a credit institution subsidiary in supervision on a consolidated basis under one of the cases provided for in the second and third indents of paragraph 3, the competent authorities of the Member State in which that credit institution subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that credit institution.

5. Supervision of solvency, and of the adequacy of own funds to cover market risks and control of large exposures, as governed by the relevant Community acts in force, shall be exercised on a consolidated basis in accordance with this Directive. Member States shall adopt any measures necessary, where appropriate, to include financial holding companies in consolidated supervision, in accordance with paragraph 2.

Compliance with the limits set in Article 12 (1) and (2) of Directive 89/646/EEC shall be supervised and controlled on the basis of the consolidated or sub-consolidated financial situation of the credit institution.

6. The competent authorities shall ensure that, in all the undertakings included in the scope of the supervision on a consolidated basis that is exercised over a credit institution in implementation of paragraphs 1 and 2,

there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supervision on a consolidated basis.

7. Without prejudice to specific provisions contained in other Directives, Member States may waive application, on an individual or sub-consolidated basis, of the rules laid down in paragraph 5 to a credit institution that, as a parent undertaking, is subject to supervision on a consolidated basis, and to any subsidiary of such a credit institution which is subject to their authorization and supervision and is included in the supervision on a consolidated basis of the credit institution which is the parent company. The same exemption option shall be allowed where the parent undertaking is a financial holding company which has its head office in the same Member State as the credit institution, provided that it is subject to the same supervision as that exercised over credit institutions, and in particular the standards laid down in paragraph 5.

In both cases, steps must be taken to ensure that capital is distributed adequately within the banking group.

If the competent authorities do apply those rules individually to such credit institutions, they may, for the purpose of calculating own funds, make use of the provision in the last subparagraph of Article 2 (1) of Directive 89/299/EEC.

8. Where a credit institution the parent of which is a credit institution has been authorized and is situated in another Member State, the competent authorities which granted that authorization shall apply the rules laid down in paragraph 5 to that institution on an individual or, when appropriate, a sub-consolidated basis.

9. Notwithstanding the requirements of paragraph 8, the competent authorities responsible for authorizing the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, delegate their responsibility for supervision to the competent authorities which authorized and supervise the parent undertaking. The Commission must be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the Banking Advisory Committee.

10. Member States shall provide that their competent authorities responsible for exercising supervision on a consolidated basis may ask the subsidiaries of a credit institution or a financial holding company which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 6. In such a case, the procedures for transmitting and verifying the information laid down in that Article shall apply.

Article 4

Competent authorities responsible for exercising supervision on a consolidated basis

1. Where a parent undertaking is a credit institution, supervision on a consolidated basis shall be exercised by the competent authorities that authorized it under Article 3 of Directive 77/780/EEC.

2. Where the parent of a credit institution is a financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities which authorized that credit institution under Article 3 of Directive 77/780/EEC.

However, where credit institutions authorized in two or more Member States have as their parent the same financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities of the credit institution authorized in the Member State in which the financial holding company was set up.

If no credit institution subsidiary has been authorized in the Member State in which the financial holding company was set up, the competent authorities of the Member States concerned (including those of the Member State in which the financial holding company was set up) shall seek to reach agreement as to who amongst them will exercise supervision on a consolidated basis. In the absence of such agreement, supervision on a consolidated basis shall be exercised by the competent authorities that authorized the credit institution with the greatest balance sheet total; if that figure is the same, supervision on a consolidated basis shall be exercised by the competent authorities which first gave the authorization referred to in Article 3 of Directive 77/780/EEC.

3. The competent authorities concerned may by common agreement waive the rules laid down in the first and second subparagraphs of paragraph 2.

4. The agreements referred to in the third subparagraph of paragraph 2 and in paragraph 3 shall provide for procedures for cooperation and for the transmission of information such that the objectives of this Directive may be achieved.

5. Where Member States have more than one competent authority for the prudential supervision of credit institutions and financial institutions, Member States shall take the requisite measures to organize coordination between such authorities.

Article 5

Form and extent of consolidation

1. The competent authorities responsible for exercising supervision on a consolidated basis must, for the purposes of supervision, require full consolidation of all the credit institutions and financial institutions which are subsidiaries of a parent undertaking.

However, proportional consolidation may be prescribed where, in the opinion of the competent authorities, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital because of the liability of the other shareholders or members whose solvency is satisfactory. The liability of the other shareholders and members must be clearly established, if necessary by means of formal, signed commitments.

2. The competent authorities responsible for carrying out supervision on a consolidated basis must, in order to do so, require the proportional consolidation of participations in credit institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where those undertakings' liability is limited to the share of the capital they hold.

3. In the case of participations or capital ties other than those referred to in paragraphs 1 and 2, the competent authorities shall determine whether and how consolidation is to be carried out. In particular, they may permit or require use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

4. Without prejudice to paragraphs 1, 2 and 3, the competent authorities shall determine whether and how consolidation is to be carried out in the following cases:

— where, in the opinion of the competent authorities, a credit institution exercises a significant influence over one or more credit institutions or financial institutions, but without holding a participation or other capital ties in these institutions,

— where two or more credit institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association,

— where two or more credit institutions or financial institutions have administrative, management or supervisory bodies with the same persons constituting a majority.

In particular, the competent authorities may permit, or require use of, the method provided for in Article 12 of Directive 83/349/EEC. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.

5. Where consolidated supervision is required pursuant to Article 3 (1) and (2), ancillary banking services undertakings shall be included in consolidations in the cases, and in accordance with the methods, laid down in paragraphs 1 to 4, of this Article.

Article 6

Information to be supplied by mixed-activity holding companies and their subsidiaries

1. Pending further coordination of consolidation methods, Member States shall provide that, where the parent undertaking of one or more credit institutions is a mixed-activity holding company, the competent authorities responsible for the authorization and supervision of those credit institutions shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via credit institution subsidiaries, require them to supply any information which would be relevant for the purposes of supervising the credit institution subsidiaries.

2. Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Article 7 (4) may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which the credit institution subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in Article 7 (7).

Article 7

Measures to facilitate the application of this Directive

1. Member States shall take the necessary steps to ensure that there are no legal impediments preventing the undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries of the kind covered in Article 3 (10), from exchanging amongst themselves any information which would be relevant for the purposes of supervision in accordance with this Directive.

2. Where a parent undertaking and any of its subsidiaries that are credit institutions are situated in different Member States, the competent authorities of each Member State shall communicate to each other all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

Where the competent authorities of the Member State in which a parent undertaking is situated do not themselves exercise supervision on a consolidated basis pursuant to Article 4, they may be invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to these authorities.

3. Member States shall authorize the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, financial institutions or ancillary banking services undertakings, the collection or possession of information shall not in any way imply that the competent authorities are required to play a supervisory role in relation to those institutions or undertakings standing alone.

Similarly, Member States shall authorize their competent authorities to exchange the information referred to in Article 6 on the understanding that the collection or possession of information does not in any way imply that the competent authorities play a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries of the kind covered in Article 3 (10).

4. Where a credit institution, financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorization, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

5. Information received pursuant to this Directive and in particular any exchange of information between competent authorities which is provided for in this Directive shall be subject to the obligation of professional secrecy defined in Article 12 of Directive 77/780/EEC.

6. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies referred to in Article 3 (2). Those lists shall be communicated to the competent authorities of the other Member States and to the Commission.

7. Where, in applying this Directive, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary banking services undertaking, a mixed-activity holding company, a subsidiary of the kind covered in Article 6 or a subsidiary of the kind covered in Article 3 (10), situated in another Member State, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request must, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out.

8. Without prejudice to their provisions of criminal law, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on financial holding companies and mixed-activity holding companies, or their effective managers, that infringe laws, regulations or administrative provisions enacted to implement this Directive. In certain cases, such measures may require the intervention of the courts. The competent authorities shall cooperate closely to ensure that the abovementioned penalties or measures produce the desired results, especially when the central administration or main establishment of a financial holding company or of a mixed-activity holding company is not located at its head office.

Article 8

Third countries

1. The Commission may submit proposals to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over :

— credit institutions the parent undertakings of which have their head offices situated in a third country, and

— credit institutions situated in third countries the parent undertakings of which, whether credit institutions or financial holding companies, have their head offices in the Community.

2. The agreements referred to in paragraph 1 shall in particular seek to ensure both :

— that the competent authorities of the Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of credit institutions or financial holding companies situated in the Community and which have as subsidiaries credit institutions or financial institutions situated outside the Community, or which hold participations in such institutions,

— that the competent authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries credit institutions or financial institutions situated in one or more Member States, or which hold participations in such institutions.

3. The Commission and the Advisory Committee set up under Article 11 of Directive 77/780/EEC shall examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.

Article 9

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993. They shall forthwith inform the Commission thereof.

When Member States adopt the abovementioned measures, the measures shall contain a reference to this Directive or 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.

2. Notwithstanding the provisions of Article 3 (5) and until the future Directive on capital adequacy to cover market risks is brought into effect, the competent authorities shall include in consolidated supervision financial institutions which are principally exposed to market risks in accordance with methods to be determined by those authorities in the light of the particular nature of the risks involved.

3. Member States shall communicate to the Commission the texts of the main provisions of internal law which they adopt in the field governed by this Directive.

Article 10

1. Directive 83/350/EEC is hereby repealed with effect from 1 January 1993.

2. In the following provisions, the words 'Directive 83/350/EEC' shall be replaced by 'Directive 92/350/EEC':

— Article 5 of Directive 89/299/EEC,

— Articles 12 (6), 13 (3) and the fifth indent of the first subparagraph of Article 18 (2) of Directive 89/646/EEC,

— Article 3 (3) of Directive 89/647/EEC.

3. In Article 1, point 5, of Directive 89/646/EEC and the first indent of Article 2 (1) of Directive 89/647/EEC, the definition of competent authorities shall be replaced by the following:

'the national authorities which are empowered by law or regulation to supervise credit institutions'.

'4. In Article 15 (2) of Directive 89/646/EEC, the reference "Article 5 (4) of Directive 83/350/EEC" shall be replaced by the reference "Article 7 (7) of Directive 92/30/EEC".'

Article 11

This Directive is addressed to the Member States.

Done at Luxembourg, 6 April 1992.

For the Council

The President

João PINHEIRO

CORRIGENDA

Corrigendum to Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis

(Official Journal of the European Communities No L 110 of 28 April 1992)

On page 58 in Article 10 (2), second indent:

for: 'Articles 12 (5), 13 (3) and 15 (2) and the fifth indent of the first subparagraph of Article 18 (2) of Directive 89/646/EEC',

read: 'Articles 12 (6), 13 (3) and the fifth indent of the first subparagraph of Article 18 (2) of Directive 89/646/EEC';

the following paragraph is added to Article 10:

'4. In Article 15 (2) of Directive 89/646/EEC, the reference "Article 5 (4) of Directive 83/350/EEC" shall be replaced by the reference "Article 7 (7) of Directive 92/30/EEC".'

.b) **89/299/EEC** + 91/633/EEC + 92/16/EEC
Council Directive of 17 April 1989 on the own funds of credit institutions
(OJ No L 124, 05.05.1989, p. 16-20)

Art. 1 : Scope

Art. 2 : General principles

Art. 3 : Other items referred to in Article 2 (1) (6)

Art. 4-5

Art. 6 : Deductions and limits

Art. 7-10

Mod. Art. 6 by Dir. 91/633/EEC
(OJ L 339, 11.12.1991, p. 33-34)

Mod. Art. 4 + 8 by Dir. 92/16/EEC
(OJ L 75, 21.03.1992, p. 48-50)

COUNCIL DIRECTIVE

of 17 April 1989

on the own funds of credit institutions

(89/299/EEC)

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 proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas common basic standards for the own funds of credit institutions are a key factor in the creation of an internal market in the banking sector since own funds serve to ensure the continuity of credit institutions and to protect savings; whereas such harmonization will strengthen the supervision of credit institutions and contribute to further coordination in the banking sector, in particular the supervision of major risks and solvency ratios;

Whereas such standards must apply to all credit institutions authorized in the Community;

Whereas the own funds of a credit institution can serve to absorb losses which are not matched by a sufficient volume of profits; whereas the own funds also serve as an important yardstick for the competent authorities, in particular for the assessment of the solvency of credit institutions and for other prudential purposes;

Whereas credit institutions in a common banking market engage in direct competition with each other, and the definitions and standards pertaining to own funds must therefore be equivalent; whereas, to that end, the criteria for determining the composition of own funds must not be left solely to Member States; whereas the adoption of common basic standards will be in the best interests of the Community in that it will prevent distortions of competition and will strengthen the Community banking system;

Whereas the definition laid down in this Directive provides for a maximum of items and qualifying amounts, leaving it to the discretion of each Member State to use all or some of such items or to adopt lower ceilings for the qualifying amounts;

Whereas this Directive specifies the qualifying criteria for certain own funds items, and the Member States remain free to apply more stringent provisions;

Whereas at the initial stage common basic standards are defined in broad terms in order to encompass all the items making up own funds in the different Member States;

Whereas, according to the nature of the items making up own funds, this Directive distinguishes between on the one hand, items constituting original own funds and, on the other, those constituting additional own funds;

Whereas it is recognized that due to the special nature of the fund for general banking risks, this item is to be included provisionally in own funds without limit; whereas, however, a decision on its final treatment will have to be taken as soon as possible after the implementation of the Directive; whereas that decision will have to take into account the results of discussions in international fora;

Whereas, to reflect the fact that items constituting additional own funds are not of the same nature as those constituting original own funds, the amount of the former included in own funds must not exceed the original own funds; whereas, moreover, the amount of certain items of additional own funds included must not exceed one-half of the original own funds;

Whereas, in order to avoud distortions of competition, public credit institutions must not include in their own funds guarantees granted them by the Member States or local authorities; whereas, however, the Kingdom of Belgium should be granted a transitional period up to 31 December 1994 in order to permit the institutions concerned to adjust to the new conditions by reforming their statutes;

Whereas whenever in the course of supervision it is necessary to determine the amount of the consolidated own funds of a group of credit institutions, that calculation shall be effected in accordance with Council Directive 83/350/EEC of 13 June 1983 on the supervision of credit institutions on a consolidated basis (4); whereas that Directive leaves the Member States scope to interpret the technical details of its application, and that scope should be in keeping with the spirit of this Directive; whereas the former Directive is currently being revised to achieve greater harmonization;

(1) OJ No C 243, 27. 9. 1986, p. 4 and OJ No C 32, 5. 2. 1988, p. 2.
(2) OJ No C 246, 14. 9. 1987, p. 72 and OJ No C 96, 17. 4. 1989.
(3) OJ No C 180, 8. 7. 1987, p. 51.
(4) OJ No L 193, 18. 7. 1983, p. 18.

Whereas the precise accounting technique to be used for the calculation of own funds must take account of the provisions of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [1], which incorporates certain adaptations of the provisions of Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts [2]; whereas pending transposition of the provisions of the abovementioned Directives into the national laws of the Member States, the use of a specific accounting technique for the calculation of own funds should be left to the discretion of the Member States;

Whereas this Directive forms part of the wider international effort to bring about approximation of the rules in force in major countries regarding the adequacy of own funds;

Whereas measures to comply with the definitions in this Directive must be adopted no later than the date of entry into force of the measures implementing the future directive harmonizing solvency ratios;

Whereas the Commission will draw up a report and periodically examine this Directive with the aim of tightening its provisions and thus achieving greater convergence on a common definition of own funds; whereas such convergence will allow the alignment of Community credit institutions' own funds;

Whereas it will probably be necessary to make certain technical and terminological adjustments to the directive to take account of the rapid development of financial markets; whereas pending submission by the Commission of a proposal 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 this Directive, the Council reserves the right to take such measures.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. Wherever a Member State lays down by law, regulation or administrative action a provision in implementation of Community legislation concerning the prudential supervision of an operative credit institution which uses the term or refers to the concept of own funds, it shall bring this term or concept into line with the definition given in the following Articles.

2. For the purposes of this Directive, 'credit institutions' shall mean the institutions to which Directive 77/780/EEC [3], as last amended by Directive 86/524/EEC [4], applies.

Article 2

General principles

1. Subject to the limits imposed in Article 6, the unconsolidated own funds of credit institutions shall consist of the following items:

(1) capital within the meaning of Article 22 of Directive 86/635/EEC, in so far as it has been paid up, plus share premium accounts but excluding cumulative preferential shares;

(2) reserves within the meaning of Article 23 of Directive 86/635/EEC and profits and losses brought forward as a result of the application of the final profit or loss. The Member States may permit inclusion of interim profits before a formal decision has been taken only if these profits have been verified by persons responsible for the auditing of the accounts and if it is proved to the satisfaction of the competent authorities that the amount thereof has been evaluated in accordance with the principles set out in Directive 86/635/EEC and is net of any foreseeable charge or dividend;

(3) revaluation reserves within the meaning of Article 33 of Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies [5], as last amended by Directive 84/569/EEC [6];

(4) funds for general banking risks within the meaning of Article 38 of Directive 86/635/EEC;

(5) value adjustments within the meaning of Article 37 (2) of Directive 86/635/EEC;

(6) other items within the meaning of Article 3;

(7) the commitments of the members of credit institutions set up as cooperative societies and the joint and several commitments of the borrowers of certain institutions organized as funds, as referred to in Article 4 (1);

(8) fixed-term cumulative preferential shares and subordinated loan capital as referred to in Article 4 (3).

(1) OJ No L 372, 31. 12. 1986, p. 1.
(2) OJ No L 193, 18. 7. 1983, p. 1.
(3) OJ No L 322, 17. 12. 1977, p. 30.
(4) OJ No L 309, 4. 11. 1986, p. 15.
(5) OJ No L 222, 14. 8. 1978, p. 11.
(6) OJ No L 314, 4. 12. 1984, p. 28.

The following items shall be deducted in accordance with Article 6:

(9) own shares at book value held by a credit institution;

(10) intangible assets within the meaning of Article 4 (9) ('assets') of Directive 86/635/EEC;

(11) material losses of the current financial year;

(12) holdings in other credit and financial institutions amounting to more than 10% of their capital, subordinated claims and the instruments referred to in Article 3 which a credit institution holds in respect of credit and financial institutions in which it has holdings exceeding 10% of the capital in each case.

Where shares in another credit or financial institution are held temporarily for the purposes of a financial assistance operation designed to reorganize and save that institution, the supervisory authority may waive this provision;

(13) holdings in other credit and financial institutions of up to 10% of their capital, the subordinated claims and the instruments referred to in Article 3 which a credit institution holds in respect of credit and financial institutions other than those referred to in point 12 in respect of the amount of the total of such holdings, subordinated claims and instruments which exceed 10% of that credit institution's own funds calculated before the deduction of items 12 and 13.

Pending subsequent coordination of the provisions on consolidation, Member States may provide that, for the calculation of unconsolidated own funds, parent companies subject to supervision on a consolidated basis need not deduct their holdings in other credit institutions or financial institutions which are included in the consolidation. This provision shall apply to all the prudential rules harmonized by Community acts.

2. The concept of own funds as defined in points 1 to 8 of paragraph 1 embodies a maximum number of items and amounts. The use of those items and the fixing of lower ceilings, and the deduction of items other than those listed in items 9 to 13 of paragraph 1 shall be left to the discretion of the Member States. Member States shall nevertheless be obliged to consider increased convergence with a view to a common definition of own funds.

To that end, the Commission shall, not more than three years after the date referred to in Article 9 (1), submit a report to the European Parliament and to the Council on the application of this Directive, accompanied, where appropriate, by such proposals for amendment as it shall deem necessary. Within five years of the date referred to in Article 9 (1), the Council shall, acting by qualified majority on a proposal from the Commission, in cooperation with the European Parliament and after consultation of the Economic and Social Committee, examine the definition of own funds with a view to the uniform application of the common definition.

3. The items listed in points 1 to 5 must be available to a credit institution for unrestricted and immediate use to cover risks or losses as soon as these occur. The amount must be net of any foreseeable tax charge at the moment of its calculation or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses.

Article 3

Other items referred to in Article 2 (1) (6)

1. The concept of own funds used by a Member State may include other items provided that, whatever their legal or accounting designations might be, they have the following characteristics:

(a) they are freely available to the credit institution to cover normal banking risks where revenue or capital losses have not yet been identified;

(b) their existence is disclosed in internal accounting records;

(c) their amount is determined by the management of the credit institution, verified by independent auditors, made known to the competent authorities and placed under the supervision of the latter. With regard to verification, internal auditing may be considered as provisionally meeting the aforementioned requirements until such time as the Community provisions making external auditing mandatory have been implemented.

2. Securities of indeterminate duration and other instruments that fulfil the following conditions may also be accepted as other items:

(a) they may not be reimbursed on the bearer's initiative or without the prior agreement of the supervisory authority;

(b) the debt agreement must provide for the credit institution to have the option of deferring the payment of interest on the debt;

(c) the lender's claims on the credit institution must be wholly subordinated to those of all non-subordinated creditors;

(d) the documents governing the issue of the securities must provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the credit institution in a position to continue trading;

(e) only fully paid-up amounts shall be taken into account.

To these may be added cumulative preferential shares other than those referred to in Article 2 (1) (8).

Article 4

1. The commitments of the members of credit institutions set up as cooperative societies referred to in Article 2 (1) (7), shall comprise those societies' uncalled capital, together with the legal commitments of the members of those cooperative societies to make additional non-refundable payments should the credit institution incur a loss, in which case it must be possible to demand those payments without delay.

The joint and several commitments of borrowers in the case of credit institutions organized as funds shall be treated in the same way as the preceding items.

All such items may be included in own funds in so far as they are counted as the own funds of institutions of this category under national law.

2. Member States shall not include in the own funds of public credit institutions guarantees which they or their local authorities extend to such entities.

However, the Kingdom of Belgium shall be exempt from this obligation until 31 December 1994.

3. Member States or the competent authorities may include fixed-term cumulative preferential shares referred to in Article 2 (1) (8) and subordinated loan capital referred to in that provision in own funds, if binding agreements exist under which, in the event of the bankruptcy or liquidation of the credit institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must also fulfil the following criteria:

(a) only fully paid-up funds may be taken into account;

(b) the loans involved must have an original maturity of at least five years, after which they may be repaid; if the maturity of the debt is not fixed, they shall be repayable only subject to five years' notice unless the loans are no longer considered as own funds or unless the prior consent of the competent authorities is specifically required for early repayment. The competent authorities may grant permission for the early repayment of such loans provided the request is made at the initiative of the issuer and the solvency of the credit institution in question is not affected;

(c) the extent to which they may rank as own funds must be gradually reduced during at least the last five years before the repayment date;

(d) the loan agreement must not include any clause providing that in specified circumstances, other than the winding up of the credit institution, the debt will become repayable before the agreed repayment date.

Article 5

Until further coordination of the provisions on consolidation, the following rules shall apply.

1. Where the calculation is to be made on a consolidated basis, the consolidated amounts relating to the items listed under Article 2 (1) shall be used in accordance with the rules laid down in Directive 83/350/EEC. Moreover, the following may, when they are credit ('negative') items, be regarded as consolidated reserves for the calculation of own funds:
   - any minority interests within the meaning of Article 21 of Directive 83/349/EEC, where the global integration method is used,
   - the first consolidation difference within the meaning of Articles 19, 30 and 31 of Directive 83/349/EEC,
   - the translation differences included in consolidated reserves in accordance with Article 39 (6) of Directive 86/635/EEC,
   - any difference resulting from the inclusion of certain participating interests in accordance with the method prescribed in Article 33 of Directive 83/349/EEC.
2. Where the above are debit ('positive') items, they must be deducted in the calculation of consolidated own funds.

Article 6

Deductions and limits

1. The items referred to in Article 2 (1), points 3 and 5 to 8, shall be subject to the following limits:

(a) the total of items 3 and 5 to 8 may not exceed a maximum of 100% of items 1 plus 2 minus 9, 10 and 11;

(b) the total of items 7 and 8 may not exceed a maximum of 50% of items 1 plus 2 minus 9, 10 and 11;

(c) the total of items 12 and 13 shall be deducted from the total of all items.

2. The item referred to in Article 2 (1) (4) shall constitute a separate category. Provisionally, it shall be included in own funds without limit, but shall not be included when the basis of the limit for the items referred to in points 3 and 5 to 8 is fixed. Within six months of the implementation of this Directive the Commission shall, in accordance with the procedure provided for in Article 8, propose the final treatment for this item either in original own funds or in additional own funds.

3. The limits referred to in paragraph 1 must be complied with as from the date of the entry into force of the implementing measures for the Council Directive on a solvency ratio for credit institutions and by 1 January 1993 at the latest.

Credit institutions exceeding those limits must gradually reduce the extent to which the items referred to in Article 2 (1), points 3 and 5 to 8, are taken into account so that they comply with those limits before the aforementioned date.

4. The competent authorities may authorize credit institutions to exceed the limit laid down in paragraph 1 in temporary and exceptional circumstances.

Article 7

Compliance with the conditions laid down in Articles 2 to 6 must be proved to the satisfaction of the competent authorities.

Article 8

Without prejudice to the report referred to in Article 2 (2), second subparagraph, technical adaptations deemed to be necessary to this Directive to:

— clarify the definitions to ensure uniform application of the said Directive throughout the Community,

— clarify the definitions to take account, in implementing the said Directive, of developments on the financial markets,

— bring the terminology and wording of the definitions into line with that of subsequent acts concerning credit institutions and related areas,

shall be adopted by the Council acting by a qualified majority on a Commission proposal.

Article 9

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive no later than the date laid down for the entry into force of the implementing measures of the Council directive on a solvency ratio for credit institutions, and by 1 January 1993 at the latest. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

3. The communication referred to in paragraph 2 must also include a statement, accompanied by an explanatory text, notifying the Commission of the specific provisions adopted and the items selected by the Member States' respective competent authorities as comprising own funds.

Article 10

This Directive is addressed to the Member States.

Done at Luxembourg, 17 April 1989.

For the Council

The President

C. SOLCHAGA CATALAN

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 3 December 1991

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

(91/633/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions (1) and in particular Article 6 (2) thereof,

Having regard to the proposal from the Commission,

Whereas Directive 89/229/EEC gives a definition of the own funds of credit institutions including the way by which total own funds are to be calculated;

Whereas since, with regard to the fund for general banking risks within the meaning of Article 38 of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (2) there was no final allocation, Article 6 (2) of Directive 89/299/EEC provides that within six months of the date of implementation the Commission shall propose the final treatment of this item either in original own funds or in additional own funds, in accordance with the procedure provided for in Article 8;

Whereas the Banking Advisory Committee has expressed its opinion; whereas taking into account the results of discussions wider international fora and in accordance with the treatment of the fund for general banking risks at international level, these are included within the category of original own funds;

Whereas Directive 89/299/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/299/EEC is hereby amended as follows:

1. Article 6 (1) shall be replaced by the following:

'1. The items referred to in Article 2 (1), points 3 and 5 to 8 shall be subject to the following limits:

(a) the total of items 3 and 5 to 8 may not exceed a maximum of 100 % of items 1 plus 2 and 4 minus 9, 10 and 11;

(b) the total of items 7 and 8 may not exceed a maximum of 50 % of items 1 plus 2 and 4 minus 9, 10 and 11;

(c) the total of items 12 and 13 shall be deducted from the total of the items.'

2. Article 6 (2) shall be deleted.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993. They shall forthwith inform the Commission thereof.

(1) OJ No L 124, 5. 5. 1989, p. 16.
(2) OJ No L 372, 31. 12. 1986, p. 1.

2. When Member States adopt the measures referred to in paragraph 1 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 the main provisions of national law which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 3 December 1991.

For the Council

The President

B. de VRIES

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/16/EEC

of 16 March 1992

amending Directive 89/299/EEC on the credit institution's own funds

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 Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions (1), in which the eligible elements of the said own funds 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),

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 own funds items under Article 2 (1), point 7, 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 converted into a public limited liability company ;

Whereas the Danish Government has expressed a strong interest in having its few mortgage credit institutions organized as cooperative societies or funds converted into public limited liability companies ; whereas, in order to facilitate the conversion or to make it 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 affect competition between credit institutions ;

Whereas, in adopting Directive 89/299/EEC, the Council 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 said Directive ;

Whereas implementing powers of the same nature as those the Council reserved for itself in Directive 89/299/EEC were conferred on the Commission in the Second Council Directive, 89/646/EEC, of 15 December 1989 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 (5) ;

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 powers conferred on it in accordance with the procedural rules laid down in Article 2, procedure III (b), of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (6),

(1) OJ No L 124, 5. 5. 1989, p. 16.
(2) OJ No C 172, 3. 7. 1991, p. 3.
(3) OJ No C 13, 20. 1. 1992 (Decision of 12 February 1992 not yet published in the Official Journal).
(4) OJ No C 339, 31. 12. 1991, p. 2.

(5) OJ No L 386, 30. 12. 1989, p. 1.
(6) OJ No L 197, 18. 7. 1987, p. 33.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/299/EEC is hereby amended as follows:

1. The following Article shall be inserted:

'*Article 4a*

Denmark may allow its mortgage credit institutions organized as cooperative societies or funds before 1 January 1990 and converted into public limited liability companies to continue to include joint and several commitments of members, or of borrowers as referred to in Article 4 (1) claims on whom are treated in the same way as such joint and several commitments, in their own funds, subject to the following limits:

(a) the basis for calculation of the part of joint and several commitments of borrowers shall be the total of the items referred to in Article 2 (1), points 1 and 2, minus those referred to in Article 2 (1), points 9, 10 and 11;

(b) the basis for calculation on 1 January 1991 or, if converted at a later date, on the date of conversion, shall be the maximum basis for calculation. The basis for calculation may 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), point 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;'

2. Article 8 shall be replaced by the following:

'*Article 8*

1. Without prejudice to the report referred to in the second subparagraph of Article 2 (2), 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, and

— 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.

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, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.'

Article 2

1. Member States shall put into effect the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993. They shall forthwith inform the Commission thereof.

When Member States adopt the measures referred to in the first subparagraph, 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.

2. Member States shall communicate to the Commission the text of the essential provisions of internal law which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 16 March 1992.

For the Council

The President

Jorge BRAGA DE MACEDO

II .c) **89/647/EEC + 91/31/EEC + 94/7/EC**
Council Directive of 18 December 1989 on a solvency ratio for credit institutions
(OJ No L 386, 30.12.1989, p. 14-22)

Scope and definitions (Art. 1 and 2)

Art. 3 : General principles

Art. 4 : The numerator : own funds

Art. 5 : The denominator : risk-adjusted assets and off-balance sheet items

Art. 6 : Risk weightings

Art. 7-13

Annex I (to Art. 2(1) and 5(2)) :

Classification of off-balance-sheet items

Annex II (to Art. 5(3)) :

The treatment of off-balance-sheet items concerning interest and foreign-exchange rates

Annex III (to Annex II) :

Types of off-balance-sheet items concerning interest rates and foreign exchange

Commission Directive of 19 December 1990 adapting the technical definition of multilateral develpment banks in Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions
(OJ No L 71, 23.01.1991, p. 20)

Commission Directive of 15 March 1994 adapting Council Directive 89/647/EEC on a solvency ratio for credit institutions as regards the technical definition of 'multilateral development banks'
(OJ N° L 89. 06.04 1994. p. 17)

COUNCIL DIRECTIVE

of 18 December 1989

on a solvency ratio for credit institutions

(89/647/EEC)

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 proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas this Directive is the outcome of work carried out by the Banking Advisory Committee, which, pursuant to Article 6 (4) of Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (4), as last amended by Directive 89/646/EEC (5), is responsible for making suggestions to the Commission with a view to coordinating the coefficients applicable in the Member States;

Whereas the establishment of an appropriate solvency ratio plays a central role in the supervision of credit institutions;

Whereas a ratio which weights assets and off-balance-sheet items according to the degree of credit risk is a particularly useful measure of solvency;

Whereas the development of common standards for own funds in relation to assets and off-balance-sheet items exposed to credit risk is, accordingly, an essential aspect of the harmonization necessary for the achievement of the mutual recognition of supervision techniques and thus the completion of the internal banking market;

Whereas, in that respect, this Directive must be considered in conjunction with other specific instruments also harmonizing the fundamental techniques of the supervision of credit institutions;

Whereas this Directive must also be seen as complementary to Directive 89/646/EEC, which lays out the broader framework of which this Directive is an integral part;

Whereas, in a common banking market, institutions are required to enter into direct competition with one another and whereas the adoption of common solvency standards in the form of a minimum ratio will prevent distortions of competition and strengthen the Community banking system;

Whereas this Directive provides for different weightings to be given to guarantees issued by different financial institutions; whereas the Commission accordingly undertakes to examine whether the Directive taken as a whole significantly distorts competition between credit institutions and insurance companies and, in the light of that examination, to consider whether any remedial measures are justified;

Whereas the minimum ratio provided for in this Directive reinforces the capital of credit institutions in the Community; whereas a level of 8 % has been adopted following a statistical survey of capital requirements in force at the beginning of 1988;

Whereas measurement of and allowance for interest-rate, foreign-exchange and other market risks are also of great importance in the supervision of credit institutions; whereas the Commission will accordingly, in cooperation with the competent authorities of the Member States and all other bodies working towards similar ends, continue to study the techniques available; whereas it will then make appropriate proposals for the further harmonization of supervision rules relating to those risks; whereas in so doing it will keep a special watch on the possible interaction between the various banking risks and consequently pay particular attention to the consistency of the various proposals;

Whereas, in making proposals for rules for the supervision of investment services and the adequacy of the capital of entities operating in that area, the Commission will ensure that equivalent requirements are applied in respect of the level of own funds, if the same type of business is transacted and identical risks are assumed;

Whereas the specific accounting technique to be used for the calculation of solvency ratios must take account of the provisions of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (6), which incorporates certain adaptations of the provisions of Council Directive 83/349/EEC (7), as amended by the Act of Accession of Spain and Portugal; whereas, pending transposition of the provisions of those Directives into the national laws of the Member States, the use of a specific accounting technique for

(1) OJ No C 135, 25. 5. 1988, p. 2.
(2) OJ No C 96, 17. 4. 1984, p. 86 and OJ No C 304, 4. 12. 1984.
(3) OJ No C 337, 31. 12. 1988, p. 8.
(4) OJ No L 322, 17. 12. 1977, p. 30.
(5) See page 1 of this Official Journal.
(6) OJ No L 372, 31. 12. 1986, p. 1.
(7) OJ No L 193, 18. 7. 1983, p. 18.

the calculation of solvency ratios should be left to the discretion of the Member States;

Whereas the application of a 20% weighting to credit institutions' holdings of mortgage bonds may unsettle a national financial market on which such instruments play a preponderant role; whereas, in this case, provisional measures are taken to apply a 10% risk weighting;

Whereas technical modifications to the detailed rules laid down in this Directive may from time to time be necessary to take account of new developments in the banking sector; whereas the Commission will accordingly make such modifications as are necessary, after consulting the Banking Advisory Committee, within the limits of the implementing powers conferred on the Commission by the provisions of the Treaty; whereas that Committee will act as a 'Regulatory' Committee, according to the rules of procedure laid down in Article 2, procedure III, variant (b), of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (1),

HAS ADOPTED THIS DIRECTIVE:

Scope and definitions

Article 1

1. This Directive shall apply to credit institutions as defined the first indent of Article 1 of Directive 77/780/EEC.

2. Notwithstanding paragraph 1, the Member States need not apply this Directive to credit institutions listed in Article 2 (2) of Directive 77/780/EEC.

3. A credit institution which, as defined in Article 2 (4) (a) of Directive 77/780/EEC, is affiliated to a central body in the same Member State, may be exempted from the provisions of this Directive, provided that all such affiliated credit institutions and their central bodies are included in consolidated solvency ratios in accordance with this Directive.

4. Exceptionally, and pending further harmonization of the prudential rules relating to credit, interest-rate and market risks, the Member States may exclude from the scope of this Directive any credit institution specializing in the inter-bank and public-debt markets and fulfilling, together with the central bank, the institutional function of banking-system liquidity regulator, provided that:

— the sum of its asset and off-balance-sheet items included in the 50% and 100% weightings, calculated in accordance with Article 6, must not normally exceed 10% of total assets and off-balance-sheet items and shall not in any event exceed 15% before application of the weightings,

— its main activity consists of acting as intermediary between the central bank of its Member State and the banking system,

— the competent authority applies adequate systems of supervision and control of its credit, interest-rate and market risks.

The Member States shall inform the Commission of the exemptions granted, in order to ensure that they do not result in distortions of competititon. Within three years of the adoption of this Directive, the Commission shall submit to the Council a report together, where necessary, with any proposals it may consider appropriate.

Article 2

1. For the purposes of this Directive:

— 'competent authorities' shall mean the authorities defined in the fifth indent of Article 1 of Council Directive 83/350/EEC,

— 'Zone A' shall comprise all the Member States and all other countries which are full members of the Organization for Economic Cooperation and Development (OECD) and those countries which have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's General Arrangements to Borrow (GAB),

— 'Zone B' shall comprise all countries not in Zone A,

— 'Zone A credit institutions' shall mean all credit institutions authorized in the Member States, in acccordance with Article 3 of Directive 77/780/EEC, including their branches in third countries, and all private and public undertakings covered by the definition in the first indent of Article 1 of Directive 77/780/EEC and authorized in other Zone A countries, including their branches,

— 'Zone B credit institutions' shall mean all private and public undertakings authorized outside Zone A covered by the definition in the first indent of Article 1 of Directive 77/780/EEC, including their branches within the Community,

— 'non-bank sector' shall mean all borrowers other than credit institutions as defined in the fourth and fifth indents, central governments and central banks, regional governments and local authorities, the European Communities, the European Investment Bank and multilateral development banks as defined in the seventh indent,

— 'multilateral development banks' shall mean the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the

(1) OJ No L 197, 18. 7. 1987, p. 33.

Council of Europe Resettlement Fund, the Nordic Investment Bank and the Caribbean Development Bank,

— 'full-risk', 'medium-risk', 'medium/low-risk' and 'low-risk' off-balance-sheet items shall mean the items described in Article 6 (2) and listed in Annex I.

2. For the purposes of Article 6 (1) (b), the competent authorities may include within the concept of regional governments and local authorities non-commercial administrative bodies responsible to regional governments or local authorities, and those non-commercial undertakings owned by central governments, regional governments, local authorities or authorities which, in the view of the competent authorities, exercise the same responsibilities as regional and local authorities.

Article 3

General principles

1. The solvency ratio referred to in paragraphs 2 to 7 expresses own funds, as defined in Article 4, as a proportion of total assets and off-balance-sheet items, risk-adjusted in accordance with Article 5.

2. The solvency ratios of credit institutions which are neither parent undertakings as defined in Article 1 of Directive 83/349/EEC nor subsidiaries of such undertakings shall be calculated on an individual basis.

3. The solvency ratios of credit institutions which are parent undertakings shall be calculated on a consolidated basis in accordance with the methods laid down in this Directive and in Directives 83/350/EEC and 86/635/EEC (1).

4. The competent authorities responsible for authorizing and supervising a parent undertaking which is a credit institution may also require the calculation of a subconsolidated or unconsolidated ratio in respect of that parent undertaking and of any of its subsidiaries which are subject to authorization and supervision by them. Where such monitoring of the satisfactory allocation of capital within a banking group is not carried out, other measures must be taken to attain that end.

5. Where the subsidiary of a parent undertaking has been authorized and is situated in another Member State, the competent authorities which granted that authorization shall require the calculation of a subconsolidated or unconsolidated ratio.

6. Notwithstanding paragraph 5, the competent authorities responsible for authorizing the subsidiary of a parent undertaking situated in another Member State may, by way of a bilateral agreement, delegate their responsibility for supervising solvency to the competent authorities which have authorized and which supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. The Commission shall be kept informed of the existence and content of such agreements. It shall forward such information to the other authorities and to the Banking Advisory Committee.

7. Without prejudice to credit institutions' compliance with the requirements of paragraphs 2 to 6, the competent authorities shall ensure that ratios are calculated not less than twice each year, either by credit institutions themselves, which shall communicate the results and any component data required to the competent authorities, or by the competent authorities, using data supplied by the credit institutions.

8. The valuation of assets and off-balance-sheet items shall be effected in accordance with Directive 86/635/EEC. Pending implementation of the provisions of that Directive, valuation shall be left to the discretion of the Member States.

Article 4

The numerator: own funds

Own funds as defined in Directive 89/299/EEC (2) shall form the numerator of the solvency ratio.

Article 5

The denominator: risk-adjusted assets and off-balance-sheet items

1. Degrees of credit risk, expressed as percentage weightings, shall be assigned to asset items in accordance with Articles 6 and 7, and exceptionally Articles 8 and 11. The balance-sheet value of each asset shall then be multiplied by the relevant weighting to produce a risk-adjusted value.

2. In the case of the off-balance-sheet items listed in Annex I, a two-stage calculation as precribed in Article 6 (2) shall be used.

3. In the case of the interest-rate- and foreign-exchange-related off-balance-sheet items referred to in Article 6 (3), the potential costs of replacing contracts in the event of counterparty default shall be calculated by means of one of the two methods set out in Annex II. Those costs shall be multiplied by the relevant counterparty weigthings in Article 6 (1), except that the 100% weightings as provided for there shall be replaced by 50% weightings to produce risk-adjusted values.

4. The total of the risk-adjusted values of the assets and off-balance-sheet items mentioned in paragraphs 2 and 3 shall be the denominator of the solvency ratio.

(1) OJ No L 372, 31. 12. 1986, p. 1.

(2) OJ No L 124, 5. 5. 1989, p. 16.

Article 6

Risk weightings

1. The following weightings shall be applied to the various categories of asset items, altough the competent authorities may fix higher weightings as they see fit:

(a) *Zero weighting*

1. cash in hand and equivalent items;
2. asset items constituting claims on Zone A central governments and central banks;
3. asset items constituting claims on the European Communities;
4. asset items constituting claims carrying the explicit guarantees of Zone A central governments and central banks;
5. asset items constituting claims on Zone B central governments and central banks, denominated and funded in the national currencies of the borrowers;
6. asset items constituting claims carrying the explicit guarantees of Zone B central governments and central banks, denominated and funded in the national currency common to the guarantor and the borrower;
7. asset items secured, to the satisfaction of the competent authorities, by collateral in the form of Zone A central government or central bank securities, or securities issued by the European Communities, or by cash deposits placed with the lending institution or by certificates of deposit or similar instruments issued by and lodged with the latter;

(b) *20 % weighting*

1. asset items constituting claims on the European Investment Bank (EIB);
2. asset items constituting claims on multilateral development banks;
3. asset items constituting claims carrying the explicit guarantee of the European Investment Bank (EIB);
4. asset items constituting claims carrying the explicit guarantees of multilateral development banks;
5. asset items constituting claims on Zone A regional governments or local authorities, subject to Article 7;
6. asset items constituting claims carrying the explicit guarantees of Zone A regional governments or local authorities, subject to Article 7;
7. asset items constituting claims on Zone A credit institutions but not constituting such institutions' own funds as defined in Directive 89/299/EEC;
8. asset items constituting claims, with a maturity of one year or less, on Zone B credit institutions, other than securities issued by such institutions which are recognized as components of their own funds;
9. asset items carrying the explicit guarantees of Zone A credit institutions;
10. asset items constituting claims with a maturity of one year or less, carrying the explicit guarantees of Zone B credit institutions;
11. asset items secured, to the satisfaction of the competent authorities, by collateral in the form of securities issued by the EIB or by multilateral development banks;
12. cash items in the process of collection;

(c) *50 % weighting*

1. loans fully and completely secured, to the satisfaction of the competent authorities, by mortgages on residential property which is or will be occupied or let by the borrower;
2. prepayments and accrued income: these assets shall be subject to the weighting corresponding to the counterparty where a credit institution is able to determine it in accordance with Directive 86/635/EEC. Otherwise, where it is unable to determine the contraparty, it shall apply a flat-rate weighting of 50 %;

(d) *100 % weighting*

1. asset items constituting claims on Zone B central governments and central banks except where denominated and funded in the national currency of the borrower;
2. asset items constituting claims on Zone B regional governments or local authorities;
3. asset items constituting claims with a maturity of more than one year on Zone B credit institutions;
4. asset items constituting claims on the Zone A or Zone B non-bank sectors;
5. tangible assets within the meaning of assets as listed in Article 4 (10) of Directive 86/635/EEC;
6. holdings of shares, participations and other components of the own funds of other credit institutions which are not deducted from the own funds of the lending institutions;
7. all other assets except where deducted from own funds.

2. The following treatment shall apply to off-balance-sheet items other than those covered in paragraph 3. They shall first be grouped according to the risk groupings set out in Annex I. The full value of the full-risk items shall be taken into account, 50 % of the value of the medium-risk items and 20 % of the medium/low-risk items, while the value of low-risk items shall be set at zero. The

second stage shall be to multiply the off-balance-sheet values, adjusted as described above, by the weightings attributable to the relevant counterparties, in accordance with the treatment of asset items prescribed in paragraph 1 and Article 7. In the case of asset sale and repurchase agreements and outright forward purchases, the weightings shall be those attaching to the assets in question and not to the counterparties to the transactions.

3. The methods set out in Annex II shall be applied to the interest-rate and foreign-exchange risks listed in Annex III.

4. Where off-balance-sheet items carry explicit guarantees, they shall be weighted as if they had been incurred on behalf of the guarantor rather than the counterparty. Where the potential exposure arising from off-balance-sheet transactions is fully and completely secured, to the satisfaction of the competent authorities, by any of the asset items recognized as collateral in paragraph 1 (a) (7) or (b) (11), weightings of 0 % or 20 % shall apply, depending on the collateral in question.

5. Where asset and off-balance-sheet items are given a lower weighting because of the existence of explicit guarantees or collateral acceptable to the competent authorities, the lower weighting shall apply only to that part which is guaranteed or which is fully covered by the collateral.

Article 7

1. Notwithstanding the requirements of Article 6 (1) (b), the Member States may fix a weighting of 0 % for their own regional governments and local authorities if there is no difference in risk between claims on the latter and claims on their central governments because of the revenue-raising powers of the regional governments and local authorities and the existence of specific institutional arrangements the effect of which is to reduce the chances of default by the latter. A zero weighting fixed in accordance with these criteria shall apply to claims on and off-balance-sheet items incurred on behalf of the regional governments and local authorities in question and claims on others and off-balance-sheet items incurred on behalf of others and guaranteed by those regional governments and local authorities.

2. The Member States shall notify the Commission if they believe a zero weighting to be justified according to the criteria laid down in paragraph 1. The Commission shall circulate that information. Other Member States may offer the credit institutions under the supervision of their competent authorities the possibility of applying a zero weighting where they undertake business with the regional governments or local authorities in question or where they hold claims guaranteed by the latter.

Article 8

1. The Member States may apply a weighting of 20 % to asset items which are secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by Zone A regional governments or local authorities, by deposits placed with Zone A credit institutions other than the lending institution, or by certificates of deposit of similar instruments issued by those credit institutions.

2. The Member States may apply a weighting of 10 % to claims on institutions specializing in the inter-bank and public-debt markets in their home Member States and subject to close supervision by the competent authorities where those asset items are fully and completely secured, to the satisfaction of the competent authorities of the home Member States, by a combination of asset items mentioned in Article 6 (1) (a) and (b) recognized by the latter as constituting adequate collateral.

3. The Member States shall notify the Commission of any provisions adopted pursuant to paragraphs 1 and 2 and of the grounds for such provisions. The Commission shall forward that information to the Member States. The Commission shall periodically examine the implications of those provisions in order to ensure that they do not result in any distortions of competition. Within three years of the adoption of this Directive, the Commission shall submit to the Council a report together, where necessary, with any proposals it may consider appropriate.

Article 9

1. The 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:

— a temporary reduction in the minimum ratio prescribed in Article 10 or the weightings prescribed in Article 6 in order to take account of specific circumstances,

— the definition of 'Zone A' in Article 2,

— the definition of 'multilateral development banks' in Article 2,

— amendment of the definitions of the assets listed in Article 6 in order to take account of developments on financial markets,

— the lists and classification of off-balance-sheet items in Annexes I and III and their treatment in the calculation of the ratio as decribed in Articles 5, 6 and 7 and Annex II,

— clarification of the definitions in order 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.

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 Commission shall adopt the measures proposed, unless the Council has decided against those measures by a simple majority.

Article 10

1. With effect from 1 January 1993 credit institutions shall be required permanently to maintain the ratio defined in Article 3 at a level of at least 8 %.

2. Notwithstanding paragraph 1, the competent authorities may prescribe higher minimum ratios as they consider appropriate.

3. If the ratio falls below 8 % the competent authorities shall ensure that the credit institution in question takes appropriate measures to restore the ratio to the agreed minimum as quickly as possible.

Article 11

1. A credit institution the minimum ratio of which has not reached the 8 % prescribed in Article 10 (1) by the date prescribed in Article 12 (1) must gradually approach that level by successive stages. It may not allow the ratio to fall below the level reached before that objective has been attained. Any fluctuation should be temporary and the competent authorities should be apprised of the reasons for it.

2. For not more than five years after the date prescribed in Article 10 (1) the Member States may fix a weighting of 10 % for the bonds defined in Article 22 (4) of Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (1), as amended by Directive 88/220/EEC (2), and maintain it for credit institutions when and if they consider it necessary, to avoid grave disturbances in the operation of their markets. Such exceptions shall be reported to the Commission.

3. For not more than seven years after 1 January 1993, Article 10 (1) shall not apply to the Agricultural Bank of Greece. However, the latter must approach the level prescribed in Article 10 (1) by successive stages according to the method described in paragraph 1.

4. By derogation from Article 6 (1) (c) (1), until 1 January 1996 Germany, Denmark and Greece may apply a weighting of 50 % to assets which are entirely and completely secured to the satisfaction of the competent authorities concerned, by mortgages on completed residential property, on offices or on multi-purpose commercial premises, situated within the territories of those three Member States provided that the sum borrowed does not exceed 60 % of the value of the property in question, calculated on the basis of rigorous assessment criteria laid down in statutory or regulatory provisions.

5. Member States may apply a 50 % weighting to property leasing transactions concluded within ten years of the date laid down in Article 12 (1) and concerning assets for business use situated in the country of the head office and governed by statutory provisions whereby the lessor retains full ownership of the rented asset until the tenant exercises his option to purchase.

Article 12

1. The Member States shall adopt the measures necessary for them to comply with the provisions of this Directive by 1 January 1991 at the latest.

2. The 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 13

This Directive is addressed to the Member States.

Done at Brussels, 18 December 1989.

For the Council

The President

P. BÉRÉGOVOY

(1) OJ No L 375, 31. 12. 1985, p. 3.
(2) OJ No L 100, 19. 4. 1988, p. 31.

ANNEX I

CLASSIFICATION OF OFF-BALANCE-SHEET ITEMS

Full risk

— Guarantees having the character of credit substitutes,

— Acceptances,

— Endorsements on bills not bearing the name of another credit institution,

— Transactions with recourse,

— Irrevocable standby letters of credit having the character of credit substitutes,

— Asset sale and repurchase agreements as defined in Articles 12 (1) and (2) of Directive 86/635/EEC, if these agreements are treated as off-balance-sheet items pending application of Directive 86/635/EEC,

— Assets purchased under outright forward purchase agreements,

— Forward forward deposits,

— The unpaid portion of partly-paid shares and securities,

— Other items also carrying full risk.

Medium risk

— Documentary credits issued and confirmed (see also medium/low risk),

— Warranties and indemnities (including tender, performance, customs and tax bonds) and guarantees not having the character of credit substitutes,

— Asset sale and repurchase agreements as defined in Article 12 (3) and (5) of Directive 86/635/EEC,

— Irrevocable standby letters of credit not having the character of credit substitutes,

— Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of more than one year,

— Note issuance facilities (NIFs) and revolving underwriting facilities (RUFs),

— Other items also carrying medium risk.

Medium/low risk

— Documentary credits in which underlying shipment acts as collateral and other self-liquidating transactions,

— Other items also carrying medium/low risk.

Low risk

— Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of up to and including one year or which may be cancelled unconditionally at any time without notice,

— Other items also carrying low risk.

The Member States undertake to inform the Commission as soon as they have agreed to include a new off-balance-sheet item in any of the last indents under each category of risk. Such items will be definitively classified at Community level once the procedure laid down in Article 9 has been completed.

ANNEX II

THE TREATMENT OF OFF-BALANCE-SHEET ITEMS CONCERNING INTEREST AND FOREIGN-EXCHANGE RATES

Subject to the consent of their supervisory authorities, credit institutions may choose one of the methods set out below to measure the risks associated with the transactions listed in Annex III. Interest-rate and foreign-exchange contracts traded on recognized exchanges where they are subject to daily margin requirements and foreign-exchange contracts with an original maturity of 14 calendar days or less are excluded.

Where there is a separate bilateral contract for novation, recognized by the national supervisory authorities, between a credit institution and its counterparty under which any obligation to each other to deliver payments in their common currency on a given date are automatically amalgamated with other similar obligations due on the same date, the single net amount fixed by such novation is weighted, rather than the gross amounts involved.

Method 1: the 'marking to market' approach

Step (a): by attaching current market values to contracts (marking to market) the current replacement cost of all contracts with positive values is obtained.

Step (b): to obtain a figure for potential future credit exposure (1), the notional principal amounts or values underlying an institution's aggregate books are multiplied by the following percentages:

Residual maturity	Interest-rate contracts	Foreign-exchange contracts
One year or less	0 %	1 %
More than one year	0,5 %	5 %

Step (c): the sum of current replacement cost and potential future credit exposure is multiplied by the risk weightings allocated to the relevant counterparties in Article 6.

Method 2: the 'original exposure' approach

Step (a): the notional principal amount of each instrument is multiplied by the percentages given below:

Original maturity (1)	Interest-rate contracts	Foreign-exchange contracts
One year or less	0,5 %	2 %
More than one year but not exceeding two years	1 %	5 %
Additional allowance for each additional year	1 %	3 %

(1) In the case of interest-rate contracts, credit institutions may, subject to the consent of their supervisory authorities, choose either original or residual maturity.

Step (b): the original exposure thus obtained is multiplied by the risk weightings allocated to the relevant counterparties in Article 6.

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(1) Except in the case of single-currency 'floating/floatinginterest rate swaps' in which only the current replacement cost will be calculated.

ANNEX III

TYPES OF OFF-BALANCE-SHEET ITEMS CONCERNING INTEREST RATES AND FOREIGN EXCHANGE

Interest-rate contracts

— Single-currency interest rate swaps,

— Basis swaps,

— Forward-rate agreements,

— Interest-rate futures,

— Interest-rate options purchased,

— Other contracts of a similar nature.

Foreign-exchange contracts

— Cross-currency interest-rate swaps,

— Forward foreign-exchange contracts,

— Currency futures,

— Currency options purchased,

— Other contracts of a similar nature.

COMMISSION

COMMISSION DIRECTIVE

of 19 December 1990

adapting the technical definition of 'multilateral development banks' in Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions

(91/31/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [1], and in particular Article 9 thereof,

Whereas the Commission has submitted a proposal for a Council Decision on the conclusion of the Agreement establishing an European Bank for Reconstruction and Development [2];

Whereas the seventh indent of Article 2 (1) of Directive 89/647/EEC defines the 'multilateral development banks' in a enumerate manner including the International Bank for Reconstruction and Development, the international Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the Council of Europe Resettlement Fund, the Nordic Investment Bank and the Caribbean Development Bank;

Whereas the definition of multilateral development banks can be subject to technical adaptations as provided for in Article 9 (1) and in accordance with the procedure laid down in Article 9 (2) of Directive 89/647/EEC;

Whereas the European Bank for Reconstruction and Development embodies the same main characteristics as the abovementioned multilateral development banks; whereas this new multilateral financial institution is European in its basic character and broadly international in its membership; whereas it constitutes a new and unique structure of cooperation in Europe in order to promote the economic progress of Central and Eastern European countries to help their economies become more internationally competitive and assist them in their reconstruction and development, and thus to reduce, where appropriate, any risk related to the financing of their economies; whereas for these reasons the European Bank for Reconstruction and Development should be included in the definition of 'multilateral development banks' in Council Directive 89/647/EEC;

Whereas the provisions of this Directive are in accordance with the opinion of the Banking Advisory Committee acting as the committee which is to assist the Commission in accordance with the procedure laid down in Article 9 (2) of Directive 89/647/EEC,

HAS ADOPTED THIS REGULATION:

Article 1

The definition of 'multilateral development banks' in the seventh indent of Article 2 (1) of Directive 89/647/EEC shall include the European Bank for Reconstruction and Development.

Article 2

1. Under the condition that the Council Decision on the conclusion of the Agreement establishing an European Bank for Reconstruction and Development has been adopted, Member States in implementing Directive 89/647/EEC shall adopt the measures necessary for them to comply with the provision of this Directive by 31 March 1991 at the latest.

2. The 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 3

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1990.

For the Commission

Leon BRITTAN

Vice-President

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[1] OJ No L 386, 30. 12. 1989, p. 14.
[2] OJ No C 241, 26. 9. 1990, p. 1.

COMMISSION DIRECTIVE 94/7/EC

of 15 March 1994

adapting Council Directive 89/647/EEC on a solvency ratio for credit institutions as regards the technical definition of 'multilateral development banks'

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [1], as amended by Directive 92/30/EEC [2], and in particular Article 9 thereof,

Whereas the Commission has submitted to the Council a proposal for amending the Protocol on the Statute of the European Investment Bank (EIB) empowering the Board of Governors of the EIB to establish a European Investment Fund (EIF);

Whereas the seventh indent of Article 2 (1) of Directive 89/647/EEC defines 'multilateral development banks' in an enumerate manner;

Whereas the European Investment Fund embodies the same main characteristics as the said multilateral development banks; whereas this new multilateral financial institution is European in its basic character and in its membership; whereas it constitutes a new and unique structure of cooperation in Europe in order to contribute to the strengthening of the internal market, the promotion of economic recovery in Europe, and the furthering of economic and social cohesion; whereas for these reasons, the European Investment Fund should be included in the definition of multilateral development banks in Directive 89/647/EEC;

Whereas the provisions of this Directive are in accordance with the opinion of the Banking Advisory Committee acting as the committee which is to assist the Commission in accordance with the procedure laid down in Article 9 (2) of Directive 89/647/EEC;

Whereas this Directive is relevant for the European Economic Area (EEA) and the procedure laid down in Article 99 of the Agreement on the European Economic Area has been followed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The definition of 'multilateral development banks' in the seventh indent of Article 2 (1) of Directive 89/647/EEC shall include the European Investment Fund.

Article 2

1. Member States shall adopt the measures necessary for them to comply with the provisions of this Directive within six months of the date of the decision of the Board of Governors of the European Investment Bank establishing the European Investment Fund.

When Member States adopt these measures, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Done at Brussels, 15 March 1994.

For the Commission

Raniero VANNI D'ARCHIRAFI

Member of the Commission

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[1] OJ No L 386, 30. 12. 1989, p. 14.
[2] OJ No L 110, 28. 4. 1992, p. 52.

COMMISSION DIRECTIVE 95/15/EC

of 31 May 1995

adapting Council Directive 89/647/EEC on a solvency ratio for credit institutions, as regards the technical definition of 'Zone A' and in respect of the weighting of asset items constituting claims carrying the explicit guarantee of the European Communities

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions (1), as amended by Directive 92/30/EEC (2), and in particular Article 9 thereof,

Whereas the second indent of Article 2 (1) of Directive 89/647/EEC defines 'Zone A' as comprising 'all the Member States and all other countries which are full members of the Organization for Economic Cooperation and Development (OECD) as well as those countries having concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's General Arrangements to Borrow (GAB)';

Whereas the full membership of the OECD has been considered for the time being as the most appropriate criterion to distinguish the credit risk between countries with regard to the weighting of asset items constituting claims on or carrying the explicit guarantee of these countries;

Whereas an enlargement of the number of full members of the OECD is taking place as a consequence of a higher level of development reached by other countries together with democratic and economic freedom in line with the general principles for membership of the OECD;

Whereas it is important from a prudential supervisory point of view to maintain the creditworthiness of all countries in the 'Zone A' category; whereas for this reason an additional criterion should be included in the definition of 'Zone A'; whereas this criterion should imply that any country which reschedules its external sovereign debt should be precluded from the 'Zone A' category for a period of five years; whereas the same additional criterion has been introduced in the Basle Capital Accord and consistency with this Accord is desirable;

Whereas the second indent of Article 9 (1) of Directive 89/647/EEC provides that technical adaptations as regards amendment of the definition of 'Zone A' in Article 2 are to be adopted in accordance with the procedure laid down in Article 9 (2);

Whereas, when Directive 89/647/EEC was adopted, the possibility that loans might carry the explicit guarantee of the European Communities was not foreseen; whereas, for that reason, the Directive did not expressly provide for a reduced weighting and, as a result, such assets guaranteed by the European Communities are currently assigned a weighting of 100 %;

Whereas, however, points 3 and 7 of Article 6 (1) (a) of Directive 89/647/EEC apply a zero weighting to asset items constituting claims on the European Communities and to asset items secured to the satisfaction of the competent authorities by collateral in the form of securities issued by the European Communities;

Whereas it is appropriate to apply a 100 % weighting to asset items carrying the explicit guarantee of the European Communities and whereas a zero weighting should be applied in order to ensure consistency with points 3 and 7 of Article 6 (1) (a);

Whereas the fourth indent of Article 9 (1) of Directive 89/647/EEC provides that technical adaptations as regards amendment of the definitions of the assets listed in Article 6 in order to take account of developments on financial markets are to be adopted in accordance with the procedure laid down in Article 9 (2);

Whereas this Directive is relevant for the European Economic Area (EEA) and the procedure laid down in Article 99 of the Agreement on the European Economic Area has been followed;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Banking Advisory Committee,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Article 2 (1) of Directive 89/647/EEC, the following sentence is added to the second indent:

'Any country which reschedules its external sovereign debt is, however, precluded from Zone A for a period of 5 years.'

Article 2

In point (a) of Article 6 (1) of Directive 89/647/EEC, point 4 is replaced by the following:

'4. asset items constituting claims carrying the explicit guarantees of Zone A central governments and central banks or of the European Communities;'.

(1) OJ No L 386, 30. 12. 1989, p. 14.
(2) OJ No L 110, 28. 4. 1992, p. 52.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1 of this Directive by 30 September 1995. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall immediately inform the Commission of the measures taken pursuant to Article 2 of this Directive.

Article 4

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities.*

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 31 May 1995.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DIRECTIVE 95/67/EC

of 15 December 1995

making a technical amendment to Council Directive 89/647/EEC on a solvency ratio for credit institutions as regards the definition of 'multilateral development banks'

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions (1) as last amended by Commission Directive 95/15/CE (2), and in particular Article 9 thereof,

Whereas 'multilateral development banks' are defined by list in the seventh indent of Article 2 (1) of Directive 89/647/EEC;

Whereas the Inter-American Investment Corporation is affiliated with the Inter-American Development Bank; whereas the purpose of the Inter-American Investment Corporation is to promote the economic development of its developing regional member countries by encouraging the establishment, expansion and modernization of private — preferably small or medium-scale — enterprises, so as to complement the activities of the Inter-American Development Bank; whereas the Inter-American Investment Corporation has the same basic characteristics as 'multilateral development banks' and should therefore be included in the definition of 'multilateral development banks' contained in Directive 89/64/EEC;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Banking Advisory Committee acting as the committee required to assist the Commission in accordance with the procedure laid down in Article 9 (2) of Directive 89/647/EEC;

Whereas this Directive concerns the European Economic Area (EEA); whereas the procedure of Article 99 of the Agreement on the European Economic Area has been complied with,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The definition of 'multilateral development banks' contained in the seventh indent of Article 2 (1) of Directive 89/647/EEC shall include the Inter-American Investment Corporation.

Article 2

1. Member States shall take the measures necessary to comply with the provisions of this Directive not later than 1 July 1996.

The provisions adopted pursuant to this paragraph shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

2. Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities.*

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 15 December 1995.

For the Commission

Mario MONTI

Member of the Commission

(1) OJ No L 386, 30. 12. 1989, p. 14.
(2) OJ No L 125, 8. 6. 1995, p. 23.

DIRECTIVE 96/10/EC OF THE EUROPEAN PARLAMENT AND OF THE COUNCIL

of 21 March 1996

amending Directive 89/647/EEC as regards recognition of contractual netting by the competent authorities

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the Economic and Social Committee(2),

Having regard to the opinion of the European Monetary Institute(3),

Acting in accordance with the procedure laid down in Article 189b of the Treaty(4),

Whereas Annex II to Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions(5) lays down the treatment of off-balance-sheet items concerning interest and foreign-exchange rates in the context of the calculation of credit institutions' capital requirements;

Whereas with a view to the smooth functioning of the internal market and in particular with a view to ensuring a level playing field Member States are obliged to strive for uniform assessment of contractual netting agreements by their competent authorities;

Whereas this Directive is in accordance with the work of an international forum of banking supervisors on the supervisory recognition of bilateral netting, in particular the possibility of calculating the own-funds requirements for certain transactions on the basis of a net rather than a gross amount provided that there are legally binding agreements which ensure that the credit risk is confined to the net amount;

Whereas the rules contemplated for the supervisory recognition of netting at the wider international level will lead to the possibility of reducing the capital requirements for internationally active credit institutions and groups of credit institutions in a wide range of non-member countries credit institutions which compete with Community credit institutions;

Whereas for credit institutions incorporated in the Member States, only an amendment of Directive 89/647/EEC can create a similar possibility for the recognition of bilateral netting by the competent authorities and thereby offer them equal conditions of competition; whereas the rules are both well balanced and appropriate for the further reinforcement of the application of prudential supervisory measures to credit institutions;

Whereas the competent authorities in the Member States should ensure that the calculation of add ons is based on effective rather than apparent notional amounts;

Whereas, having regard to this situation, this Directive complies with the principle of subsidiarity, since the aim of this Directive can be achieved only by means of the harmonized amendment of existing Community legislation,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Annex II to Directive 89/647/EEC shall be replaced by the Annex hereto.

Article 2

Article 1 shall be without prejudice to the competent authorities' recognition of bilateral contracts for novation concluded before the entry into force of the laws, regulations and administrative provisions necessary for the implementation of this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive after its entry into force and no later than 30 June 1996. They shall forthwith inform the Commission thereof.

When the Member States adopt those measures they shall contain references to this Directive or shall be accompanied by such references on the occasion of their official publication. The methods of making such references shall be laid down by the Member States.

(1) OJ No C 142, 25. 5. 1994, p. 8, and OJ No C 165, 1. 7. 1995, p. 6.
(2) OJ No C 393, 31. 12. 1994, p. 30.
(3) Opinion delivered on 16 January 1995 (not yet published in the Official Journal).
(4) Opinion of the European Parliament of 16 February 1995 (OJ No C 56, 6. 3. 1995, p. 79), Council common position of 5 September 1995 (OJ No C 288, 30. 10. 1995, p. 30) and Decision of the European Parliament of 14 December 1995 (OJ No C 17, 22. 1. 1996). Council Decision of 26 February 1996.
(5) OJ No L 386, 30. 12. 1989, p. 14. Directive as last amended by Commission Directive 95/15/EC (OJ No L 125, 8. 6. 1995, p. 23).

2. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 21 March 1996.

For the European Parliament	*For the Council*
The President	*The President*
K. HÄNSCH	A. GAMBINO

ANNEX X

'ANNEX II

THE TREATMENT OF OFF-BALANCE-SHEET ITEMS CONCERNING INTEREST AND FOREIGN-EXCHANGE RATES

1. SCOPE AND CHOICE OF METHOD

Subject to the consent of their competent authorities, credit institutions may choose one of the methods set out below to measure the risks associated with the transactions listed in Annex III. Interest-rate and foreign-exchange contracts traded on recognized exchanges where they are subject to daily margin requirements and foreign exchange contracts with an original maturity of fourteen calendar days or less are excluded.

2. METHODS

Method 1: the "mark-to-market" approach

Step (a): by attaching current market values to contracts (mark to market) the current replacement cost of all contracts with positive values is obtained.

Step (b): to obtain a figure for the potential future credit exposure (1), the notional principal amounts or underlying values are multiplied by the following percentages:

TABLE 1

Residual maturity	Interest-rate contracts	Foreign-exchange contracts
One year or less	0 %	1 %
More than one year	0,5 %	5 %

Step (c): the sum of the current replacement cost and the potential future credit exposure is multiplied by the risk weightings allocated to the relevant counterparties in Article 6.

Method 2: the "original exposure" approach

Step (a): the notional principal amount of each instrument is multiplied by the percentages given below:

TABLE 2

Original maturity (1)	Interest-rate contracts	Foreign-exchange contracts
One year or less	0,5 %	2 %
More than one year but not exceeding two years	1 %	5 %
Additional allowance for each additional year	1 %	3 %

(1) In the case of interest-rate contracts, credit institutions may, subject to the consent of their competent authorities, choose either original or residual maturity.

Step (b): the original exposure thus obtained is multiplied by the risk weightings allocated to the relevant counterparties in Article 6.

(1) Except in the case of single-currency "floating/floating" interest-rate swaps in which only the current replacement cost will be calculated.

3. CONTRACTUAL NETTING (CONTRACTS FOR NOVATION AND OTHER NETTING AGREEMENTS)

(a) **Types of netting that the competent authorities may recognize**

For the purposes of this point 3 "counterparty" means any entity (including natural persons) that has the power to conclude a contractual netting agreement.

The competent authorities may recognize as risk-reducing the following types of contractual netting:

(i) bilateral contracts for novation between a credit institution and its counterparty under which mutual claims and obligations are automatically amalgamated in such a way that this novation fixes one single net amount each time novation applies and thus creates a legally binding, single new contract extinguishing former contracts;

(ii) other bilateral netting agreements between a credit institution and its counterparty.

(b) **Conditions for recognition**

The competent authorities may recognize contractual netting as risk-reducing only under the following conditions:

(i) a credit institution must have a contractual netting agreement with its counterparty which creates a single legal obligation, covering all included transactions, such that, in the event of a counterparty's failure to perform owing to default, bankruptcy, liquidation or any other similar circumstance, the credit institution would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions;

(ii) a credit institution must have made available to the competent authorities written and reasoned legal opinions to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would, in the cases described under (i), find that the credit institution's claims and obligations would be limited to the net sum, as described in (i), under:

— the law of the jurisdiction in which the counterparty is incorporated and, if a foreign branch of an undertaking is involved, also under the law of the jurisdiction in which the branch is located,

— the law that governs the individual transactions included, and

— the law that governs any contract or agreement necessary to effect the contractual netting;

(iii) a credit institution must have procedures in place to ensure that the legal validity of its contractual netting is kept under review in the light of possible changes in the relevant laws.

The competent authorities must be satisfied, if necessary after consulting the other competent authorities concerned, that the contractual netting is legally valid under the law of each of the relevant jurisdictions. If any of the competent authorities is not satisfied in that respect, the contractual netting agreement will not be recognized as risk-reducing for either of the counterparties.

The competent authorities may accept reasoned legal opinions drawn up by types of contractual netting.

No contract containing a provision which permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulter, even if the defaulter is a net creditor (a "walkaway" clause), may be recognized as risk-reducing.

(c) **Effects of recognition**

(i) *Contracts for novation*

The single net amounts fixed by contracts for novation, rather than the gross amounts involved, may be weighted. Thus, in the application of Method 1, in

— Step (a): the current replacement cost, and in

— Step (b): the notional principal amounts or underlying values

may be obtained taking account of the contract for novation. In the application of Method 2, in Step (a) the notional principal amount may be calculated taking account of the contract for novation; the percentages of Table 2 must apply.

(ii) *Other netting agreements*

In the application of Method 1, in Step (a) the current replacement cost for the contracts included in a netting agreement may be obtained by taking account of the current hypothetical net replacement cost which results from the agreement. In Step (b) the single net amounts may be taken into account only for forward foreign-exchange contracts and other similar contracts, in which notional principal is equivalent to cash flows, in cases where the amounts to be claimed or delivered fall due on the same value date and in the same currency.

In the application of Method 2, in Step (a)

— for forward foreign-exchange contracts and other similar contracts, in which notional principal is equivalent to cash flows, in cases where the amounts to be claimed or delivered fall due on the same value date and in the same currency, the notional principal amount may be calculated taking account of the netting agreement; to all these contracts Table 2 must apply,

— for all other contracts included in a netting agreement, the percentages applicable may be reduced as indicated in Table 3:

TABLE 3

Original maturity(1)	Interest-rate contracts	Foreign-exchange contracts
One year or less	0,35%	1,50%
More than one year but not more than two years	0,75%	3,75%
Additional allowance for each additional year	0,75%	2,25%

(1) In the case of interest rate contracts, credit institutions may, subject to the consent of the competent authorities, choose either original or residual maturity.

II

(Preparatory Acts)

COMMISSION

Proposal for a European Parliament and Council Directive amending Council Directive 89/647/EEC on a solvency ratio for credit institutions

(96/C 114/06)

(Text with EEA relevance)

COM(95) 709 final — 96/0003(COD)

(Submitted by the Commission on 28 February 1996)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

Whereas mortgage-backed securities may be treated as the loans referred to in Article 6 (1) (c) (1) and Article 11 (4) of Council Directive 89/647/EEC (1) if the competent authorities consider that they are entirely equivalent in the light of the credit risk; whereas the issuer of such securities must be legally and economically independent in relation to the original mortgage lender;

Whereas Article 11 (4) of Directive 89/647/EEC provides for a derogation, on certain conditions, for four Member States, from Article 6 (1) (c) (1), as regards the weighting to be applied to assets secured by mortgages on offices or on multi-purpose commercial premises; whereas this derogation expired on 1 January 1996;

Whereas when Directive 89/647/EEC was adopted, the Commission undertook to examine this transitional provision to determine whether, in the light of its findings and of international developments and in view of the need to avoid distortions of competition, it considered that there was a case for amending this provision and, if so, to put forward appropriate proposals; whereas the results of the study relating to this provision, although not absolutely conclusive, show that there is no significant difference between the rates of losses recorded in the Member States covered by the derogation and in those not so covered; whereas, therefore, this derogation can be extended to all Member States which so wish for a period of five years; whereas the property to which the mortgage relates must be subject to rigorous assessment; whereas the property must be either occupied or let by the owner; whereas in the latter case, the rental income must be secured to the satisfaction of the competent authorities; whereas loans for property development are excluded from this provision;

Whereas this Directive is the most appropriate means of attaining the objectives sought and is limited to the minimum required to attain those objectives and does not exceed what is necessary for this purpose;

Whereas this Directive concerns the European Economic Area and the procedure of Article 99 of the EEA Agreement has been complied with;

Whereas the Banking Advisory Committee has been consulted on the adoption of this Directive,

(1) OJ No L 386, 30. 12. 1989, p. 14, as last amended by Directive ... (contractual netting).

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/647/EEC is amended as follows:

1. the following subparagraphs are added to Article 6 (1) (c) (1):

'mortgage backed securities' which may be treated as the loans referred to in the first subparagraph of this point or in Article 11 (4), if the competent authorities consider, given the legal framework in force in each Member State, that they are equivalent in the light of the credit risk.

The authorities must in particular be satisfied that:

(i) such securities are fully and directly backed by a pool of mortgages which are of the same nature as those defined in the first subparagraph of this point or in Article 11 (4) and are fully performing when the mortgage-backed securities are created;

(ii) a first charge on the underlying mortgage assets is held directly by investors in mortgage-backed securities, or in their name by a trustee, in the same proportion as their holdings bear to the securities they hold; when the trustee exercises the first charge, he does so on behalf of these investors;'

2. Article 11 (4) is replaced by the following:

'4. Until 1 January 2001 the competent authorities of the Member States may authorize their credit institutions to apply a 50 % risk weighting to loans fully and completely secured to their satisfaction by mortgages on offices or on multipurpose commercial premises situated within the territory of those Member States that allow the 50 % risk weighting. The sum borrowed cannot exceed 60 % of the value of the property in question, calculated on the basis of rigorous assessment criteria laid down in statutory or regulatory provisions, and the property must be either used or let by the owner; in the latter case, the rental value must be secured to the satisfaction of the competent authorities at least at a level envisaged in the assessment of the value of the property.

The first sentence of the first subparagraph does not exclude that competent authorities of a Member State, which applies a higher risk weighting in its territory, may allow the 50 % risk weighting to apply for this type of lending in the territories of those Member States that allow the 50 % risk weighting.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 31 December 1997. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

Article 4

This Directive is addressed to the Member States.

II d) 93/6/EEC Council Directive on capital adequacy of investment firms and credit institutions
(OJ N° L 141 11 06 1993 p 1 26

Scope (Art. 1)
Definitions (Art. 2)
Initial capital (Art 3)
Provision against risks (Art 4)
Monitoring and Control of large exposures (Art. 5)
Valuation of positions for reporting purposes (Art 6)
Supervision on a consolidated basis (Art. 7)
Reporting Requirements (Art. 8)
Competent authorities (Art. 9 + 10)
Transitional Provisions (Art 11)
Final provisions (Art 12 and 13)
Review Clause (Art. 14 and 15)

Annex 1. - Position Risk
- Traded Debt instruments
- Equities
- Underwriting

Annex 2 Settlement and Counter-party risk

Annex 3. Foreign exchange risk

Annex 4 Other risks

Annex 5 Own funds

Annex 6. Large exposures

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 93/6/EEC

of 15 March 1993

on the capital adequacy of investments firms and 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 proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the main objective of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (4) is to allow investment firms authorized by the competent authorities of their home Member States and supervised by the same authorities to establish branches and provide services freely in other Member States; whereas that Directive accordingly provides for the coordination of the rules governing the authorization and pursuit of the business of investment firms;

Whereas that Directive does not, however, establish common standards for the own funds of investment firms nor indeed does it establish the amounts of the initial capital of such firms; whereas it does not establish a common framework for monitoring the risks incurred by the same firms; whereas it refers, in several of its provisions, to another Community initiative, the objective of which would be precisely to adopt coordinated measures in those fields;

Whereas the approach that has been adopted is to effect only the essential harmonization that is necessary and sufficient to secure the mutual recognition of authorization and of prudential supervision systems; whereas the adoption of measures to coordinate the definition of the own funds of investment firms, the establishment of the amounts of their initial capital and the establishment of a common framework for monitoring the risks incurred by investment firms are essential aspects of the harmonization necessary for the achievement of mutual recognition within the framework of the internal financial market;

Whereas it is appropriate to establish different amounts of initial capital depending on the range of activities that investment firms are authorized to undertake;

Whereas existing investment firms should be permitted, under certain conditions, to continue their business even if they do not comply with the minimum amount of initial capital fixed for new firms;

Whereas the Member States may also establish rules stricter than those provided for in this Directive;

Whereas this Directive forms part of the wider international effort to bring about approximation of the rules in force regarding the supervision of investment firms and credit institutions (hereinafter referred to collectively as 'institutions');

Whereas common basic standards for the own funds of institutions are a key feature in an internal market in the

(1) OJ No C 152, 21. 6. 1990, p. 6; and
OJ No C 50, 25. 2. 1992, p. 5.
(2) OJ No C 326, 16. 12. 1991, p. 89; and
OJ No C 337, 21. 12. 1992, p. 114.
(3) OJ No C 69, 18. 3. 1991, p. 1.
(4) See page 27 of this Official Journal.

investment services sector, since own funds serve to ensure the continuity of institutions and to protect investors;

Whereas in a common financial market, institutions, whether they are investment firms or credit institutions, engage in direct competition with one another;

Whereas it is therefore desirable to achieve equality in the treatment of credit institutions and investment firms;

Whereas, as regards credit institutions, common standards are already established for the supervision and monitoring of credit risks in Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [1];

Whereas it is necessary to develop common standards for market risks incurred by credit institutions and provide a complementary framework for the supervision of the risks incurred by institutions, in particular market risks, and more especially position risks, counterparty/settlement risks and foreign-exchange risks;

Whereas it is necessary to introduce the concept of a 'trading book' comprising positions in securities and other financial instruments which are held for trading purposes and are subject mainly to market risks and exposures relating to certain financial services provided to customers;

Whereas it is desirable that institutions with negligible trading-book business, in both absolute and relative terms, should be able to apply Directive 89/647/EEC, rather than the requirements imposed in Annexes I and II to this Directive;

Whereas it is important that monitoring of settlement/delivery risks should take account of the existence of systems offering adequate protection that reduces that risk;

Whereas, in any case, institutions must comply with this Directive as regards the coverage of the foreign-exchange risks on their overall business; whereas lower capital requirements should be imposed for positions in closely correlated currencies, whether statistically confirmed or arising out of binding intergovernmental agreements, with a view in particular to the creation of the European Monetary Union;

Whereas the existence, in all institutions, of internal systems for monitoring and controlling interest-rate risks on all of their business is a particularly important way of minimizing such risks; whereas, consequently, such systems must be subject to overview by the competent authorities;

Whereas Council Directive 92/121/EEC of 21 December 1992 on the monitoring and control of large exposures of credit institutions [2] is not aimed at establishing common rules for monitoring large exposures in activities which are principally subject to market risks; whereas that Directive makes reference to another Community initiative intended to adopt the requisite coordination of methods in that field;

Whereas it is necessary to adopt common rules for the monitoring and control of large exposures incurred by investment firms;

Whereas the own funds of credit institutions have already been defined in Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions [3];

Whereas the basis for the definition of the own funds of institutions should be that definition;

Whereas, however, there are reasons why for the purposes of this Directive the definition of the own funds of institutions may differ from that in the aforementioned Directive in order to take account of the particular characteristics of the activities carried on by those institutions which mainly involve market risks;

Whereas Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis [4] states the principle of consolidation; whereas it does not establish common rules for the consolidation of financial institutions which are involved in activities principally subject to market risks; whereas that Directive makes reference to another Community initiative intended to adopt coordinated measures in that field;

Whereas Directive 92/30/EEC does not apply to groups which include one or more investment firms but no credit institutions; whereas it was, however, felt desirable to provide a common framework for the introduction of the supervision of investment firms on a consolidated basis;

Whereas technical adaptations to the detailed rules laid down in this Directive may from time to time be necessary to take account of new developments in the investment services field; whereas the Commission will accordingly propose such adaptations as are necessary;

Whereas the Council should, at a later stage, adopt provision for the adaptation of this Directive to technical progress in accordance with Council Decision 87/373/EEC of 13 July 1987 laying down the procedures

[1] OJ No L 386, 30. 12. 1989, p. 14. Directive as amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

[2] OJ No L 29, 5. 2. 1993, p. 1.

[3] OJ No L 124, 5. 5. 1989, p. 16. Directive as last amended by Directive 92/30/EEC (OJ No L 110, 24. 9. 1992, p. 52).

[4] OJ No L 110, 28. 4. 1992, p. 52.

for the exercise of implementing powers conferred on the Commission (1); whereas meanwhile the Council itself, on a proposal from the Commission, should carry out such adaptations;

Whereas provision should be made for the review of this Directive within three years of the date of its application in the light of experience, developments on financial markets and work in international fora of regulatory authorities; whereas that review should also include the possible review of the list of areas that may be subject to technical adjustment;

Whereas this Directive and Directive 93/22/EEC on investment services in the securities field are so closely interrelated that their entry into force on different dates could lead to the distortion of competition,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall apply the requirements of this Directive to investment firms and credit institutions as defined in Article 2.

2. A Member State may impose additional or more stringent requirements on the investment firms and credit institutions that it has authorized.

DEFINITIONS

Article 2

For the purposes of this Directive:

1. *credit institutions* shall mean all institutions that satisfy the definition in the first indent of Article 1 of the First Council Directive (77/780/EEC) of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (2) which are subject to the requirements imposed by Directive 89/647/EEC;

2. *investment firms* shall mean all institutions that satisfy the definition in point 2 of Article 1 of Directive 93/22/EEC, which are subject to the requirements imposed by the same Directive, excluding:

   — credit institutions,

   — local firms as defined in 20, and

   — firms which only receive and transmit orders from investors without holding money or securities belonging to their clients and which for that reason may not at any time place themselves in debit with their clients;

3. *institutions* shall mean credit institutions and investment firms;

4. *recognized third-country investment firms* shall mean firms which, if they were established within the Community, would be covered by the definition of investment firm in 2, which are authorized in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive;

5. *financial instruments* shall mean the instruments listed in Section B of the Annex to Directive 93/22/EEC;

6. the *trading book* of an institution shall consist of:

   (a) its proprietary positions in financial instruments which are held for resale and/or which are taken on by the institution with the intention of benefiting in the short term from actual and/or expected differences between their buying and selling prices, or from other price or interest-rate variations, and positions in financial instruments arising from matched principal broking, or positions taken in order to hedge other elements of the trading book;

   (b) the exposures due to the unsettled transactions, free deliveries and over-the-counter (OTC) derivative instruments referred to in paragraphs 1, 2, 3 and 5 of Annex II, the exposures due to repurchase agreements and securities lending which are based on securities included in the trading book as defined in (a) referred to in paragraph 4 of Annex II, those exposures due to reverse repurchase agreements and securities-borrowing transactions described in the same paragraph, provided the competent authorities so approve, which meet either the conditions (i), (ii), (iii) and (v) or conditions (iv) and (v) as follows:

      (i) the exposures are marked to market daily following the procedures laid down in Annex II;

      (ii) the collateral is adjusted in order to take account of material changes in the value of the securities involved in the agreement or transaction in question, according to a rule acceptable to the competent authorities;

(1) OJ No L 197, 18. 7. 1987, p. 33.
(2) OJ No L 322, 17. 12. 1977, p. 30. Directive as amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

(iii) the agreement or transaction provides for the claims of the institution to be automatically and immediately offset against the claims of its counter-party in the event of the latter's defaulting;

(iv) the agreement or transaction in question is an interprofessional one;

(v) such agreements and transactions are confined to their accepted and appropriate use and artificial transactions, especially those not of a short-term nature, are excluded; and

(c) those exposures in the form of fees, commission, interest, dividends and margin on exchange-traded derivatives which are directly related to the items included in the trading book referred to in paragraph 6 of Annex II.

Particular items shall be included in or excluded from the trading book in accordance with objective procedures including, where appropriate, accounting standards in the institution concerned, such procedures and their consistent implementation being subject to review by the competent authorities;

7. *parent undertaking, subsidiary undertaking* and *financial institution* shall be defined in accordance with Article 1 of Directive 92/30/EEC;

8. *financial holding company* shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions, investment firms or other financial institutions, one of which at least is a credit institution or an investment firm;

9. *risk weightings* shall mean the degrees of credit risk applicable to the relevant counter-parties under Directive 89/647/EEC. However, assets constituting claims on and other exposures to investment firms or recognized third-country investment firms and exposures incurred to recognized clearing houses and exchanges shall be assigned the same weighting as that assigned where the relevant counterparty is a credit institution;

10. *over-the-counter (OTC) derivative instruments* shall mean the interest-rate and foreign-exchange contracts referred to in Annex II to Directive 89/647/EEC and off-balance-sheet contracts based on equities, provided that no such contracts are traded on recognized exchanges where they are subject to daily margin requirements and, in the case of foreign-exchange contracts, that every such contract has an original maturity of more than 14 calendar days;

11. *regulated market* shall mean a market that satisfies the definition given in Article 1 (13) of Directive 93/22/EEC;

12. *qualifying items* shall mean long and short positions in the assets referred to in Article 6 (1) (b) of Directive 89/647/EEC and in debt instruments issued by investment firms or by recognized third-country investment firms. It shall also mean long and short positions in debt instruments provided that such instruments meet the following conditions: such instruments must firstly be listed on at least one regulated market in a Member State or on a stock exchange in a third country provided that that exchange is recognized by the competent authorities of the relevant Member State; and secondly both be considered by the institution concerned to be sufficiently liquid and, because of the solvency of the issuer, be subject to a degree of default risk which is comparable to or lower than that of the assets referred to in Article 6 (1) (b) of Directive 89/647/EEC; the manner in which the instruments are assessed shall be subject to scrutiny by the competent authorities, which shall overturn the judgment of the institution if they consider that the instruments concerned are subject to too high a degree of default risk to be qualifying items.

Notwithstanding the foregoing and pending further coordination, the competent authorities shall have the discretion to recognize as qualifying items instruments which are sufficiently liquid and which, because of the solvency of the issuer, are subject to a degree of default risk which is comparable to or lower than that of the assets referred to in Article 6 (1) (b) of Directive 89/647/EEC. The default risk associated with such instruments must have been evaluated at such a level by at least two credit-rating agencies recognized by the competent authorities or by only one such credit-rating agency so long as they are not rated below such a level by any other credit-rating agency recognized by the competent authorities.

The competent authorities may, however, waive the condition imposed in the preceding sentence if they judge it inappropriate in the light of, for example, the characteristics of the market, the issuer, the issue, or some combination of those characteristics.

Furthermore, the competent authorities shall require the institutions to apply the maximum weighting shown in Table 1 in paragraph 14 of Annex I to instruments which show a particular risk because of the insufficient solvency of the issuer or liquidity.

The competent authorities of each Member State shall regularly provide the Council and the Commission with information concerning the

methods used to evaluate the qualifying items, in particular the methods used to assess the degree of liquidity of the issue and the solvency of the issuer;

13. *central government items* shall mean long and short positions in the assets referred to in Article 6 (1) (a) of Directive 89/647/EEC and those assigned a weighting of 0% in Article 7 of the same Directive;

14. *convertible* shall mean a security which, at the option of the holder, can be exchanged for another security, usually the equity of the issuer;

15. *warrant* shall mean an instrument which gives the holder the right to purchase a number of shares of common stock or bonds at a stipulated price until the warrant's expiry date. They may be settled by the delivery of the securities themselves or their equivalent in cash;

16. *covered warrant* shall mean an instrument issued by an entity other than the issuer of the underlying instrument which gives the holder the right to purchase a number of shares of common stock or bonds at a stipulated price or a right to secure a profit or avoid a loss by reference to fluctuations in an index relating to any of the financial instruments listed in Section B of the Annex to Directive 93/22/EEC until the warrant's expiry date;

17. *repurchase agreement* and *reverse repurchase agreement* shall mean any agreement in which an institution or its counter-party transfers securities or guaranteed rights relating to title to securities where that guarantee is issued by a recognized exchange which holds the rights to the securities and the agreement does not allow an institution to transfer or pledge a particular security to more than one counter-party at one time, subject to a commitment to repurchase them (or substituted securities of the same description) at a specified price on a future date specified, or to be specified, by the transferor, being a *repurchase agreement* for the institution selling the securities and a *reverse repurchase agreement* for the institution buying them.

A reverse repurchase agreement shall be considered an interprofessional transaction when the counter-party is subject to prudential coordination at Community level or is a Zone A credit institution as defined in Directive 89/647/EEC or is a recognized third-country investment firm or when the agreement is concluded with a recognized clearing house or exchange;

18. *securities lending* and *securities borrowing* shall mean any transaction in which an institution or its counter-party transfers securities against appropriate collateral subject to a commitment that the borrower will return equivalent securities at some future date or when requested to do so by the transferor, being *securities lending* for the institution transferring the securities and *securities borrowing* for the institution to which they are transferred.

Securities borrowing shall be considered an interprofessional transaction when the counterparty is subject to prudential coordination at Community level or is a Zone A credit institution as defined in Directive 89/647/EEC or is a recognized third-country investment firm or when the transaction is concluded with a recognized clearing house or exchange;

19. *clearing member* shall mean a member of the exchange or the clearing house which has a direct contractual relationship with the central counterparty (market guarantor); non-clearing members must have their trades routed through a clearing member;

20. *local firm* shall mean a firm dealing only for its own account on a financial-futures or options exchange or for the accounts of or making a price to other members of the same exchange and guaranteed by a clearing member of the same exchange. Responsibility for ensuring the performance of contracts entered into by such a firm must be assumed by a clearing member of the same exchange, and such contracts must be taken into account in the calculation of the clearing member's overall capital requirements so long as the local firm's positions are entirely separate from those of the clearing member;

21. *delta* shall mean the expected change in an option price as a proportion of a small change in the price of the instrument underlying the option;

22. for the purposes of paragraph 4 of Annex I, *long position* shall mean a position in which an institution has fixed the interest rate it will receive at some time in the future, and *short position* shall mean a position in which it has fixed the interest rate it will pay at some time in the future;

23. *own funds* shall mean own funds as defined in Directive 89/299/EEC. This definition may, however, be amended in the circumstances described in Annex V;

24. *initial capital* shall mean items 1 and 2 of Article 2 (1) of Directive 89/299/EEC;

25. *original own funds* shall mean the sum of items 1, 2 and 4, less the sum of items 9, 10 and 11 of Article 2 (1) of Directive 89/299/EEC;

26. *capital* shall mean own funds;

27. *modified duration* shall be calculated using the formula set out in paragraph 26 of Annex I.

INITIAL CAPITAL

Article 3

1. Investment firms which hold clients' money and/or securities and which offer one or more of the following services shall have initial capital of ECU 125 000:

— the reception and transmission of investors' orders for financial instruments,

— the execution of investors' orders for financial instruments,

— the management of individual portfolios of investments in financial instruments,

provided that they do not deal in any financial instruments for their own account or underwrite issues of financial instruments on a firm commitment basis.

The holding of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing for the purposes set out in the first paragraph or for the purposes of paragraph 2.

The competent authorities may, however, allow an investment firm which executes investors' orders for financial instruments to hold such instruments for its own account if:

— such positions arise only as a result of the firm's failure to match investors' orders precisely,

— the total market value of all such positions is subject to a ceiling of 15% of the firm's initial capital,

— the firm meets the requirements imposed in Articles 4 and 5, and

— such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

2. Member States may reduce the amount referred to in paragraph 1 to ECU 50 000 where a firm is not authorized to hold clients' money or securities, to deal for its own account, or to underwrite issues on a firm commitment basis.

3. All other investment firms shall have initial capital of ECU 730 000.

4. The firms referred to in the second and third indents of Article 2 (2) shall have initial capital of ECU 50 000 in so far as they benefit from freedom of establishment or provide services under Articles 14 or 15 of Directive 93/22/EEC.

5. Notwithstanding paragraphs 1 to 4, Member States may continue the authorization of investment firms and firms covered by paragraph 4 in existence before this Directive is applied the own funds of which are less than the initial capital levels specified for them in paragraphs 1 to 4. The own funds of such firms shall not fall below the highest reference level calculated after the date of notification of this Directive. That reference level shall be the average daily level of own funds calculated over a six-month period preceding the date of calculation. It shall be calculated every six months in respect of the corresponding preceding period.

6. If control of a firm covered by paragraph 5 is taken by a natural or legal person other than the person who controlled it previously, the own funds of that firm must attain at least the level specified for it in paragraphs 1 to 4, except in the following situations:

(i) in the case of the first transfer by inheritance after the application of this Directive, subject to the competent authorities' approval, for not more than 10 years after that transfer;

(ii) in the case of a change in the composition of a partnership, as long as at least one of the partners at the date of the application of this Directive remains in the partnership, for not more than 10 years after the date of the application of this Directive.

7. In certain specific circumstances and with the consent of the competent authorities, however, in the event of a merger of two or more investment firms and/or firms covered by paragraph 4, the own funds of the firm produced by the merger need not attain the level specified in paragraphs 1 to 4. Nevertheless, during any period when the levels specified in paragraphs 1 to 4 have not been attained, the own funds of the new firm may not fall below the merged firms' total own funds at the time of the merger.

8. The own funds of investment firms and firms covered by paragraph 4 may not fall below the level specified in paragraphs 1 to 5 and 7. If they do, however, the competent authorities may, where the circumstances justify it, allow such firms a limited period in which to rectify their situations or cease their activities.

PROVISIONS AGAINST RISKS

Article 4

1. The competent authorities shall require institutions to provide own funds which are always more than or equal to the sum of:

(i) the capital requirements, calculated in accordance with Annexes I, II and VI, for their trading-book business;

(ii) the capital requirements, calculated in accordance with Annex III, for all of their business activities;

(iii) the capital requirements imposed in Directive 89/647/EEC for all of their business activities, excluding both their trading-book business and their illiquid assets it they are deducted from own funds under paragraph 2 (d) of Annex V;

(iv) the capital requirements imposed in paragraph 2.

Irrespective of the amount of the capital requirement referred to in (i) to (iv) the own-funds requirement for investment firms shall never be less than the amount prescribed in Annex IV.

2. The competent authorities shall require institutions to cover the risks arising in connection with business that is outside the scope of both this Directive and Directive 89/647/EEC and considered to be similar to the risks covered by those Directives by adequate own funds.

3. If the own funds held by an institution fall below the amount of the own funds requirement imposed in paragraph 1, the competent authorities shall ensure that the institution in question takes appropriate measures to rectify its situation as quickly as possible.

4. The competent authorities shall require institutions to set up systems to monitor and control the interest-rate risk on all of their business, and those systems shall be subject to overview by the competent authorities.

5. Institutions shall be required to satisfy their competent authorities that they employ systems which can calculate their financial positions with reasonable accuracy at any time.

6. Notwithstanding paragraph 1, the competent authorities may allow institutions to calculate the capital requirements for their trading-book business in accordance with Directive 89/647/EEC rather than in accordance with Annexes I and II to this Directive provided that:

(i) the trading-book business of such institutions does not normally exceed 5 % of their total business;

(ii) their total trading-book positions do not normally exceed ECU 15 million; and

(iii) the trading-book business of such institutions never exceeds 6 % of their total business and their total trading-book positions never exceed ECU 20 million.

7. In order to calculate the proportion that trading-book business bears to total business as in paragraph 6 (i) and (iii), the competent authorities may refer either to the size of the combined on- and off-balance-sheet business, to the profit and loss account or to the own funds of the institutions in question, or to a combination of those measurements. When the size of on- and off-balance-sheet business is assessed, debt instruments shall be valued at their market prices or their principal values, equities at their market prices and derivatives according to the nominal or market values of the instruments underlying them. Long positions and short positions shall be summed regardless of their signs.

8. If an institution should happen for more than a short period to exceed either or both of the limits imposed in paragraph 6 (i) and (ii) or to exceed either or both of the limits imposed in paragraph 6 (iii), it shall be required to meet the requirements imposed in Article 4 (1) (i) rather than those of Directive 89/647/EEC in respect of its trading-book business and to notify the competent authority.

MONITORING AND CONTROL OF LARGE EXPOSURES

Article 5

1. Institutions shall monitor and control their large exposures in accordance with Directive 92/121/EEC.

2. Notwithstanding paragraph 1, those institutions which calculate the capital requirements for their trading-book business in accordance with Annexes I and II shall monitor and control their large exposures in accordance with Directive 92/121/EEC subject to the modifications laid down in Annex VI to this Directive.

VALUATION OF POSITIONS FOR REPORTING PURPOSES

Article 6

1. Institutions shall mark to market their trading books on a daily basis unless they are subject to Article 4 (6).

2. In the absence of readily available market prices, for example in the case of dealing in new issues on the primary markets, the competent authorities may waive the requirement imposed in paragraph 1 and require institutions to use alternative methods of valuation provided that those methods are sufficiently prudent and have been approved by competent authorities.

SUPERVISION ON A CONSOLIDATED BASIS

Article 7

General principles

1. The capital requirements imposed in Articles 4 and 5 for institutions which are neither parent undertakings nor subsidiaries of such undertakings shall be applied on a solo basis.

2. The requirements imposed in Articles 4 and 5 for:

— any institution which has a credit institution within the meaning of Directive 92/30/EEC, an investment firm or another financial institution as a subsidiary or which holds a participation in such an entity, and

— any institution the parent undertaking of which is a financial holding company

shall be applied on a consolidated basis in accordance with the methods laid down in the abovementioned Directive and in paragraphs 7 to 14 of this Article.

3. When a group covered by paragraph 2 does not include a credit institution, Directive 92/30/EEC shall apply, subject to the following adaptations:

— *financial holding company* shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions one at least of which is an investment firm,

— *mixed-activity holding company* shall mean a parent undertaking, other than a financial holding company or an investment firm, the subsidiaries of which include at least one investment firm,

— *competent authorities* shall mean the national authorities which are empowered by law or regulation to supervise investment firms,

— every reference to *credit institutions* shall be replaced by a reference to *investment firms*,

— the second subparagraph of Article 3 (5) of Directive 92/30/EEC shall not apply,

— in Articles 4 (1) and (2) and 7 (5) of Directive 92/30/EEC each reference to Directive 77/780/EEC shall be replaced by a reference to Directive 93/22/EEC,

— for the purposes of Articles 3 (9) and 8 (3) of Directive 92/30/EEC the references to the *Banking Advisory Committee* shall be substituted by references to the Council and the Commission,

— the first sentence of Article 7 (4) of Directive 92/30/EEC shall be replaced by the following:

'Where an investment firm, a financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings shall cooperate closely'.

4. The competent authorities required or mandated to exercise supervision of groups covered by paragraph 3 on a consolidated basis may, pending further coordination on the supervision of such groups on a consolidated basis and where the circumstances justify it, waive that obligation provided that each investment firm in such a group:

(i) uses the definition of own funds given in paragraph 9 of Annex V;

(ii) meets the requirements imposed in Articles 4 and 5 on a solo basis;

(iii) sets up systems to monitor and control the sources of capital and funding of all other financial institutions within the group.

5. The competent authorities shall require investment firms in a group which has been granted the waiver provided for in paragraph 4 to notify them of those risks, including those associated with the composition and sources of their capital and funding, which could undermine their financial positions. If the competent authorities then consider that the financial positions of those investment firms is not adequately protected, they shall require them to take measures including, if necessary, limitations on the transfer of capital from such firms to group entities.

6. Where the competent authorities waive the obligation of supervision on a consolidated basis provided for in paragraph 4 they shall take other appropriate measures to monitor the risks, namely large exposures, of the whole group, including any undertakings not located in a Member State.

7. Member States may waive the application of the requirements imposed in Articles 4 and 5, on an individual or subconsolidated basis, to an institution which, as a parent undertaking, is subject to supervision on a consolidated basis, and to any subsidiary of such an institution which is subject to their authorization and supervision and is included in the supervision on a consolidated basis of the institution which is its parent company.

The same right of waiver shall be granted where the parent undertaking is a financial holding company which has its head office in the same Member State as the institution, provided that it is subject to the same supervision as that exercised over credit institutions or investment firms, and in particular the requirements imposed in Articles 4 and 5.

In both cases, if the right of waiver is exercised measures must be taken to ensure the satisfactory allocation of own funds within the group.

8. Where an institution the parent undertaking of which is an institution has been authorized and is situated in another Member State, the competent

authorities which granted that authorization shall apply the rules laid down in Articles 4 and 5 to that institution on a individual or, where appropriate, a subconsolidated basis.

9. Notwithstanding paragraph 8, the competent authorities responsible for authorizing the subsidiary of a parent undertaking which is an institution may, by a bilateral agreement, delegate their responsibility for supervising the subsidiary's capital adequacy and large exposures to the competent authorities which authorized and supervise the parent undertaking. The Commission must be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the Banking Advisory Committee and to the Council, except in the case of groups covered by paragraph 3.

Calculating the consolidated requirements

10. Where the rights of waiver provided for in paragraphs 7 and 9 are not exercised, the competent authorities may, for the purpose of calculating the capital requirements set out in Annex I and the exposures to clients set out in Annex VI on a consolidated basis, permit net positions in the trading book of one institution to offset positions in the trading book of another institution according to the rules set out in Annexes I and VI respectively.

In addition, they may allow foreign-exchange positions subject to Annex III in one institution to offset foreign-exchange positions subjet to Annex III in another institution in accordance with the rules set out in Annex III.

11. The competent authorities may also permit offsetting of the trading book and of the foreign-exchange positions of undertakings located in third countries, subject to the simultaneous fulfilment of the following conditions:

(i) those undertakings have been authorized in a third country and either satisfy the definition of credit institution given in the first indent of Article 1 of Directive 77/780/EEC or are recognized third-country investment firms;

(ii) such undertakings comply, on a solo basis, with capital adequacy rules equivalent to those laid down in this Directive;

(iii) no regulations exist in the countries in question which might significantly affect the transfer of funds within the group.

12. The competent authorities may also allow the offsetting provided for in paragraph 10 between institutions within a group that have been authorized in the Member State in question, provided that:

(i) there is a satisfactory allocation of capital within the group;

(ii) the regulatory, legal or contractual framework in which the institutions operate is such as to guarantee mutual financial support within the group.

13. Furthermore, the competent authorities may allow the offsetting provided for in paragraph 10 between institutions within a group that fulfil the conditions imposed in paragraph 12 and any institution included in the same group which has been authorized in another Member State provided that that institution is obliged to fulfil the capital requirements imposed in Articles 4 and 5 on a solo basis.

Definition of consolidated own funds

14. In the calculation of own funds on a consolidated basis Article 5 of Directive 89/299/EEC shall apply.

15. The competent authorities responsible for exercising supervision on a consolidated basis may recognize the validity of the specific own-funds definitions applicable to the institutions concerned under Annex V in the calculation of their consolidated own funds.

REPORTING REQUIREMENTS

Article 8

1. Member States shall require that investment firms and credit institutions provide the competent authorities of their home Member States with all the information necessary for the assessment of their compliance with the rules adopted in accordance with this Directive. Member States shall also ensure that institutions' internal control mechanisms and administrative and accounting procedures permit the verification of their compliance with such rules at all times.

2. Investment firms shall be obliged to report to the competent authorities in the manner specified by the latter at least once every month in the case of firms covered by Article 3 (3), at least once every three months in the case of firms covered by Article 3 (1) and at least once every six months in the case of firms covered by Article 3 (2).

3. Notwithstanding paragraph 2, investment firms covered by Article 3 (1) and (3) shall be required to provide the information on a consolidated or subconsolidated basis only once every six months.

4. Credit institutions shall be obliged to report in the manner specified by the competent authorities as often as they are obliged to report under Directive 89/647/EEC.

5. The competent authorities shall oblige institutions to report to them immediately any case in which their counterparties in repurchase and reverse repurchase

agreements or securities-lending and securities-borrowing transactions default on their obligations. The Commission shall report to the Council on such cases and their implications for the treatment of such agreements and transactions in this Directive not more than three years after the date referred to in Article 12. Such reports shall also describe the way that institutions meet those of conditions (i) to (v) in Article 2 (6) (b) that apply to them, in particular that referred to in condition (v). Furthermore it shall give details of any changes in the relative volume of institutions' traditional lending and their lending through reverse repurchase agreements and securities-borrowing transactions. If the Commission concludes on the basis of this report and other information that further safeguards are needed to prevent abuse it shall make appropriate proposals.

COMPETENT AUTHORITIES

Article 9

1. Member States shall designate the authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.

2. The authorities referred to in paragraph 1 must be public authorities or bodies officially recognized by national law or by public authorities as part of the supervisory system in operation in the Member State concerned.

3. The authorities concerned must be granted all the powers necessary for the performance of their tasks, and in particular that of overseeing the constitution of trading books.

4. The competent authorities of the various Member States shall collaborate closely in the performance of the duties provided for in this Directive, particularly when investment services are provided on a services basis or through the establishment of branches in one or more Member States. They shall on request supply one another with all information likely to facilitate the supervision of the capital adequacy of investment firms and credit institutions, in particular the verification of their compliance with the rules laid down in this Directive. Any exchange of information between competent authorities which is provided for in this Directive in respect of investment firms shall be subject to the obligation of professional secrecy imposed in Article 25 of Directive 93/22/EEC and, as regards credit institutions, to the obligation imposed in Article 12 of Directive 77/780/EEC, as amended by Directive 89/646/EEC.

Article 10

Pending adoption of a further Directive laying down provisions for adapting this Directive to technical progress in the areas specified below, the Council shall, acting by qualified majority on a proposal from the Commission, in accordance with Decision 87/373/EEC, adopt those adaptations which may be necessary, as follows:

— clarification of the definitions in Article 2 in order to ensure uniform application of this Directive throughout the Community,

— clarification of the definitions in Article 2 to take account of developments on financial markets,

— alteration of the amounts of initial capital prescribed in Article 3 and the amount referred to in Article 4 (6) to take account of developments in the economic and monetary field,

— the alignment of terminology on and the framing of definitions in accordance with subsequent acts on institutions and related matters.

TRANSITIONAL PROVISIONS

Article 11

1. Member States may authorize investment firms subject to Article 30 (1) of Directive 93/22/EEC the own funds of which are on the day of the application of this Directive lower than the levels specified in Article 3 (1) to (3) of this Directive. Thereafter, however, the own funds of such investment firms must fulfil the conditions laid down in Article 3 (5) to (8) of this Directive.

2. Notwithstanding paragraph 14 of Annex I, Member States may set a specific-risk requirement for any bonds assigned a weighting of 10% under Article 11 (2) of Directive 89/647/EEC equal to half the specific-risk requirement for a qualifying item with the same residual maturity as such a bond.

FINAL PROVISIONS

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by the date fixed in the second paragraph of Article 31 of Directive 93/22/EEC. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions they shall include a reference to this Directive or add such a reference on the occasion of their official publication. The manner in which such references are to be made shall be laid down by the Member States.

2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.

Article 13

The Commission shall as soon as possible submit to the Council proposals for capital requirements in respect of commodities trading, commodity derivatives and units of collective-investment undertakings.

The Council shall decide on the Commission's proposals no later than six months before the date of application of this Directive.

REVIEW CLAUSE

Article 14

Within three years of the date referred to in Article 12, acting on a proposal from the Commission, the Council shall examine and, if necessary, revise this Directive in the light of the experience acquired in applying it, taking into account market innovation and, in particular, developments in international fora of regulatory authorities.

Article 15

This Directive is addressed to the Member States.

Done at Brussels, 15 March 1993.

For the Council

The President

M. JELVED

ANNEX I

POSITION RISK

INTRODUCTION

Netting

1. The excess of an institution's long (short) positions over its short (long) positions in the same equity, debt and convertible issues and identical financial futures, options, warrants and covered warrants shall be its net position in each of those different instruments. In calculating the net position the competent authorities shall allow positions in derivative instruments to be treated, as laid down in paragraphs 4 to 7, as positions in the underlying (or notional) security or securities. Institutions' holdings of their own debt instruments shall be disregarded in calculating specific risk under paragraph 14.

2. No netting shall be allowed between a convertible and an offsetting position in the instrument underlying it, unless the competent authorities adopt an approach under which the likelihood of a particular convertible's being converted is taken into account or have a capital requirement to cover any loss which conversion might entail.

3. All net positions, irrespective of their signs, must be converted on a daily basis into the institution's reporting currency at the prevailing spot exchange rate before their aggregation.

Particular instruments

4. Interest-rate futures, forward-rate agreements (FRAs) and forward commitments to buy or sell debt instruments shall be treated as combinations of long and short positions. Thus a long interest-rate futures position shall be treated as a combination of a borrowing maturing on the delivery date of the futures contract and a holding of an asset with maturity date equal to that of the instrument or notional position underlying the futures contract in question. Similarly a sold FRA will be treated as a long position with a maturity date equal to the settlement date plus the contract period, and a short position with maturity equal to the settlement date. Both the borrowing and the asset holding shall be included in the Central government column of Table 1 in paragraph 14 in order to calculate the capital required against specific risk for interest-rate futures and FRAs. A forward commitment to buy a debt instrument shall be treated as a combination of a borrowing maturing on the delivery date and a long (spot) position in the debt instrument itself. The borrowing shall be included in the central government column of Table 1 for purposes of specific risk, and the debt instrument under whichever column is appropriate for it in the same table. The competent authorities may allow the capital requirement for an exchange-traded future to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the future and that the method used to calculate the margin is equivalent to the method of calculation set out in the remainder of this Annex.

5. Options on interest rates, debt instruments, equities, equity indices, financial futures, swaps and foreign currencies shall be treated as if they were positions equal in value to the amount of the underlying instrument to which the option refers, multiplied by its delta for the purposes of this Annex. The latter positions may be netted off against any offsetting positions in the identical underlying securities or derivatives. The delta used shall be that of the exchange concerned, that calculated by the competent authorities or, where that is not available or for OTC options, that calculated by the institution itself, subject to the competent authorities' being satisfied that the model used by the institution is reasonable.

   However, the competent authorities may also prescribe that institutions calculate their deltas using a methodology specified by the competent authorities.

   The competent authorities shall require that the other risks, apart from the delta risk, associated with options are safeguarded against. The competent authorities may allow the requirement against a written exchange-traded option to be equal to the margin required by the exchange if they are fully

satisfied that it provides an accurate measure of the risk associated with the option and that the method used to calculate the margin is equivalent to the method of calculation set out in the remainder of this Annex for such options. In addition they may allow the requirement on a bought exchange-traded or OTC option to be the same as that for the instrument underlying it, subject to the constraint that the resulting requirement does not exceed the market value of the option. The requirement against a written OTC option shall be set in relation to the instrument underlying it.

6. Warrants and covered warrants shall be treated in the same way as options under paragraph 5.

7. Swaps shall be treated for interest-rate risk purposes on the same basis as on-balance-sheet instruments. Thus an interest-rate swap under which an institution receives floating-rate interest and pays fixed-rate interest shall be treated as equivalent to a long position in a floating-rate instrument of maturity equivalent to the period until the next interest fixing and a short position in a fixed-rate instrument with the same maturity as the swap itself.

8. However, institutions which mark to market and manage the interest-rate risk on the derivative instruments covered in paragraphs 4 to 7 on a discounted-cash-flow basis may use sensitivity models to calculate the positions referred to above and may use them for any bond which is amortized over its residual life rather than via one final repayment of principal. Both the model and its use by the institution must be approved by the competent authorities. These models should generate positions which have the same sensitivity to interest-rate changes as the underlying cash flows. This sensitivity must be assessed with reference to independent movements in sample rates across the yield curve, with at least one sensitivity point in each of the maturity bands set out in Table 2 of paragraph 18. The positions shall be included in the calculation of capital requirements according to the provisions laid down in paragraphs 15 to 30.

9. Institutions which do not use models under paragraph 8 may instead, with the approval of the competent authorities, treat as fully offsetting any positions in derivative instruments covered in paragraphs 4 to 7 which meet the following conditions at least:

   (i) the positions are of the same value and denominated in the same currency;

   (ii) the reference rate (for floating-rate positions) or coupon (for fixed-rate positions) is closely matched;

   (iii) the next interest-fixing date or, for fixed coupon positions, residual maturity corresponds with the following limits:

   - less than one month hence: same day,
   - between one month and one year hence: within seven days,
   - over one year hence: within 30 days.

10. The transferor of securities or guaranteed rights relating to title to securities in a repurchase agreement and the lender of securities in a securities lending shall include these securities in the calculation of its capital requirement under this Annex provided that such securities meet the criteria laid down in Article 2 (6) (a).

11. Positions in units of collective-investment undertakings shall be subject to the capital requirements of Directive 89/647/EEC rather than to position-risk requirements under this Annex.

Specific and general risks

12. The position risk on a traded debt instrument or equity (or debt or equity derivative) shall be divided into two components in order to calculate the capital required against it. The first shall be its specific-risk component — this is the risk of a price change in the instrument concerned due to factors related to its issuer or, in the case of a derivative, the issuer of the underlying instrument. The second component shall cover its general risk — this is the risk of a price change in the instrument due (in the case of a traded debt instrument or debt derivative) to a change in the level of interest rates or (in the case of an equity or equity derivative) to a broad equity-market movement unrelated to any specific attributes of individual securities.

TRADED DEBT INSTRUMENTS

13. The institution shall classify its net positions according to the currency in which they are denominated and shall calculate the capital requirement for general and specific risk in each individual currency separately.

Specific risk

14. The institution shall assign its net positions, as calculated in accordance with paragraph 1, to the appropriate categories in Table 1 on the basis of their residual maturities and then multiply them by the weightings shown. It shall sum its weighted positions (regardless of whether they are long or short) in order to calculate its capital requirement against specific risk.

Table 1

Central government items	Qualifying items			Other items
	Up to 6 months	Over 6 and up to 24 months	Over 24 months	
0,00 %	0,25 %	1,00 %	1,60 %	8,00 %

General risk

(a) *Maturity-based*

15. The procedure for calculating capital requirements against general risk involves two basic steps. First, all positions shall be weighted according to maturity (as explained in paragraph 16), in order to compute the amount of capital required against them. Second, allowance shall be made for this requirement to be reduced when a weighted position is held alongside an opposite weighted position within the same maturity band. A reduction in the requirement shall also be allowed when the opposite weighted positions fall into different maturity bands, with the size of this reduction depending both on whether the two positions fall into the same zone, or not, and on the particular zones they fall into. There are three zones (groups of maturity bands) altogether.

16. The institution shall assign its net positions to the appropriate maturity bands in column 2 or 3, as appropriate, in Table 2 appearing in paragraph 18. It shall do so on the basis of residual maturity in the case of fixed-rate instruments and on the basis of the period until the interest rate is next set in the case of instruments on which the interest rate is variable before final maturity. It shall also distinguish between debt instruments with a coupon of 3 % or more and those with a coupon of less than 3 % and thus allocate them to column 2 or column 3 in Table 2. It shall then multiply each of them by the weighing for the maturity band in question in column 4 in Table 2.

17. It shall then work out the sum of the weighted long positions and the sum of the weighted short positions in each maturity band. The amount of the former which are matched by the latter in a given maturity band shall be the matched weighted position in that band, while the residual long or short position shall be the unmatched weighted position for the same band. The total of the matched weighted positions in all bands then be calculated.

18. The institution shall compute the totals of the unmatched weighted long positions for the bands included in each of the zones in Table 2 in order to derive the unmatched weighted long position for each zone. Similarly the sum of the unmatched weighted short positions for each band in a particular zone shall be summed to compute the unmatched weighted short position for that zone. That part of the unmatched weighted long position for a given zone that is matched by the unmatched weighted short position for the same zone shall be the matched weighted position for that zone. That part of the unmatched weighted long or unmatched weighted short position for a zone that cannot be thus matched shall be the unmatched weighted position for that zone.

Table 2

Zone	Maturity band		Weighting (in %)	Assumed interest rate change (in %)
	Coupon of 3% or more	Coupon of less than 3%		
(1)	(2)	(3)	(4)	(5)
One	0 ≤ 1 month	0 ≤ 1 month	0,00	—
	> 1 ≤ 3 months	> 1 ≤ 3 months	0,20	1,00
	> 3 ≤ 6 months	> 3 ≤ 6 months	0,40	1,00
	> 6 ≤ 12 months	> 6 ≤ 12 months	0,70	1,00
Two	> 1 ≤ 2 years	> 1,0 ≤ 1,9 years	1,25	0,90
	> 2 ≤ 3 years	> 1,9 ≤ 2,8 years	1,75	0,80
	> 3 ≤ 4 years	> 2,8 ≤ 3,6 years	2,25	0,75
Three	> 4 ≤ 5 years	> 3,6 ≤ 4,3 years	2,75	0,75
	> 5 ≤ 7 years	> 4,3 ≤ 5,7 years	3,25	0,70
	> 7 ≤ 10 years	> 5,7 ≤ 7,3 years	3,75	0,65
	> 10 ≤ 15 years	> 7,3 ≤ 9,3 years	4,50	0,60
	> 15 ≤ 20 years	> 9,3 ≤ 10,6 years	5,25	0,60
	> 20 years	> 10,6 ≤ 12,0 years	6,00	0,60
		> 12,0 ≤ 20,0 years	8,00	0,60
		> 20 years	12,50	0,60

19. The amount of the unmatched weithted long (short) position in zone one which is matched by the unmatched weighted short (long) position in zone two shall then be computed. This shall be referred to in paragraph 23 as the matched weighted position between zones one and two. The same calculation shall then be undertaken with regard to that part of the unmatched weighted position in zone two which is left over and the unmatched weighted position in zone three in order to calculate the matched weighted position between zones two and three.

20. The institution may, if it wishes, reverse the order in paragraph 19 so as to calculate the matched weighted position between zones two and three before working out that between zones one and two.

21. The remainder of the unmatched weighted position in zone one shall then be matched with what remains of that for zone three after the latter's matching with zone two in order to derive the matched weighted position between zones one and three.

22. Residual positions, following the three separate matching calculations in paragraphs 19, 20 and 21, shall be summed.

23. The institution's capital requirement shall be calculated as the sum of:

(a) 10% of the sum of the matched weighted positions in all maturity bands;

(b) 40% of the matched weighted position in zone one;

(c) 30% of the matched weighted position in zone two;

(d) 30% of the matched weighted position in zone three;

(e) 40% of the matched weighted position between zones one and two and between zones two and three (see paragraph 19);

(f) 150% of the matched weighted position between zones one and three;

(g) 100% of the residual unmatched weighted positions.

(b) *Duration-based*

24. The competent authorities in a Member State may allow institutions in general or on an individual basis to use a system for calculating the capital requirement for the general risk on traded debt instruments which reflects duration instead of the system set out in paragraphs 15 to 23, provided that the institution does so on a consistent basis.

25. Under such a system the institution shall take the market value of each fixed-rate debt instrument and thence calculate its yield to maturity, which is implied discount rate for that instrument. In the case of floating-rate instruments, the institution shall take the market value of each instrument and thence calculate its yield on the assumption that the principal is due when the interest rate can next be changed.

26. The institution shall then calculate the modified duration of each debt instrument on the basis of the following formula:

$$\text{modified duration} = \frac{\text{duration (D)}}{(1 + r)}, \text{ where:}$$

$$D = \frac{\sum_{t=1}^{m} \frac{t\,C_t}{(1+r)^t}}{\sum_{t=1}^{m} \frac{C_t}{(1+r)^t}}$$

where:

r = yield to maturity (see paragraph 25),

C_t = cash payment in time t,

m = total maturity (see paragraph 25).

27. The institution shall then allocate each debt instrument to the appropriate zone in Table 3. It shall do so on the basis of the modified duration of each instrument.

Table 3

Zone	Modified duration (in years)	Assumed interest (change in %)
(1)	(2)	(3)
One	> 0 ≤ 1,0	1,0
Two	> 1,0 ≤ 3,6	0,85
Three	> 3,6	0,7

28. The institution shall then calculate the duration-weighted position for each instrument by multiplying its market price by its modified duration and by the assumed interest-rate change for an instrument with that particular modified duration (see column 3 in Table 3).

29. The institution shall work out its duration-weighted long and its duration-weighted short positions within each zone. The amount of the former which are matched by the latter within each zone shall be the matched duration-weighted position for that zone.

The institution shall then calculate the unmatched duration-weighted positions for each zone. It shall then follow the procedures laid down for unmatched weighted positions in paragraphs 19 to 22.

30. The institution's capital requirement shall then be calculated as the sum of:

(a) 2 % of the matched duration-weighted position for each zone;

(b) 40 % of the matched duration-weighted positions between zones one and two and between zones two and three;

(c) 150 % of the matched duration-weighted position between zones one and three;

(d) 100 % of the residual unmatched duration-weighted positions.

EQUITIES

31. The institution shall sum all its net long positions and all its net short positions in accordance with paragraph 1. The sum of the two figures shall be its overall gross position. The difference between them shall be its overall net position.

Specific risk

32. It shall multiply its overall gross position by 4 % in order to calculate its capital requirement against specific risk.

33. Notwithstanding paragraph 32, the competent authorities may allow the capital requirement against specific risk to be 2 % rather than 4 % for those portfolios of equities that an institution holds which meet the following conditions:

(i) the equities shall not be those of issuers which have issued traded debt instruments that currently attract an 8 % requirement in Table 1 appearing in paragraph 14;

(ii) the equities must be adjudged highly liquid by the competent authorities according to objective criteria;

(iii) no individual position shall comprise more than 5 % of the value of the institution's whole equity portfolio. However, the competent authorities may authorize individual positions of up to 10 % provided that the total of such positions does not exceed 50 % of the portfolio.

General risk

34. Its capital requirement against general risk shall be its overall net position multiplied by 8 %.

Stock-index futures

35. Stock-index futures, the delta-weighted equivalents of options in stock-index futures and stock indices collectively referred to hereafter as 'stock-index futures', may be broken down into positions in each of their constituent equities. These positions may be treated as underlying positions in the equities in question; therefore, subject to the approval of the competent authorities, they may be netted against opposite positions in the underlying equities themselves.

36. The competent authorities shall ensure that any institution which has netted off its positions in one or more of the equities constituting a stock-index future against one or more positions in the stock-index future itself has adequate capital to cover the risk of loss caused by the future's values not moving fully in line with that of its constituent equities; they shall also do this when an institution holds opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

37. Notwithstanding paragraphs 35 and 36, stock-index futures which are exchange traded and — in the opinion of the competent authorities — represent broadly diversified indices shall attract a capital requirement against general risk of 8 %, but no capital requirement against specific risk. Such stock-index futures shall be included in the calculation of the overall net position in paragraph 31, but disregarded in the calculation of the overall gross position in the same paragraph.

38. If a stock-index future is not broken down into its underlying positions, it shall be treated as if it were an individual equity. However, the specific risk on this individual equity can be ignored if the stock-index future in question is exchange traded and, in the opinion of the competent authorities, represents a broadly diversified index.

UNDERWRITING

39. In the case of the underwriting of debt and equity instruments, the competent authorities may allow an institution to use the following procedure in calculating its capital requirements. Firstly, it shall calculate the net positions by deducting the underwriting positions which are subscribed or

sub-underwritten by third parties on the basis of formal agreements; secondly, it shall reduce the net positions by the following reduction factors:

— working day 0: 100 %
— working day 1: 90 %
— working days 2 to 3: 75 %
— working day 4: 50 %
— working day 5: 25 %
— after working day 5: 0 %.

Working day zero shall be the working day on which the institution becomes unconditionally committed to accepting a known quantity of securities at an agreed price.

Thirdly, it shall calculate its capital requirements using the reduced underwriting positions. The competent authorities shall ensure that the institution holds sufficient capital against the risk of loss which exists between the time of the initial commitment and working day 1.

ANNEX II

SETTLEMENT AND COUNTER-PARTY RISK

SETTLEMENT/DELIVERY RISK

1. In the case of transactions in which debt instruments and equities (excluding repurchase and reverse repurchase agreements and securities lending and securities borrowing) are unsettled after their due delivery dates, an institution must calculate the price difference to which it is exposed. This is the difference between the agreed settlement price for the debt instrument or equity in question and its current market value, where the difference could involve a loss for the institution. It must multiply this difference by the appropriate factor in column A of the table appearing in paragraph 2 in order to calculate its capital requirement.

2. Notwithstanding paragraph 1, an institution may, at the discretion of its competent authorities, calculate its capital requirements by multiplying the agreed settelement price of every transaction which is unsettled between 5 and 45 working days after its due date by the appropriate factor in column B of the table below. As from 46 working days after the due date it shall take the requirement to be 100 % of the price difference to which it is exposed as in column A.

Number of working days after due settlement date	Column A (%)	Column B (%)
5—15	8	0,5
16—30	50	4,0
31—45	75	9,0
46 or more	100	see paragraph 2

COUNTER-PARTY RISK

Free deliveries

3.1. An institution shall be required to hold capital against counter-party risk if:

(i) it has paid for securities before receiving them or it has delivered securities before receiving payment for them, and

(ii) in the case of cross-border transactions, one day or more has elapsed since it made that payment or delivery.

3.2. The capital requirement shall be 8 % of the value of the securities or cash owed to the institution multiplied by the risk weighting applicable to the relevant counter-party.

Repurchase and reverse repurchase agreements and securities lending and borrowing

4.1. In the case of repurchase agreements and securities lending based on securities included in the trading book the institution shall calculate the difference between the market value of the securities and the amount borrowed by the institution or the market value of the collateral, where that difference is positive. In the case of reverse repurchase agreements and securities borrowing the institution shall calculate the difference between the amount the institution has lent or the market value of the collateral and the market value of the securities it has received, where that difference is positive.

The competent authorities shall take measures to ensure that the excess collateral given is acceptable.

Furthermore, the competent authorities may allow institutions not to include the amount of excess collateral in the calculations described in the first two sentences of this paragraph if the amount of excess collateral is guaranteed in such a way that the transferor is always assured that the excess collateral will be returned to it in the event of defaults of its counter-party.

Accrued interest shall be included in calculating the market value of amounts lent or borrowed and collateral.

4.2. The capital requirement shall be 8 % of the figure produced in accordance with paragraph 4.1, multiplied by the risk weighting applicable to the relevant counter-party.

OTC derivative instruments

5. In order to calculate the capital requirement on their OTC derivative instruments, institutions shall apply Annex II to Directive 89/647/EEC in the case of interest-rate and exchange-rate contracts; bought OTC equity options and covered warrants shall be subject to the treatment accorded to exchange-rate contracts in Annex II to Directive 89/647/EEC.

The risk weightings to be applied to the relevant counter-parties shall be determined in accordance with Article 2 (9) of this Directive.

OTHER

6. The capital requirements of Directive 89/647/EEC shall apply to those exposures in the form of fees, commission, interest, dividends and margin in exchange-traded futures or options contracts which are neither covered in this Annex or Annex I nor deducted from own funds under paragraph 2 (d) of Annex V and which are directly related to the items included in the trading book

The risk weightings to be applied to the relevant counter-parties shall be determined in accordance with Article 2 (9) of this Directive.

ANNEX III

FOREIGN-EXCHANGE RISK

1. If an institution's overall net foreign-exchange position, calculated in accordance with the procedure set out below, exceeds 2 % of its total own funds, it shall multiply the excess by 8 % in order to calculate its own-funds requirement against foreign-exchange risk.

2. A two-stage calculation shall be used.

3.1. Firstly, the institution's net open position in each currency (including the reporting currency) shall be calculated. This position shall consist of the sum of the following elements (positive or negative):

— the net spot position (i.e. all asset items less all liability items, including accrued interest, in the currency in question),

— the net forward position (i.e. all amounts to be received less all amounts to be paid under forward exchange transactions, including currency futures and the principal on currency swaps not included in the spot position),

— irrevocable guarantees (and similar instruments) that are certain to be called,

— net future income/expenses not yet accrued but already fully hedged (at the discretion of the reporting institution and with the prior consent of the competent authorities, net future income/expenses not yet entered in accounting records but already fully hedged by forward foreign-exchange transactions may be included here). Such discretion must be exercised on a consistent basis,

— the net delta (or delta-based) equivalent of the total book of foreign-currency options,

— the market value of other (i.e. non-foreign-currency) options,

— any positions which an institution has deliberately taken in order to hedge against the adverse effect of the exchange rate on its capital ratio may be excluded from the calculation of net open currency positions. Such positions should be of a non-trading or structural nature and their exclusion, and any variation of the terms of their exclusion, shall require the consent of the competent authorities. The same treatment subject to the same conditions as above may be applied to positions which an institution has which relate to items that are already deducted in the calculation of own funds.

3.2. The competent authorities shall have the discretion to allow institutions to use the net present value when calculating the net open position in each currency.

4. Secondly, net short and long positions in each currency other than the reporting currency shall be converted at spot rates into the reporting currency. They shall then be summed separately to form the total of the net short positions and the total of the net long positions respectively. The higher of these two totals shall be the institution's overall net foreign-exchange position.

5. Notwithstanding paragraphs 1 to 4 and pending further coordination, the competent authorities may prescribe or allow institutions to use alternative procedures for the purposes of this Annex.

6. Firstly, the competent authorities may allow institutions to provide lower capital requirements against positions in closely correlated currencies than those which would result from applying paragraphs 1 to 4 to them. The competent authorities may deem a pair of currencies to be closely correlated only if the likelihood of a loss — calculated on the basis of daily exchange-rate data for the preceding three or five years — occurring on equal and opposite positions in such currencies over the following 10 working days, which is 4 % or less of the value of the matched position in question (valued in terms of the reporting currency) has a probability of at least 99 %, when an observation period of three years is used, or 95 %, when an observation period of five years is used. The own-funds requirement on the matched position in two closely correlated currencies shall be 4 % multiplied by the value of the matched position. The capital requirement on unmatched positions in closely correlated currencies,

and all positions in other currencies, shall be 8 %, multiplied by the higher of the sum of the net short or the net long positions in those currencies after the removal of matched positions in closely correlated currencies.

7. Secondly, the competent authorities may allow institutions to apply an alternative method to those outlined in paragraphs 1 to 6 for the purposes of this Annex. The capital requirement produced by this method must be sufficient:

   (i) to exceed the losses, if any, that would have occurred in at least 95 % of the rolling 10-working-day periods over the preceding five years, or, alternatively, in at least 99 % of the rolling 10-working-day periods over the preceding three years, had the institution begun each such period with its current positions;

   (ii) on the basis of an analysis of exchange-rate movements during all the rolling 10-working-day periods over the preceding five years, to exceed the likely loss over the following 10-working-day holding period 95 % or more of the time, or, alternatively, to exceed the likely loss 99 % or more of the time where the analysis of exchange-rate movements covers only the preceding three years; or

   (iii) irrespective of the size of (i) or (ii) to exceed 2 % of the net open position as measured in paragraph 4.

8. Thirdly, the competent authorities may allow institutions to remove positions in any currency which is subject to a legally binding intergovernmental agreement to limit its variation relative to other currencies covered by the same agreement from whichever of the methods described in paragraphs 1 to 7 that they apply. Institutions shall calculate their matched positions in such currencies and subject them to a capital requirement no lower than half of the maximum permissible variation laid down in the intergovernmental agreement in question in respect of the currencies concerned. Unmatched positions in those currencies shall be treated in the same way as other currencies.

   Norwithstanding the first paragraph, the competent authorities may allow the capital requirement on the matched positions in currencies of Member States participating in the second stage of the European monetary union to be 1,6 %, multiplied by the value of such matched positions.

9. The competent authorities shall notify the Council and Commission of the methods, if any, that they are prescribing or allowing in respect of paragraphs 6 to 8.

10. The Commission shall report to the Council on the methods referred to in paragraph 9 and, where necessary and with due regard to international developments, shall propose a more harmonized treatment of foreign-exchange risk.

11. Net positions in composite currencies may be broken down into the component currencies according to the quotas in force.

ANNEX IV

OTHER RISKS

Investment firms shall be required to hold own funds equivalent to one quarter of their preceding year's fixed overheads. The competent authorities may adjust that requirement in the event of a material change in a firm's business since the preceding year. Where a firm has not completed a year's business, including the day it starts up, the requirement shall be a quarter of the fixed overheads figure projected in its business plan unless an adjustment to that plan is required by the authorities.

ANNEX V

OWN FUNDS

1. The own funds of investment firms and credit institutions shall be defined in accordance with Directive 89/299/EEC.

   For the purposes of this Directive, however, investment firms which do not have one of the legal forms referred to in Article 1 (1) of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies [1] shall nevertheless be deemed to fall within the scope of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions [2].

2. Notwithstanding paragraph 1, the competent authorities may permit those institutions which are obliged to meet the own-funds requirements laid down in Annexes I, II, III, IV and VI to use an alternative definition when meeting those requirements only. No part of the own funds thus provided may be used simultaneously to meet other own-funds requirements. This alternative definition shall include the following items (a), (b) and (c) less item (d), the deduction of that item being left to the discretion of the competent authorities:

   (a) own funds as defined in Directive 89/299/EEC excluding only items (12) and (13) of Article 2 (1) of the same Directive for those investment firms which are required to deduct item (d) of this paragraph from the total of items (a), (b) and (c) of this paragraph;

   (b) an institution's net trading-book profits net of any foreseeable charges or dividends, less net losses on its other business provided that none of those amounts has already been included in item (a) of this paragraph under item 2 or 11 of Article 2 (1) of Directive 89/299/EEC;

   (c) subordinated loan capital and/or the items referred to in paragraphs 5, subject to the conditions set out in paragraphs 3 to 7;

   (d) illiquid assets as defined in paragraph 8.

3. The subordinated loan capital referred to in paragraph 2 (c) shall have an initial maturity of at least two years. It shall be fully paid up and the loan agreement shall not include any clause providing that in specified circumstances other than the winding up of the institution the debt will become repayable before the agreed repayment date, unless the competent authorities approve the repayment. Neither the principal nor the interest on such subordinated loan capital may be repaid if such repayment would mean that the own funds of the institution in question would then amount to less than 100% of the institution's overall requirements.

   In addition, an institution shall notify the competent authorities of all repayments on such subordinated loan capital as soon as its own funds fall below 120% of its overall requirements.

4. The subordinated loan capital referred to in paragraph 2 (c) may not exceed a maximum of 150% of the original own funds left to meet the requirements laid down in Annexes I, II, III, IV and VI and may approach that maximum only in particular circumstances acceptable to the relevant authorities.

5. The competent authorities may permit institutions to replace the subordinated loan capital referred to in paragraphs 3 and 4 with items 3 and 5 to 8 of Article 2 (1) of Directive 89/299/EEC.

6. The competent authorities may permit investment firms to exceed the ceiling for subordinated loan capital prescribed in paragraph 4 if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 200% of the original own funds left to meet the requirements imposed in Annexes I, II, III, IV and VI, or 250% of the same amount where investment firms deduct item 2 (d) referred to in paragraph 2 when calculating own funds.

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[1] OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

[2] OJ No L 372, 31. 12. 1986, p. 1.

7. The competent authorities may permit the ceiling for subordinated loan capital prescribed in paragraph 4 to be exceeded by a credit institution if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 250 % of the original own funds left to meet the requirements imposed in Annexes I, II, III and VI.

8 Illiquid assets include:

— tangible fixed assets (except to the extent that land and buildings may be allowed to count against the loans which they are securing),

— holdings in, including subordinated claims on, credit or financial institutions which may be included in the own funds of such institutions, unless they have been deducted under items 12 and 13 of Article 2 (1) of Directive 89/299/EEC or under paragraph 9 (iv) of this Annex.

Where shares in a credit or financial institution are held temporarily for the purpose of a financial assistance operation designed to reorganize and save that institution, the competent authorities may waive this provision. They may also waive it in respect of those shares which are included in the investment firm's trading book,

— holdings and other investments, in undertakings other than credit institutions and other financial institutions, which are not readily marketable,

— deficiencies in subsidiaries,

— deposits made, other than those which are available for repayment within 90 days, and also excluding payments in connection with margined futures or options contracts,

— loans and other amounts due, other than those due to be repaid within 90 days,

— physical stocks, unless they are subject to the capital requirements imposed in Article 4 (2) and provided that such requirements are not less stringent than those imposed in Article 4 (1) (iii).

9. Those investment firms included in a group subject to the waiver described in Article 7 (4) shall calculate their own funds in accordance with paragraphs 1 to 8 subject to the following modifications:

(i) the illiquid assets referred to in paragraph 2 (d) shall be deducted;

(ii) the exclusion referred to in paragraph 2 (a) shall not cover those components of items 12 and 13 of Article 2 (1) of Directive 89/299/EEC which an investment firm holds in respect of undertakings included in the scope of consolidation as defined in Article 7 (2) of this Directive;

(iii) the limits referred to in Article 6 (1) (a) and (b) of Directive 89/299/EEC shall be calculated with reference to the original own funds less those components of items 12 and 13 of Article 2 (1) of Directive 89/299/EEC described in (ii) which are elements of the original own funds of the undertakings in question;

(iv) those components of items 12 and 13 of Article 2 (1) of Directive 89/299/EEC referred to in (iii) shall be deducted from the original own funds rather than from the total of all items as prescribed in Article 6 (1) (c) of the same Directive for the purposes, in particular, of paragraphs 4 to 7 of this Annex.

ANNEX VI

LARGE EXPOSURES

1. Institutions referred to in Article 5 (2) shall monitor and control their exposures to individual clients and groups of connected clients as defined in Directive 92/121/EEC, subject to the following modifications.

2. The exposures to individual clients which arise on the trading book shall be calculated by summing the following items (i), (ii) and (iii):

   (i) the excess — where positive — of an institution's long positions over its short positions in all the financial instruments issued by the client in question (the net position in each of the different instruments being calculated according to the methods laid down in Annex I);

   (ii) in the case of the underwriting of a debt or an equity instrument, the institution's exposure shall be its net exposure (which is calculated by deducting those underwriting positions which are subscribed or sub-underwritten by third parties on the basis of a formal agreement) reduced by the factors set out in paragraph 39 of Annex I.

   Pending further coordination, the competent authorities shall require institutions to set up systems to monitor and control their underwriting exposures between the time of the initial commitment and working day one in the light of the nature of the risks incurred in the markets in question;

   (iii) the exposures due to the transactions, agreements and contracts referred to in Annex II with the client in question, such exposures being calculated in the manner laid down in that Annex, without application of the weightings for counter-party risk.

3. Thereafter, the exposures to groups of connected clients on the trading book shall be calculated by summing the exposures to individual clients in a group, as calculated in paragraph 2.

4. The overall exposures to individual clients or groups of connected clients shall be calculated by summing the exposures which arise on the trading book and the exposures which arise on the non-trading book, taking into account Article 4 (6) to (12) of Directive 92/121/EEC. In order to calculate the exposure on the non-trading book, institutions shall take the exposure arising from assets which are deducted from their own funds by virtue of paragraph 2 (d) of Annex V to be zero.

5. Institutions' overall exposures to individual clients and groups of connected clients calculated in accordance with paragraph 4 shall be reported in accordance with Article 3 of Directive 92/121/EEC.

6. That sum of the exposures to an individual client or group of connected clients shall be limited in accordance with Article 4 of Directive 92/121/EEC subject to the transitional provisions of Article 6 of the same Directive.

7. Notwithstanding paragraph 6 the competent authorities may allow assets constituting claims and other exposures on investment firms, on recognized third-country investment firms and recognized clearing houses and exchanges in financial instruments to be subject to the same treatment accorded to those on credit institutions in Article 4 (7) (i), (9) and (10) of Directive 92/121/EEC.

8. The competent authorities may authorize the limits laid down in Article 4 of Directive 92/121/EEC to be exceeded subject to the following conditions being met simultaneously:

   1. the exposure on the non-trading book to the client or group of clients in question does not exceed the limits laid down in Directive 92/121/EEC, calculated with reference to own funds as defined in Directive 89/299/EEC, so that the excess arises entirely on the trading book;

   2. the firm meets an additional capital requirement on the excess in respect of the limits laid down in Article 4 (1) and (2) of Directive 92/121/EEC. This shall be calculated by selecting those components of the total trading exposure to the client or group of clients in question which attract the highest specific-risk requirements in Annex I and/or requirements in Annex II, the sum of which equals the amount of the excess referred to in 1; where the excess has not persisted for more than 10 days, the additional capital requirement shall be 200 % of the requirements referred to in the previous sentence, on these components.

As from 10 days after the excess has occurred, the components of the excess, selected in accordance with the above criteria, shall be allocated to the appropriate line in column 1 of the table below in ascending order of specific-risk requirements in Annex I and/or requirements in Annex II. The institution shall then meet an additional capital requirement equal to the sum of the specific-risk requirements in Annex I and/or the Annex II requirements on these components multiplied by the corresponding factor in column 2;

Table

Excess over the limits (on the basis of a percentage of own funds)	Factors
(1)	(2)
Up to 40 %	200 %
From 40 % to 60 %	300 %
From 60 % to 80 %	400 %
From 80 % to 100 %	500 %
From 100 % to 250 %	600 %
Over 250 %	900 %

3. where 10 days or less has elapsed since the excess occurred, the trading-book exposure to the client or group of connected clients in question must not exceed 500 % of the institution's own funds;

4. any excesses which have persisted for more than 10 days must not, in aggregate, exceed 600 % of the institution's own funds;

5. institutions must report to the competent authorities every three months all cases where the limits laid down in Article 4 (1) and (2) of Directive 92/121/EEC have been exceeded during the preceding three months. In each case in which the limits have been exceeded the amount of the excess and the name of the client concerned must be reported.

9. The competent authorities shall establish procedures, of which they shall notify the Council and the Commission, to prevent institutions from deliberately avoiding the additional capital requirements that they would otherwise incur on exposures exceeding the limits laid down in Article 4 (1) and (2) of Directive 92/121/EEC once those exposures have been maintained for more than 10 days, by means of temporarily transferring the exposures in question to another company, whether within the same group or not, and/or by undertaking artificial transactions to close out the exposure during the 10-day period and create a new exposure. Institutions shall maintain systems which ensure that any transfer which has this effect is immediately reported to the competent authorities.

10. The competent authorities may permit those institutions which are allowed to use the alternative definition of own funds under paragraph 2 of Annex V to use that definition for the purposes of paragraphs 5, 6 and 8 of this Annex provided that the institutions concerned are required, in addition, to meet all of the obligations set out in Articles 3 and 4 of Directive 92/121/EEC, in respect of the exposures which arise outside their trading books by using own funds as defined in Directive 89/299/EEC.

II.e) 92/121/EEC Council Directive of 21 December 1992 on monitoring and controlling large exposures of credit institutions (OJ N° L 29. 05.02.1993. p 1 - 8)

Annex: The monitoring and control of large exposures of credit institutions

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/121/EEC

of 21 December 1992

on the monitoring and control of large exposures 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 proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas this Directive comes within the framework of the aims set out in the Commission's White Paper on completing the internal market;

Whereas the essential rules for monitoring large exposures of credit institutions should be harmonized; whereas Member States should still be able to adopt provisions more stringent than those provided for by this Directive;

Whereas this Directive has been the subject of consultation with the Banking Advisory Committee, which, under Article 6 (4) of Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions (4), is responsible for making suggestions to the Commission with a view to coordinating the coefficients applicable in the Member States;

Whereas the monitoring and control of a credit institution's exposures is an integral part of its supervision; whereas an excessive concentration of exposures to a single client or group of connected clients may result in an unacceptable risk of loss; whereas such a situation may be considered prejudicial to the solvency of a credit institution;

Whereas common guidelines for monitoring and controlling credit institutions' large exposures were initially introduced by Commission recommendation 87/62/EEC (5); whereas that instrument was chosen because it permitted the gradual adjustment of existing systems and the establishment of new systems without dislocating the Community's banking system; whereas, now that that first phase is over, a binding instrument applicable to all Community credit institutions should be adopted;

Whereas in a unified banking market credit institutions are engaged in direct competition with one another and monitoring requirements throughout the Community should therefore be equivalent; whereas, to that end, the criteria applied to determining the concentration of exposures must be the subject of legally binding rules at Community level and cannot be left entirely to the discretion of the Member States; whereas the adoption of common rules will therefore best serve the Community's interests, since it will prevent differences in the conditions of competition, while strengthening the Community's banking system;

Whereas, for the precise accounting technique to be used for the assessment of exposures reference is made to Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (6);

(1) OJ No C 123, 9. 5. 1991, p. 18 and OJ No C 175, 11. 7. 1992, p 4.

(2) OJ No C 150, 15. 6. 1992, p. 74 and OJ No C 337, 21. 12. 1992.

(3) OJ No C 339, 31. 12. 1991, p 35.

(4) OJ No L 322, 17. 12. 1977, p. 30. Directive last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

(5) OJ No L 33, 4. 2. 1987, p. 10.

(6) OJ No L 372, 31. 12. 1986, p 1.

Whereas Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions (1) includes a list of credit risks which may be incurred by credit institutions; whereas that list should therefore be used for the definition of exposures for the purposes of this Directive; whereas it is not, however, appropriate to refer on principle to the weightings or degrees of risk laid down in that Directive; whereas those weightings and degrees of risk were devised for the purpose of establishing a general solvency requirement to cover the credit risk of credit institutions; whereas, in the context of the regulation of large exposures, the aim is to limit the maximum loss that a credit institution may incur through any single client or group of connected clients; whereas it is therefore appropriate to adopt a prudent approach in which, as a general rule, account is taken of the nominal value of exposures, but no weightings or degrees of risk are applied;

Whereas, when a credit institution incurs an exposure to its own parent undertaking or to other subsidiaries of tis parent undertaking, particular prudence is necessary; whereas the management of exposures incurred by credit institutions must by carried out in a fully autonomous manner, in accordance with the principles of sound banking management, without regard to any considerations other than those principles; whereas the Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (2) requires that where the influence exercised by persons directly or indirectly holding a qualifying participation in a credit institution is likely to operate to the detriment of the sound and prudent management of that institution, the competent authorities shall take appropriate measures to put an end to that situation; whereas, in the field of large exposures, specific standards should also be laid down for exposures incurred by a credit institution to its own group and in such cases more stringent restrictions are justified than for other exposures; whereas more stringent restrictions need not, however, be applied where the parent undertaking is a financial holding company or a credit institution or where the other subsidiaries are either credit or financial institutions or undertakings offering ancillary banking services, provided that all such undertakings are covered by the supervision of the credit institution on a consolidated basis; whereas in such cases the consolidated monitoring of the group of undertakings allows for an adequate level of supervision, and does not require the imposition of more stringent limits on exposure; whereas under this approach banking groups will also be encouraged to organize their structures in such a way as to allow consolidated monitoring, which is desirable because a more comprehensive level of monitoring is possible;

Whereas, in order to ensure harmonious application of this Directive, Member States should be allowed to provide for the two-stage application of the new limits; whereas, for smaller credit institutions, a longer transitional period may be warranted inasmuch as too rapid an application of the 25 % rule could reduce their lending activity too abruptly;

Whereas implementing powers of the same type as those which the Council reserved for itself in Directive 89/299/EEC on the own funds of credit institutions (3) were granted to the Commission in Directive 89/646/EEC;

Whereas, taking account of the specific characteristics of the sector in question, it is appropriate to give the Committee set up by Article 22 of Directive 89/646/EEC the role of assisting the Commission in exercising the powers conferred on it under the procedure laid down in Article 2 (Procedure III, Variant (b)) of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (4);

Whereas, with regard to the monitoring of large exposures concerning activities which are principally exposed to market risks, the necessary coordination of monitoring methods can be ensured under a Community act on the capital adequacy of investment firms and credit institutions; whereas that implies that until Community legislation on the aforementioned large exposures is adopted the monitoring of large exposures relating to activities which are principally exposed to market risks, such as the trading portfolio, underwriting commitments for the issue of securities and claims related to the settlement of securities transactions may be left to the competent authorities of each Member State,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purposes of this Directive:

(a) ***credit institution*** shall mean a credit insutution as defined in the first indent of Article 1 of Directive 77/780/EEC, including such a credit institution's branches in third countries, and any private or public undertaking, including its branches, which satisfies the definition in the first indent of Article 1 of Directive 77/780/EEC and which has been authorized in a third country;

(1) OJ No L 386, 30. 12. 1989, p. 14

(2) OJ No L 386, 30. 12. 1989, p. 1. Directive amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

(3) OJ No L 124, 5. 5. 1989, p. 16.

(4) OJ No L 197, 18. 7. 1987, p. 33.

(b) *competent authorities* shall mean the competent authorities as defined in the ninth indent of Article 1 of Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis (1);

(c) *parent undertaking* shall mean a parent undertaking as defined in the seventh indent of Article 1 of Directive 92/30/EEC;

(d) *subsidiary undertaking* shall mean a subsidiary undertaking as defined in the eighth indent of Article 1 of Directive 92/30/EEC;

(e) *financial holding company* shall mean a financial holding company as defined in the third indent of Article 1 of Directive 92/30/EEC;

(f) *financial institution* shall mean a financial institution as defined in the second indent of Article 1 of Directive 92/30/EEC;

(g) *ancillary banking-services undertaking* shall mean an undertaking as defined in the fifth indent of Article 1 of Directive 92/30/EEC;

(h) *exposures* shall mean the assets and off-balance-sheet items referred to in Article 6 of Directive 89/647/EEC and in Annexes I and III thereto, without application of the weightings or degrees of risk there provided for; the risks referred to in the aforementioned Annex III must be calculated in accordance with one of the methods set out in Annex II to that Directive, without application of the weightings for counter-party risk; all elements entirely covered by own funds may, with the agreement of the competent authorities, be excluded from the definition of exposures provided that such own funds are not included in the calculation of the solvency ratio or of other monitoring ratios provided for in Community acts; exposures shall not include:

— in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the 48 hours following payment, or

— in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the five working days following payment or delivery of the securities, whichever is the earlier;

(i) *Zone A* shall mean the zone referred to in the second indent of Article 2 (1) of Directive 89/647/EEC;

(j) *Zone B* shall mean the zone referred to in the third indent of Article 2 (1) of Directive 89/647/EEC;

(k) *own funds* shall mean the own funds of a credit institution as defined in Directive 89/299/EEC;

(l) *control* shall mean the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

(m) *group of connected clients* shall mean:

— two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others, or

— two or more natural or legal persons between whom there is no relationship of control as defined in the first indent but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties.

Article 2

Scope

This Directive shall apply to credit institutions which have obtained the authorization referred to in Article 3 of Directive 77/780/EEC.

Member States need not, however, apply this Directive to:

(a) the institutions listed in Article 2 (2) of Directive 77/780/EEC, or

(b) the institutions in the same Member State which, as defined in Article 2 (4) (a) of Directive 77/780/EEC, are affiliated to a central body established in that Member State, provided that, without prejudice to the application of this Directive to the central body, the whole as constituted by the central body and its affiliated institutions is subject to global monitoring.

Article 3

Reporting of large exposures

1. A credit institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10 % of its own funds.

(1) OJ No L 110, 28. 4. 1992, p. 52.

2. A credit institution shall report every large exposure within the meaning of paragraph 1 to the competent authorities. Member States shall provide that that reporting is to be carried out, at their discretion, in accordance with one of the following two methods:

— reporting of all large exposures at least once a year, combined with reporting during the year of all new large exposures and any increases in existing large exposures of at least 20 % with respect to the previous communication,

— reporting of all large exposures at least four times a year.

3. Exposures exempted under Article 4 (7) (a), (b), (c), (d), (f), (g) and (h) need not, however, be reported as laid down in paragraph 2. The reporting frequency laid down in the second indent of paragraph 2 may be reduced to twice a year for the exposures referred to in Article 4 (7) (e) and (i) to (s), (8), (9) and (10).

4. The competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms for the purpose of identifying and recording all large exposures and subsequent changes to them, as defined and required by this Directive, and for that of monitoring those exposures in the light of each credit institution's own exposure policies.

Where a credit institution invokes paragraph 3, it shall keep a record of the grounds advanced for at least one year after the event giving rise to the dispensation, so that the competent authorities may establish whether it is justified.

Article 4

Limits on large exposures

1. A credit institution may not incur an exposure to a client or group of connected clients the value of which exceeds 25 % of its own funds.

2. Where that client or group of connected clients is the parent undertaking or subsidiary of the credit institution and/or one or more subsidiaries of that parent undertaking, the percentage laid down in paragraph 1 shall be reduced to 20 %. Member States may, however, exempt the exposures incurred to such clients from the 20 % limit if they provide for specific monitoring of such exposures by other measures or procedures. They shall inform the Commission and the Banking Advisory Committee of the content of such measures or procedures.

3. A credit institution may not incur large exposures which in total exceed 800 % of its own funds.

4. Member States may impose limits more stringent than those laid down in paragraphs 1, 2 and 3.

5. A credit institution shall at all times comply with the limits laid down in paragraphs 1, 2 and 3 in respect of its exposures. If in an exceptional case exposures exceed those limits, that fact must be reported without delay to the competent authorities who may, where the circumstances warrant it, allow the credit institution a limited period of time in which to comply with the limits.

6. Member States may fully or partially exempt from the application of paragraphs 1, 2 and 3 exposures incurred by a credit institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the credit institution itself is subject, in accordance with Directive 92/30/EEC or with equivalent standards in force in a third country.

7. Member States may fully or partially exempt the following exposures from the application of paragraphs 1, 2 and 3:

(a) asset items constituting claims on Zone A central governments or central banks;

(b) asset items constituting claims on the European Communities;

(c) asset items constituting claims carrying the explicit guarantees of Zone A central governments or central banks or of the European Communities;

(d) other exposures attributable to, or guaranteed by, Zone A central governments or central banks or the European Communities;

(e) asset items constituting claims on and other exposures to Zone B central governments or central banks which are denominated and, where applicable, funded in the national currencies of the borrowers;

(f) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of Zone A central government or central bank securities, or securities issued by the European Communities or by Member State regional or local authorities for which Article 7 of Directive 89/647/EEC lays down a zero weighting for solvency purposes;

(g) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of cash deposits placed with the lending institution or with a credit institution which is the parent undertaking or a subsidiary of the lending institution;

(h) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of certificates of deposit issued by the lending institution or by a credit institution which is the parent undertaking or a subsidiary of the lending institution and lodged with either of them;

(i) asset items constituting claims on and other exposures to credit institutions, with a maturity of one year or less, but not constituting such institutions' own funds as defined in Directive 89/299/EEC;

(j) asset items constituting claims on and other exposures to those institutions which are not credit institutions but which fulfil the conditions referred to in Article 8 (2) of Directive 89/647/EEC, with a maturity of one year or less, and secured in accordance with the same paragraph;

(k) bills of trade and other similar bills, with a maturity of one year or less, bearing the signatures of other credit institutions;

(l) debt securities as defined in Article 22 (4) of Directive 85/611/EEC (1);

(m) pending subsequent coordination, holdings in the insurance companies referred to in Article 12 (3) of Directive 89/646/EEC up to 40 % of the own funds of the credit institution acquiring such a holding;

(n) asset items constituting claims on regional or central credit institutions with which the lending institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;

(o) exposures secured, to the satisfaction of the competent authorities, by collateral in the form of securities other than those referred to in (f) provided that those securities are not issued by the credit institution itself, its parent company or one of their subsidiaries, or by the client or group of connected clients in question. The securities used as collateral must be valued at market price, have a value that exceeds the exposures guaranteed and be either traded on a stock exchange or effectively negotiable and regularly quoted on a market operated under the auspices of recognized professional operators and allowing, to the satisfaction of the competent authorities of the Member State of origin of the credit institution, for the establishment of an objective price such that the excess value of the securities may be verified at any time. The excess value required shall be 100 %; it shall, however, be 150 % in the case of shares and 50 % in the case of debt securities issued by credit institutions, Member State regional or local authorities other than those referred to in Article 7 of Directive 89/647/EEC, and in the case of debt securities issued by the European Investment Bank and multilateral development banks as defined in Article 2 of Directive 89/647/EEC. Securities used as collateral may not constitute credit institutions' own funds as defined in Directive 89/229/EEC;

(p) loans secured, to the satisfaction of the competent authorities, by mortgages on residential property and leasing transactions under which the lessor retains full ownership of the residential property leased for as long as the lessee has not exercised his option to purchase, in both cases up to 50 % of the value of the residential property concerned. The value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of strict valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once a year. For the purposes of this subparagraph residential property shall mean a residence to be occupied or let by the borrower;

(q) 50 % of the medium/low-risk off-balance-sheet items referred to in Annex I to Directive 89/647/EEC;

(r) subject to the competent authorities' agreement, guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions as defined in Article 1 (a), subject to a weighting of 20 % of their amount.

Member States shall inform the Commission of the use they make of this option in order to ensure that it does not result in distortions of competition. Within five years of the adoption of this Directive, the Commission shall submit to the Council a report accompanied, if necessary, by appropriate proposals;

(s) the low-risk off-balance-sheet items referred to in Annex I to Directive 89/647/EEC, to the extent that an agreement has been concluded with the

(1) OJ No L 375, 31. 12. 1985, p. 3. Directive as amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

client or group of connected clients under which the exposure may be incurred only if it has been ascertained that it will not cause the limits applicable under paragraphs 1, 2 and 3 to be exceeded.

8. For the purposes of paragraphs 1, 2 and 3, Member States may apply a weighting of 20 % to asset items constituting claims on Member State regional and local authorities and to other exposures to or guaranteed by such authorities; subject to the conditions laid down in Article 7 of Directive 89/647/EEC, however, Member States may reduce that rate to 0 %.

9. For the purposes of paragraphs 1, 2 and 3, Member States may apply a weighting of 20 % to asset items constituting claims on and other exposures to credit institutions with a maturity of more than one but not more than three years and a weighting of 50 % to asset items constituting claims on credit institutions with a maturity of more than three years, provided that the latter are represented by debt instruments that were issued by a credit institution and that those debt instruments are, in the opinion of the competent authorities, effectively negotiable on a market made up of professional operators and are subject to daily quotation on that market, or the issue of which was authorized by the competent authorities of the Member State of origin of the issuing credit institution. In no case may any of these items constitute own funds within the meaning of Directive 89/299/EEC.

10. By way of derogation from paragraphs 7 (i) and 9, Member States may apply a weighting of 20 % to asset items constituting claims on and other exposures to credit institutions, regardless of their maturity.

11. Where an exposure to a client is guaranteed by a third party, or by collateral in the form of securities issued by a third party under the conditions laid down in paragraph 7 (o), Member States may:

— treat the exposure as having been incurred to the third party rather than to the client, if the exposure is directly and unconditionally guaranteed by that third party, to the satisfaction of the competent authorities,

— treat the exposure as having been incurred to the third party rather than to the client, if the exposure defined in paragraph 7 (o) is guaranteed by collateral under the conditions there laid down.

12. Within five years of the date referred to in Article 8 (1), the Council shall, on the basis of a report from the Commission, examine the treatment of interbank exposures provided for in paragraphs 7 (i), 9 and 10. The Council shall decide on any changes to be made on a proposal from the Commission.

Article 5

Supervision on a consolidated or unconsolidated basis

1. If the credit institution is neither a parent undertaking nor a subsidiary, compliance with the obligations imposed in Articles 3 and 4 or in any other Community provision applicable to this area shall be monitored on an unconsolidated basis.

2. In the other cases, compliance with the obligations imposed in Articles 3 and 4 or in any other Community provision applicable to this area shall be monitored on a consolidated basis in accordance with Directive 92/30/EEC.

3. Member States may waive monitoring on an individual or subconsolidated basis of compliance with the obligations imposed in Articles 3 and 4 or in any other Community provision applicable to this area by a credit institution which, as a parent undertaking, is subject to monitoring on a consolidated basis and by any subsidiary of such a credit institution which is subject to their authorization and supervision and is covered by monitoring on a consolidated basis.

Member States may also waive such monitoring where the parent undertaking is a financial holding company established in the same Member State as the credit institution, provided that that company is subject to the same monitoring as credit institutions.

In the cases referred to in the first and second subparagraphs measures must be taken to ensure the satisfactory allocation of risks within the group.

4. Where a credit institution the parent undertaking of which is a credit institution has been authorized and has its registered office in another Member State, the competent authorities which granted that authorization shall require compliance with the obligations imposed in Articles 3 and 4 or in any other Community provision applicable to this area on an individual basis or, when appropriate, a subconsolidated basis.

5. Notwithstanding paragraph 4, the competent authorities responsible for authorizing the subsidiary of a parent undertaking which is a credit institution which has been authorized by and has its registered office in another Member State may, by way of bilateral

agreement, transfer responsibility for monitoring compliance with the obligations imposed in Articles 3 and 4 or in any other Community provision applicable to this area to the competent authorities which have authorized and which monitor the parent undertaking. The Commission and the Banking Advisory Committee shall be kept informed of the existence and content of such agreements.

Article 6

Transitional provisions relating to exposures in excess of the limits

1. If, when this Directive is published in the *Official Journal of the European Communities*, a credit institution has already incurred an exposure or exposures exceeding either the large exposure limit or the aggregate large exposure limit laid down in this Directive, the competent authorities shall require the credit institution concerned to take steps to have that exposure or those exposures brought within the limits laid down in this Directive.

2. The process of having such an exposure or exposures brought within authorized limits shall be devised, adopted, implemented and completed within the period which the competent authorities consider consistent with the principle of sound administration and fair competition. The competent authorities shall inform the Commission and the Banking Advisory Committee of the schedule for the general process adopted.

3. A credit institution may not take any measure which would cause the exposures referred to in paragraph 1 to exceed their level on the date of the publication of this Directive in the *Official Journal of the European Communities*.

4. The period applicable under paragraph 2 shall expire no later than 31 December 2001. Exposures with a longer maturity, for which the lending institution is bound to observe the contractual terms, may be continued until their maturity.

5. Until 31 December 1998, Member States may increase the limit laid down in Article 4 (1) to 40 % and the limit laid down in Article 4 (2) to 30 %. In such cases and subject to paragraphs 1 to 4, the time limit for bringing the exposures existing at the end of this period within the limits laid down in Article 4 shall expire on 31 December 2001.

6. In the case of credit institutions the own funds of which, as defined in Article 2 (1) of Directive 89/299/EEC, do not exceed ECU 7 million, and only in the case of such institutions, Member States may extend the time limits laid down in paragraph 5 by five years. Member States that avail themselves of the option provided for in this paragraph shall take steps to prevent distortions of competition and shall inform the Commission and the Banking Advisory Committee thereof.

7. In the cases referred to in paragraphs 5 and 6, an exposure may be considered a large exposure if its value is equal to or exceeds 15 % of own funds.

8. Until 31 December 2001 Member States may substitute a frequency of at least twice a year for the frequency of notification of large exposures referred to in the second indent of Article 3 (2).

9. Member States may fully or partially exempt from the application of Article 4 (1), (2) and (3) exposures incurred by a credit institution consisting of mortgage loans as defined in Article 11 (4) of Directive 89/647/EEC concluded within eight years of the date laid down in Article 8 (1) of this Directive, as well as property leasing transactions as defined in Article 11 (5) of Directive 89/647/EEC concluded within eight years of the date laid down in Article 8 (1) of this Directive, in both cases up to 50 % of the value of the property concerned.

10. Without prejudice to paragraph 4, Portugal may, until 31 December 1998, fully or partially exempt from the application of Article 4 (1) and (3) exposures incurred by a credit institution to Electricidade de Portugal (EDP) and Petrogal.

Article 7

Subsequent amendments

1. Technical amendments to the following points shall be adopted in accordance with the procedure laid down in paragraph 2:

— the clarification of definitions to take account of developments on financial markets,

— the clarification of definitions to ensure the uniform application of this Directive,

— the alignment of the terminology and of the wording of the definitions on those in subsequent instruments concerning credit institutions and related matters,

— the clarification of the exemptions provided for in Article 4 (5) to (10).

2. The Commission shall be assisted by the committee provided for in the first subparagraph of Article 22 (2) of Directive 89/646/EEC.

The Commission representative shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on that 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 Member States' representatives on the committee shall be weighted as laid down in that Article. The chairman shall not vote.

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

If the measures envisaged are not in accordance with the committee's opinion, 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 Commission shall adopt the measures proposed unless the Council has decided against those measures by a simple majority.

Article 8

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1994. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall include a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The manner in which such a reference is to be made shall be laid down by the Member States.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

3. Pending Community legislation on the monitoring on a consolidated or non-consolidated basis of large exposures concerning activities which are principally exposed to market risks the Member States shall deal with such large exposures in accordance with methods which they shall determine, having regard to the particular nature of the risks involved.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1992.

For the Council

The President

D. HURD

III. ACCOUNTING AND ADVERTISING DIRECTIVES

III.a) 86/635/EEC

Council Directive of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions

(OJ No L 372, 31.12.1986, p. 1-17)

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 8 December 1986

on the annual accounts and consolidated accounts of banks and other financial institutions

(86/635/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Council Directive 78/660/EEC of 25 July 1978, based on Article 54 (3) (g) of the Treaty, on the annual accounts of certain types of companies (4), as last amended by Directive 84/569/EEC (5), need not be applied to banks and other financial institutions, hereafter referred to as 'credit institutions', pending subsequent coordination; whereas in view of the central importance of these undertakings in the Community, such coordination is necessary;

Whereas Council Directive 83/349/EEC of 13 June 1983, based on Article 54 (3) (g) of the Treaty, on consolidated accounts (6), provides for derogations for credit institutions only until expiry of the deadline imposed for the application of this Directive; whereas this Directive must therefore also include provisions specific to credit institutions in respect of consolidated accounts;

Whereas such coordination has also become urgent because more and more credit institutions are operating across national borders; whereas for creditors, debtors and members and for the general public improved comparability of the annual accounts and consolidated accounts of these institutions is of crucial importance;

Whereas in virtually all the Member States of the Community credit institutions within the meaning of Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (7), having many different legal forms, are in competition with one another in the banking sector; whereas it therefore seems advisable not to confine coordination in respect of these credit institutions to the legal forms covered by Directive 78/660/EEC but rather to opt for a scope which includes all companies and firms as defined in the second paragraph of Article 58 of the Treaty;

Whereas as far as financial institutions are concerned the scope of this Directive should however be confined to those financial institutions taking one of the legal forms referred to in Directive 78/660/EEC; whereas financial institutions

(1) OJ No C 130, 1. 6. 1981, p. 1, OJ No C 83, 24. 3. 1984, p. 6 and OJ No C 351, 31. 12. 1985, p. 24.
(2) OJ No C 242, 12. 9. 1983, p. 33 and OJ No C 163, 10. 7. 1978, p. 60.
(3) OJ No C 112, 3. 5. 1982, p. 60.
(4) OJ No L 222, 14. 8. 1978, p. 11.
(5) OJ No L 314, 4. 12. 1984, p. 28.
(6) OJ No L 193, 18. 7. 1983, p. 1.
(7) OJ No L 322, 17. 12. 1977, p. 30.

which are not subject to that Directive must automatically come under this Directive;

Whereas a link with coordination in respect of credit institutions is necessary because aspects of the provisions governing annual accounts and consolidated accounts will have an impact on other areas of that coordination, such as authorization requirements and the indicators used for supervisory purposes;

Whereas although, in view of the specific characteristics of credit institutions, it would appear appropriate to adopt a separate Directive on the annual accounts and consolidated accounts of such institutions, this does not imply a new set of rules separate from those under Directives 78/660/EEC and 83/349/EEC; whereas such separate rules would be neither appropriate nor consistent with the principles underlying the coordination of company law since, given the important role which they play in the Community economy, credit institutions cannot be excluded from a framework of rules devised for undertakings generally; whereas, for this reason, only the particular characteristics of credit institutions have been taken into account and this Directive deals only with exceptions to the rules contained in Directives 78/660/EEC and 83/349/EEC;

Whereas the structure and content of the balance sheets of credit institutions differ in each Member State; whereas this Directive must therefore prescribe the same layout, nomenclature and terminology for the balance sheets of all credit institutions in the Community; whereas derogations should be allowed if necessitated by the legal form of an institution or by the special nature of its business;

Whereas, if the annual accounts and consolidated accounts are to be comparable, a number of basic questions regarding the disclosure of various transactions in the balance sheet and off the balance sheet must be settled;

Whereas, in the interests of greater comparability, it is also necessary that the content of the various balance sheet and off-balance sheet items be determined precisely;

Whereas the same applies to the layout and definition of the items in the profit and loss account;

Whereas the comparability of figures in the balance sheet and profit and loss account also depends crucially on the values at which assets and liabilities are entered in the balance sheet;

Whereas, in view of the particular risks associated with banking and of the need to maintain confidence, provision should be made for the possibility of introducing a liabilities item in the balance sheet entitled 'Fund for general banking risks'; whereas it would appear advisable for the same reasons that the Member States be permitted, pending subsequent coordination, to allow credit institutions some discretion, especially in the valuation of loans and advances and of certain securities; whereas, however, in this last case the Member States should allow these same credit institutions to create the 'Fund for general banking risks' mentioned above; whereas it would also appear appropriate to permit the Member States to allow credit institutions to set of certain charges and income in the profit and loss account;

Whereas, in view of the special nature of credit institutions, certain changes are also necessary with regard to the notes on the accounts;

Whereas, in the desire to place on the same footing as many credit institutions as possible, as was the case with Directive 77/780/EEC, the relief under Directive 78/660/EEC is not provided for in the case of small and medium-sized credit institutions; whereas, nevertheless, if in the light of experience such relief were to prove necessary it would be possible to provide for it in subsequent coordination; whereas for the same reasons the scope allowed the Member States under Directive 83/349/EEC to exempt parent undertakings from the consolidation requirement if the undertakings to be consolidated do not together exceed a certain size has not been extended to credit institutions;

Whereas the application of the provisions on consolidated accounts to credit institutions requires certain adjustments to some of the rules applicable to all industrial and commercial companies; whereas explicit rules have been provided for in the case of mixed groups and exemption from subconsolidation may be made subject to additional conditions;

Whereas, given the scale on which banking networks extend beyond national borders and their constant development, the annual accounts and consolidated accounts of a credit institution having its head office in one Member State should be published in all the Member States in which it is established;

Whereas the examination of problems which arise in connection with the subject matter of this Directive, notably concerning its application, requires the cooperation of representatives of the Member States and the Commission in a contact committee; whereas, in order to avoid the proliferation of such committees, it is desirable that such cooperation take place in the Committee provided for in Article 52 of Directive 78/660/EEC; whereas, nevertheless, when examining problems concerning credit institutions, the Committee will have to be appropriately constituted;

Whereas, in view of the complexity of the matter, the credit institutions covered by this Directive must be allowed a longer period than usual to implement its provisions;

Whereas provision should be made for the review of certain provisions of this Directive after five years' experience of its application, in the light of the aims of greater transparency and harmonization,

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

PRELIMINARY PROVISIONS AND SCOPE

Article 1

1. Articles 2, 3, 4 (1), (3) to (5), 6, 7, 13, 14, 15 (3) and (4), 16 to 21, 29 to 35, 37 to 41, 42 first sentence, 45 (1), 46, 48 to 50, 51 (1), 54, 56 to 59 and 61 of Directive 78/660/EEC shall apply to the institutions mentioned in Article 2 of this Directive, except where this Directive provides otherwise.

2. Where reference is made in Directives 78/660/EEC and 83/349/EEC to Articles 9 and 10 (balance sheet) or to Articles 23 to 26 (profit and loss account) of Directive 78/660/EEC, such references shall be deemed to be references to Articles 4 (balance sheet) or to Articles 27 and 28 (profit and loss account) of this Directive.

3. References in Directives 78/660/EEC and 83/349/EEC to Articles 31 to 42 of Directive 78/660/EEC shall be deemed to be references to those Articles, taking account of Articles 35 to 39 of this Directive.

4. Where reference is made in the aforementioned provisions of Directive 78/660/EEC to balance sheet items for which this Directive makes no equivalent provision, such references shall be deemed to be references to the items in Article 4 of this Directive which include the assets and liabilities in question.

Article 2

1. The coordination measures prescribed by this Directive shall apply to

(a) credit institutions within the meaning of the first indent of Article 1 of Directive 77/780/EEC which are companies or firms as defined in the second paragraph of Article 58 of the Treaty;

(b) financial institutions having one of the legal forms referred to in Article 1 (1) of Directive 78/660/EEC which, on the basis of paragraph 2 of that Article, are not subject to that Directive.

For the purposes of this Directive 'credit institutions' shall also include financial institutions unless the context requires otherwise.

2. The Member States need not apply this Directive to:

(a) the credit institutions listed in Article 2 (2) of Directive 77/780/EEC;

(b) institutions of the same Member State which, as defined in Article 2 (4) (a) of Directive 77/780/EEC, are affiliated to a central body in that Member State. In that case, without prejudice to the application of this Directive to the central body, the whole constituted by the central body and its affiliated institutions must be the subject of consolidated accounts including an annual report which shall be drawn up, audited and published in accordance with this Directive;

(c) the following credit institutions:

— in Greece: ETEBA (National Investment Bank for Industrial Development) and Τράπεζα Επενδύσεων (Investment Bank),

— in Ireland: Industrial and Provident Societies,

— in the United Kingdom: Friendly Societies and Industrial and Provident Societies.

4. Without prejudice to Article 2 (3) of Directive 78/660/EEC and pending subsequent coordination, the Member States may:

(a) in the case of the credit institutions referred to in Article 2 (1) (a) of this Directive which are not companies of any of the types listed in Article 1 (1) of Directive 78/660/EEC, lay down rules derogating from this Directive where derogating rules are necessary because of such institutions' legal form;

(b) in the case of specialized credit institutions, lay down rules derogating from this Directive where derogating rules are necessary because of the special nature of such institutions' business.

Such derogating rules may provide only for adaptations to the layout, nomenclature, terminology and content of items in the balance sheet and the profit and loss account; they may not have the effect of permitting the institutions to which they apply to provide less information in their annual accounts than other institutions subject to this Directive.

The Member States shall inform the Commission of those credit institutions, possibly by category, within six months of the end of the period stipulated in Article 47 (2). They shall inform the Commission of the derogations laid down to that end.

These derogations shall be reviewed within 10 years of the notification of this Directive. The Commission shall, if appropriate, submit suitable proposals. It shall also submit

an interim report within five years of the notification of this Directive.

SECTION 2

GENERAL PROVISIONS CONCERNING THE BALANCE SHEET AND THE PROFIT AND LOSS ACCOUNT

Article 3

In the case of credit institutions the possibility of combining items pursuant to Article 4 (3) (a) or (b) of Directive 78/660/EEC shall be restricted to balance sheet and profit and loss account sub-items preceded by lower-case letters and shall be authorized only under the rules laid down by the Member States to that end.

SECTION 3

LAYOUT OF THE BALANCE SHEET

Article 4

The Member States shall prescribe the following layout for the balance sheet.

Assets

1. Cash in hand, balances with central banks and post office banks

2. Treasury bills and other bills eligible for refinancing with central banks:

   (a) Treasury bills and similar securities

   (b) Other bills eligible for refinancing with central banks (unless national law prescribes that such bills be shown under Assets items 3 and 4)

3. Loans and advances to credit institutions:

   (a) repayable on demand

   (b) other loans and advances

4. Loans and advances to customers

5. Debt securities including fixed-income securities:

   (a) issued by public bodies

   (b) issued by other borrowers, showing separately:

   — own-debt securities (unless national law requires their deduction from liabilities).

6. Shares and other variable-yield securities

7. Participating interests, showing separately:

   — participating interests in credit institutions (unless national law requires their disclosure in the notes on the accounts)

8. Shares in affiliated undertakings, showing separately:

   — shares in credit institutions (unless national law requires their disclosure in the notes on the accounts)

9. Intangible assets as described under Assets headings B and C.I of Article 9 of Directive 78/660/EEC, showing separately:

   — formation expenses, as defined by national law and in so far as national law permits their being shown as an asset (unless national law requires their disclosure in the notes on the accounts)

   — goodwill, to the extent that it was acquired for valuable consideration (unless national law requires its disclosure in the notes on the accounts)

10. Tangible assets as described under Assets heading C.II of Article 9 of Directive 78/660/EEC, showing separately:

    — land and buildings occupied by a credit institution for its own activities (unless national law requires their disclosure in the notes on the accounts)

11. Subscribed capital unpaid, showing separately:

    — called-up capital (unless national law provides for called-up capital to be included under liabilities, in which case capital called but not yet paid must be included either in this Assets item or in Assets item 14)

12. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value to the extent that national law permits their being shown in the balance sheet)

13. Other assets

14. Subscribed capital called but not paid (unless national law requires that called-up capital be shown under Assets item 11

15. Prepayments and accrued income

16. Loss for the financial year (unless national law provides for its inclusion under Liabilities item 14)

Total assets

Liabilities

1. Amounts owed to credit institutions:
   (a) repayable on demand
   (b) with agreed maturity dates or periods of notice
2. Amounts owed to customers:
   (a) savings deposits, showing separately:
   — those repayable on demand and those with agreed maturity dates or periods of notice where national law provides for such a breakdown (unless national law provides for such information to be given in the notes on the accounts)
   (b) other debts
   (ba) repayable on demand
   (bb) with agreed maturity dates or periods of notice
3. Debts evidenced by certificates:
   (a) debt securities in issue
   (b) others
4. Other liabilities
5. Accruals and deferred income
6. Provisions for liabilities and charges:
   (a) provisions for pensions and similar obligations
   (b) provisions for taxation
   (c) other provisions
7. Profit for the financial year (unless national law provides for its inclusion under Liabilities item 14)
8. Subordinated liabilities
9. Subscribed capital (unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately)
10. Share premium account
11. Reserves
12. Revaluation reserve
13. Profit or loss brought forward
14. Profit or loss for the financial year (unless national law requires that this item be shown under Assets item 16 or Liabilities item 7)

Total liabilities

Off-balance sheet items

1. Contingent liabilities, showing separately:
   — acceptances and endorsements
   — guarantees and assets pledged as collateral security
2. Commitments, showing separately:
   — commitments arising out of sale and repurchase transactions

Article 5

The following must be shown separately as sub-items of the items in question:

— claims, whether or not evidenced by certificates, on affiliated undertakings and included in Assets items 2 to 5,

— claims, whether or not evidenced by certificates, on undertakings with which a credit institution is linked by virtue of a participating interest and included in Assets items 2 to 5,

— liabilities, whether or not evidenced by certificates, to affiliated undertakings and included in Liabilities items 1, 2, 3 and 8.

— liabilities, whether or not evidenced by certificates, to undertakings with which a credit institution is linked by virtue of a participating interest and included in Liabilities items 1, 2, 3 and 8.

Article 6

1. Subordinated assets shall be shown separately as sub-items of the items of the layout and the sub-items created in accordance with Article 5.

2. Assets, whether or not evidenced by certificates, are subordinated if, in the event of winding up or bankruptcy, they are to be repaid only after the claims of other creditors have been met.

Article 7

The Member States may permit the disclosure of the information referred to in Articles 5 and 6, duly broken down into the various relevant items, in the notes on the accounts.

Article 8

1. Assets shall be shown under the relevant balance sheet headings even where the credit institution drawing up the

balance sheet has pledged them as security for its own liabilities or for those of third parties or has otherwise assigned them as security to third parties.

2. A credit institution shall not include in its balance sheet assets pledged or otherwise assigned to it as security unless such assets are in the form of cash in the hands of that credit institution.

Article 9

1. Where a loan has been granted by a syndicate consisting of a number of credit institutions, each credit institution participating in the syndicate shall disclose only that part of the total loan which it has itself funded.

2. If in the case of a syndicated loan such as described in paragraph 1 the amount of funds guaranteed by a credit institution exceeds the amount which it has made available, any additional guarantee portion shall be shown as a contingent liability (in Off-balance sheet item 1, second indent).

Article 10

1. Funds which a credit institution administers in its own name but on behalf of third parties must be shown in the balance sheet if the credit institution acquires legal title to the assets concerned. The total amount of such assets and liabilities shall be shown separately or in the notes on the accounts, broken down according to the various Assets and Liabilities items. However, the Member States may permit the disclosure of such funds off the balance sheet provided there are special rules whereby such funds can be excluded from the assets available for distribution in the event of the winding-up of a credit institution (or similar proceedings).

2. Assets acquired in the name of and on behalf of third parties must not be shown in the balance sheet.

Article 11

Only those amounts which can at any time be withdrawn without notice or for which a maturity or period of notice of 24 hours or one working day has been agreed shall be regarded as repayable on demand.

Article 12

1. Sale and repurchase transactions shall mean transactions which involve the transfer by a credit institution or customer (the 'transferor') to another credit institution or customer (the 'transferee') of assets, for example, bills, debts or transferable securities, subject to an agreement that the same assets will subsequently be transferred back to the transferor at a specified price.

2. If the transferee undertakes to return the assets on a date specified or to be specified by the transferor, the transaction in question shall be deemed to be a genuine sale and repurchase transaction.

3. If, however, the transferee is merely entitled to return the assets at the purchase price or for a different amount agreed in advance on a date specified or to be specified, the transaction in question shall be deemed to be a sale with an option to repurchase.

4. In the case of the sale and repurchase transactions referred to in paragraph 2, the assets transferred shall continue to appear in the transferor's balance sheet; the purchase price received by the transferor shall be shown as an amount owed to the transferee. In addition, the value of the assets transferred shall be disclosed in a note in the transferor's accounts. The transferee shall not be entitled to show the assets transferred in his balance sheet; the purchase price paid by the transferee shall be shown as an amount owed by the transferor.

5. In the case of the sale and repurchase transactions referred to in paragraph 3, however, the transferor shall not be entitled to show in his balance sheet the assets transferred; those items shall be shown as assets in the transferee's balance sheet. The transferor shall enter under Off-balance sheet item 2 an amount equal to the price agreed in the event of repurchase.

6. No forward exchange transactions, options, transactions involving the issue of debt securities with a commitment to repurchase all or part of the issue before maturity of any similar transactions shall be regarded as sale and repurchase transactions within the meaning of this Article.

SECTION 4

SPECIAL PROVISIONS RELATING TO CERTAIN BALANCE SHEET ITEMS

Article 13

Assets: Item 1 — Cash in hand, balances with central banks and post office banks

1. Cash in hand shall comprise legal tender including foreign notes and coins.

2. This item may include only balances with the central banks and post office banks of the country or countries in

which a credit institution is established. Such balances must be readily available at all times. Other claims on such bodies must be shown as loans and advances to credit institutions (Assets item 3) or as loans and advances to customers (Assets item 4).

Article 14

Assets: Item 2 — Treasury bills and other bills eligible for refinancing with central banks

1. This item shall comprise, under (a), treasury bills and similar securities, i. e. treasury bills, treasury certificates and similar debt instruments issued by public bodies which are eligible for refinancing with the central banks of the country or countries in which a credit institution is established. Those debt instruments issued by public bodies which fail to meet the above condition shall be shown under Assets sub-item 5 (a).

2. This item shall comprise, under (b), bills eligible for refinancing with central banks, i.e. all bills held in portfolio that were purchased from credit institutions or from customers to the extent that they are eligible, under national law, for refinancing with the central banks of the country or countries in which a credit institution is established.

Article 15

Assets: Item 3 — Loans and advances to credit institutions

1. Loans and advances to credit institutions shall comprise all loans and advances arising out of banking transactions to domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual designations.

The only exception shall be loans and advances represented by debt securities or any other security, which must be shown under Assets item 5.

2. For the purposes of this Article credit institutions shall comprise all undertakings on the list published in the *Official Journal of the European Communities* pursuant to Article 3 (7) of Directive 77/780/EEC, as well as central banks and official domestic and international banking organizations and all private and public undertakings which are not established in the Community but which satisfy the definition in Article 1 of Directive 77/780/EEC.

Loans and advances to undertakings which do not satisfy the above conditions shall be shown under Assets item 4.

Article 16

Assets: Item 4 — Loans and advances to customers

Loans and advances to customers shall comprise all types of assets in the form of claims on domestic and foreign customers other than credit institutions, regardless of their actual designations.

The only exception shall be loans and advances represented by debt securities or any other security, which must be shown under Assets item 5.

Article 17

Assets: Item 5 — Debt securities including fixed-income securities

1. This item shall comprise negotiable debt securities including fixed-income securities issued by credit institutions, by other undertakings or by public bodies; such securities issued by the latter, however, shall be included only if they are not to be shown under Assets item 2.

2. Securities bearing interest rates that vary in accordance with specific factors, for example the interest rate on the inter-bank market or on the Euromarket, shall also be regarded as debt securities including fixed-income securities.

3. Only repurchased and negotiable own-debt securities may be included in sub-item 5 (b).

Article 18

Liabilities: Item 1 — Amounts owed to credit institutions

1. Amounts owed to credit institutions shall include all amounts arising out of banking transactions owed to other domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under Liabilities item 3.

2. For the purposes of this Article credit institutions shall comprise all undertakings on the list published in the *Official Journal of the European Communities* pursuant to Article 3 (7) of Directive 77/780/EEC, as well as central banks and official domestic and international banking organizations and all private and public undertakings

which are not established in the Community but which satisfy the definition in Article 1 of Directive 77/780/EEC.

Article 19

Liabilities: Item 2 — Amounts owed to customers

1. Amounts owed to customers shall include all amounts owed to creditors that are not credit institutions within the meaning of Article 18, regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under Liabilities item 3.

2. Only deposits which satisfy the conditions laid down in national law shall be treated as savings deposits.

3. Savings bonds shall be shown under the corresponding sub-item only if they are not represented by negotiable certificates.

Article 20

Liabilities: Item 3 — Debts evidenced by certificates

1. This item shall include both debt securities and debts for which negotiable certificates have been issued, in particular deposit receipts, *'bons de caisse'* and liabilities arising out of own acceptances and promissory notes.

2. Only acceptances which a credit institution has issued for ist own refinancing and in respect of which it is the first party liable ('drawee') shall be treated as own acceptances.

Article 21

Liabilities: Item 8 — Subordinated liabilities

Where it has been contractually agreed that, in the event of winding up or of bankruptcy, liabilities, whether or not evidenced by certificates, are to be repaid only after the claims of all other creditors have been met, the liabilities in question shall be shown under this item.

Article 22

Liabilities: Item 9 — Subscribed capital

This item shall comprise all amounts, regardless of their actual designations, which, in accordance with the legal structure of the institution concerned, are regarded under national law as equity capital subscribed by the shareholders or other proprietors.

Article 23

Liabilities: Item 11 — Reserves

This item shall comprise all the types of reserves listed in Article 9 of Directive 78/660/EEC under Liabilities item A.IV, as defined therein. The Member States may also prescribe other types of reserves if necessary for credit institutions the legal structures of which are not covered by Directive 78/660/EEC.

The types of reserve referred to in the first paragraph shall be shown separately, as sub-items of Liabilities item 11, in the balance sheets of the credit institutions concerned, with the exception of the revaluation reserve which shall be shown under item 12.

Article 24

Off-balance sheet: Item 1 — Contingent liabilities

This item shall comprise all transactions whereby an institution has underwritten the obligations of a third party.

Notes on accounts shall state the nature and amount of any type of contingent liability which is material in relation to an institution's activities.

Liabilities arising out of the endorsement of rediscounted bills shall be included in this item only if national law does not require otherwise. The same shall apply to acceptances other than own acceptances.

Sureties and assets pledged as collateral security shall include all guarantee obligations incurred and assets pledged as collateral security on behalf of third parties, particularly in respect of sureties and irrevocable letters of credit.

Article 25

Off-balance sheet: Item 2 — Commitments

This item shall include every irrevocable commitment which could give rise to a risk.

Notes on accounts shall state the nature and amount of any type of commitment which is material in relation to an institution's activities.

Commitments arising out of sale and repurchase transactions shall include commitments entered into by a credit institution in the context of sale and repurchase transactions (on the basis of firm agreements to sell with options to repurchase) within the meaning of Article 12 (3).

SECTION 5

LAYOUT OF THE PROFIT AND LOSS ACCOUNT

Article 26

For the presentation of the profit and loss account, the Member States shall prescribe one or both of the layouts provided for in Articles 27 and 28. If a Member State prescribes both layouts it may allow undertakings to choose between them.

Article 27

Vertical layout

1. Interest receivable and similar income, showing separately that arising from fixed-income securities
2. Interest payable and similar charges
3. Income from securities:
   (a) Income from shares and other variable-yield securities
   (b) Income from participating interests
   (c) Income from shares in affiliated undertakings
4. Commissions receivable
5. Commissions payable
6. Net profit or net loss on financial operations
7. Other operating income
8. General administrative expenses:
   (a) Staff costs, showing separately:
      — wages and salaries
      — social security costs, with a separate indication of those relating to pensions
   (b) Other administrative expenses
9. Value adjustments in respect of Assets items 9 and 10
10. Other operating charges
11. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
12. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
13. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
14. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
15. Tax on profit or loss on ordinary activities
16. Profit or loss on ordinary activities after tax
17. Extraordinary income
18. Extraordinary charges
19. Extraordinary profit or loss
20. Tax on extraordinary profit or loss
21. Extraordinary profit or loss after tax
22. Other taxes not shown under the preceeding items
23. Profit or loss for the financial year

Article 28

Horizontal layout

A. *Charges*

1. Interest payable and similar charges
2. Commissions payable
3. Net loss on financial operations
4. General administrative expenses:
   (a) Staff costs, showing separately:
      — wages and salaries
      — social security costs, with a separate indication of those relating to pensions
   (b) Other administrative expenses
5. Value adjustments in respect of Assets items 9 and 10
6. Other operating charges

7. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

8. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings

9. Tax on profit or loss on ordinary activities

10. Profit or loss on ordinary activities after tax

11. Extraordinary charges

12. Tax on extraordinary profit or loss

13. Extraordinary loss after tax

14. Other taxes not shown under the preceding items

15. Profit for the financial year

B. *Income*

1. Interest receivable and similar income, showing separately that arising from fixed-income securities

2. Income from securities:

   (a) Income from shares and other variable-yield securities

   (b) Income from participating interests

   (c) Income from shares in affiliated undertakings

3. Commissions receivable

4. Net profit on financial operations

5. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

6. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings

7. Other operating income

8. Profit or loss on ordinary activities after tax

9. Extraordinary income

10. Extraordinary profit after tax

11. Loss for the financial year

SECTION 6

SPECIAL PROVISIONS RELATING TO CERTAIN ITEMS IN THE PROFIT AND LOSS ACCOUNT

Article 29

Article 27, items 1 and 2 (vertical layout)

Article 28, items A 1 and B 1 (horizontal layout)

Interest receivable and similar income and interest payable and similar charges.

These items shall include all profits and losses arising out of banking activities, including:

(1) all income from assets entered under Assets items 1 to 5 in the balance sheet, however calculated. Such income shall also include income arising from the spreading on a time basis of the discount on assets acquired at an amount below, and liabilities contracted at an amount above, the sum payable at maturity;

(2) all charges arising out of liabilities entered under Liabilities items 1, 2, 3 and 8, however calculated. Such charges shall also include charges arising from the spreading on a time basis of the premium on assets acquired at an amount above, and liabilities contracted at an amount below, the sum payable at maturity;

(3) income and charges resulting from covered forward contracts, spread over the actual duration of the contract and similar in nature to interest;

(4) fees and commission similar in nature to interest and calculated on a time basis or by reference to the amount of the claim or liability.

Article 30

Article 27, item 3 (vertical layout)

Article 28, item B 2 (horizontal layout)

Income from shares and other variable-yield securities, from participating interests, and from shares in affiliated undertakings

This item shall comprise all dividends and other income from variable-yield securities, from participating interests and from shares in affiliated undertakings. Income from shares in investment companies shall also be included under this item.

Article 31

Article 27, items 4 and 5 (vertical layout)

Article 28, items A 2 and B 3 (horizontal layout)

Commissions receivable and commissions payable

Without prejudice to Article 29, commissions receivable shall include income in respect of all services supplied to third parties, and commissions payable shall include charges for services rendered by third parties, in particular

— commissions for guarantees, loans administration on behalf of other lenders and securities transactions on behalf of third parties,

— commissions and other charges and income in respect of payment transactions, account administration charges and commissions for the safe custody and administration of securities,

— commissions for foreign currency transactions and for the sale and purchase of coin and precious metals on behalf of third parties,

— commissions charged for brokerage services in connection with savings and insurance contracts and loans.

Article 32

Article 27, item 6 (vertical layout)

Article 28, item A 3 or item B 4 (horizontal layout)

Net profit or net loss on financial operations.

This item covers:

1. the net profit or loss on transactions in securities which are not held as financial fixed assets together with value adjustments and value re-adjustments on such securities, taking into account, where Article 36 (2) has been applied, the difference resulting from application of that article; however, in those Member States which exercise the option provided for in Article 37, these net profits or losses and value adjustments and value re-adjustments shall be included only in so far as they relate to securities included in a trading portfolio;

2. the net profit or loss on exchange activities, without prejudice to Article 29, point 3;

3. the net profits and losses on other buying and selling operations involving financial instruments, including precious metals.

Article 33

Article 27, items 11 and 12 (vertical layout)

Article 28, items A 7 and B 5 (horizontal layout)

Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments.

1. These items shall include, on the one hand, charges for value adjustments in respect of loans and advances to be shown under Assets items 3 and 4 and provisions for contingent liabilities and for commitments to be shown under Off-balance sheet items 1 and 2 and, on the other hand, credits from the recovery of written-off loans and advances and amounts written back following earlier value adjustments and provisions.

2. In those Member States which exercise the option provided for in Article 37, this item shall also include the net profit or loss on transactions in securities included in Assets items 5 and 6 which are neither held as financial fixed assets as defined in Article 35 (2) nor included in a trading portfolio, together with value adjustments and value re-adjustments on such securities taking into account, where Article 36 (2) has been applied, the difference resulting from application of that article. The nomenclature of this item shall be adapted accordingly.

3. The Member States may permit the charges and income covered by these items to be set off against each other, so that only a net item (income or charge) is shown.

4. Value adjustments in respect of loans and advances to credit institutions, to customers, to undertakings with which a credit institution is linked by virtue of participating interests and to affiliated undertakings shall be shown separately in the notes on the accounts where they are material. This provision need not be applied if a Member State permits setting-off pursuant to paragraph 3.

Article 34

Article 27, items 13 and 14 (vertical layout)

Article 28, items A 8 and B 5 (horizontal layout)

Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings

Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings.

1. These items shall include, on the one hand, charges for value adjustments in respect of assets shown in Assets items 5 to 8 and, on the other hand, all the amounts written back following earlier value adjustments, in so far as the charges and income relate to transferable securities held as financial fixed assets as defined in Article 35 (2), participating interests and shares in affiliated undertakings.

2. The Member States may permit the charges and income covered by these items to be set off against each other, so that only a net item (income or charge) is shown.

3. Value adjustments in respect of these transferable securities, participating interests and shares in affiliated undertakings shall be shown separately in the notes on the accounts where they are material. This provision need not be applied if a Member State permits setting off pursuant to paragraph 2.

SECTION 7

VALUATION RULES

Article 35

1. Assets items 9 and 10 must always be valued as fixed assets. The assets included in other balance sheet items shall be valued as fixed assets where they are intended for use on a continuing basis in the normal course of an undertakings's activities.

2. Where reference is made to financial fixed assets in Section 7 of Directive 78/660/EEC, this term shall in the case of credit institutions be taken to mean participating interests, shares in affiliated undertakings and securities intended for use on a continuing basis in the normal course of an undertaking's activities.

3. (a) Debt securities including fixed-income securities held as financial fixed assets shall be shown in the balance sheet at purchase price. The Member States may, however, require or permit such debt securities to be shown in the balance sheet at the amount repayable at maturity.

(b) Where the purchase price of such debt securities exceeds the amount repayable at maturity the amount of the difference must be charged to the profit and loss account. The Member States may, however, require or permit the amount of the difference to be written off in instalments so that it is completely written off by the time when the debt securities are repaid. The difference must be shown separately in the balance sheet or in the notes on the accounts.

(c) Where the purchase price of such debt securities is less than the amount repayable at maturity, the Member States may require or permit the amount of the difference to be released to income in instalments over the period remaining until repayment. The difference must be shown separately in the balance sheet or in the notes on the accounts.

Article 36

1. Where transferable securities which are not held as financial fixed assets are shown in the balance sheet at purchase price, credit institutions shall disclose in the notes on their accounts the difference between the purchase price and the higher market value of the balance sheet date.

2. The Member States may, however, require or permit those transferable securities to be shown in the balance sheet at the higher market value at the balance sheet date. The difference between the purchase price and the higher market value shall be disclosed in the notes on the accounts.

Article 37

1. Article 39 of Directive 78/660/EEC shall apply to the valuation of credit institutions' loans and advances, debt securities, shares and other variable-yield securities which are not held as financial fixed assets.

2. Pending subsequent coordination, however, the Member States may permit:

(a) loans and advances to credit institutions and customers (Assets items 3 and 4) and debt securities, shares and other variable-yield securities included in Assets items 5 and 6 which are neither held as financial fixed assets as defined in Article 35 (2) nor included in a trading portfolio to be shown at a value lower than that which would result from the application of Article 39 (1) of Directive 78/660/EEC, where that is required by the prudence dictated by the particular risks associated with banking. Nevertheless, the difference between the two values must not be more than 4 % of the total amount of the assets mentioned above after application of the aforementioned Article 39;

(b) that the lower value resulting from the application of subparagraph (a) be maintained until the credit institution decides to adjust it;

(c) where a Member State exercises the option provided for in subparagraph (a), neither Article 36 (1) of this Directive nor Article 40 (2) of Directive 78/660/EEC shall apply.

Article 38

1. Pending subsequent coordination, those Member States which exercise the option provided for in Article 37 must permit and those Member States which do not exercise that option may permit the introduction of a Liabilities item 6A entitled 'Fund for general banking risks'. That item shall include those amounts which a credit institution decides to put aside to cover such risks where that is required by the particular risks associated with banking.

2. The net balance of the increases and decreases of the 'Fund for general banking risks' must be shown separately in the profit and loss account.

Article 39

1. Assets and liabilities denominated in foreign currency shall be translated at the spot rate of exchange ruling on the balance sheet date. The Member States my, however, require or permit assets held as financial fixed assets and tangible and intangible assets, not covered or not specifically covered in either the spot or forward markets, to be translated at the rates ruling on the dates of their acquisition.

2. Uncompleted forward and spot exchange transactions shall be translated at the spot rates of exchange ruling on the balance sheet date.

The Member States may, however, require forward transactions to be translated at the forward rate ruling on the balance sheet date.

3 Without prejudice to Article 29 (3), the differences between the book values of the assets, liabilities and forward transactions and the amounts produced by translation in accordance with paragraphs 1 and 2 shall be shown in the profit and loss account. The Member States may, however, require or permit differences produced by translation in accordance with paragraphs 1 and 2 to be included, in whole or in part, in reserves not available for distribution, where they arise on assets held as financial fixed assets, on tangible and intangible assets and on any transactions undertaken to cover those assets.

4. The Member States may provide that positive translation differences arising out of forward transactions, assets or liabilities not covered or not specifically covered by other forward transactions, or by assets or liabilities shall not be shown in the profit and loss account.

5. If a method specified in Article 59 of Directive 78/660/EEC is used, the Member States may provide that any translation differences shall be transferred, in whole or in part, directly to reserves. Positive and negative translation differences transferred to reserves shall be shown separately in the balance sheet or in the notes on the accounts.

6. The Member States may require or permit translation differences arising on consolidation out of the re-translation of an affiliated undertaking's capital and reserves or the share of a participating interest's capital and reserves at the beginning of the accounting period to be included, in whole or in part, in consolidated reserves, together with the translation differences arising on the translation of any transactions undertaken to cover that capital and those reserves.

7. The Member States may require or permit the income and expenditure of affiliated undertakings and participating interests to be translated on consolidation at the average rates of exchange ruling during the accounting period.

SECTION 8

CONTENTS OF THE NOTES ON THE ACCOUNTS

Article 40

1. Article 43 (1) of Directive 78/660/EEC shall apply, subject to Article 37 of this Directive and to the following provisions.

2. In addition to the information required under Article 43 (1) (5) of Directive 78/660/EEC, credit institutions shall disclose the following information relating to Liabilities item 8 (Subordinated liabilities):

(a) in respect of each borrowing which exceeds 10 % of the total amount of the subordinated liabilities:

  (i) the amount of the borrowing, the currency in which it is denominated, the rate of interest and the maturity date or the fact that it is a perpetual issue;

  (ii) whether there are any circumstances in which early repayment is required;

  (iii) the terms of the subordination, the existence of any provisions to convert the subordinated liability into capital or some other form of liability and the terms of any such provisions.

(b) an overall indication of the rules governing other borrowings.

3. (a) In place of the information required under Article 43 (1) (6) of Directive 78/660/EEC, credit

institutions shall in the notes on their accounts state separately for each of the Assets items 3 (b) and 4 and the Liabilities items 1 (b), 2 (a), 2 (b) (bb) and 3 (b) the amounts of those loans and advances and liabilities on the basis of their remaining maturity as follows:

— not more than three months,

— more than three months but not more than one year,

— more than one year but not more than five years,

— more than five years.

For Assets item 4, loans and advances on call and at short notice must also be shown.

If loans and advances or liabilities involve payment by instalments, the remaining maturity shall be the period between the balance sheet date and the date on which each instalment falls due.

However, for five years after the date referred to in Article 47 (2) the Member States may require or permit the listing by maturity of the assets and liabilities referred to in this Article to be based on the originally agreed maturity or period of notice. In that event, where a credit institution has acquired an existing loan not evidenced by a certificate, the Member States shall require classification of that loan to be based on the remaining maturity as at the date on which it was acquired. For the purposes of this subparagraph, the originally agreed maturity for loans shall be the period between the date of first drawing and the date of repayment; the period of notice shall be deemed to be the period between the date on which notice is given and the date on which repayment is to be made; if loans and advances or liabilities are redeemable by instalments, the agreed maturity shall be the period between the date on which such loans and advances or liabilities arose and the date on which the last instalment falls due. Credit institutions shall also indicate for the balance sheet items referred to in this subparagraph what proportion of those assets and liabilities will become due within one year of the balance sheet date.

(b) Credit institutions shall, in respect of Assets item 5 (Debt securities including fixed-income securities) and Liabilities item 3 (a) (Debt securities in issue), indicate what proportion of assets and liabilities will become due within one year of the balance sheet date.

(c) The Member States may require the information referred to in subparagraphs (a) and (b) to be given in the balance sheet.

(d) Credit institutions shall give particulars of the assets which they have pledged as security for their own liabilities or for those of third parties (including contingent liabilities); the particulars should be in sufficient detail to indicate for each Liabilities item and for each Off-balance sheet item the total amount of the assets pledged as security.

4. Where credit institutions have to provide the information referred to in Article 43 (1) (7) of Directive 78/660/EEC in Off-balance sheet items, such information need not be repeated in the notes on the accounts.

5. In place of the information required under Article 43 (1) (8) of Directive 78/660/EEC, a credit institution shall indicate in the notes on its accounts the proportion of its income relating to items 1, 3, 4, 6 and 7 of Article 27 or to items B 1, B 2, B 3, B 4 and B 7 of Article 28 by geographical markets, in so far as, taking account of the manner in which the credit institution is organized, those markets differ substantially from one another. Article 45 (1) (b) of Directive 78/660/EEC shall apply.

6. The reference in Article 43 (1) (9) of Directive 78/660/EEC to Article 23 (6) of that Directive shall be deemed to be a reference to Article 27 (8) or Article 28 (A 4) of this Directive.

7. By way of derogation from Article 43 (1) (13) of Directive 78/660/EEC, credit institutions need disclose only the amounts of advances and credits granted to the members of their administrative, managerial and supervisory bodies, and the commitments entered into on their behalf by way of guarantees of any kind. That information must be given in the form of a total for each category.

Article 41

1. The information prescribed in Article 15 (3) of Directive 78/660/EEC must be given in respect of assets held as fixed assets as defined in Article 35 of this Directive. The obligation to show value adjustments separately shall not, however, apply where a Member State has permitted set-offs between value adjustments pursuant to Article 34 (2) of this Directive. In that event value adjustments may be combined with other items.

2. The Member States shall require credit institutions to give the following information as well in the notes on their accounts:

(a) a breakdown of the transferable securities shown under Assets items 5 to 8 into listed and unlisted securities;

(b) a breakdown of the transferable securities shown under Assets items 5 and 6 into securities which, pursuant to Article 35, are or are not held as financial fixed assets and the criterion used to distinguish between the two categories of transferable securities;

(c) the value of leasing transactions, apportioned between the relevant balance sheet items;

(d) a breakdown of Assets item 13, Liabilities item 4, items 10 and 18 in the vertical layout or A 6 and A 11 in the horizontal layout and items 7 and 17 in the vertical layout or B 7 and B 9 in the horizontal layout in the profit and loss account into their main component amounts, where such amounts are important for the purpose of assessing the annual accounts, as well as explanations of their nature and amount;

(e) the charges paid on account of subordinated liabilities by a credit institution in the year under review;

(f) the fact that an institution provides management and agency services to third parties where the scale of business of that kind is material in relation to the institution's activities as a whole;

(g) the aggregate amounts of assets and of liabilities denominated in foreign currencies, translated into the currency in which the annual accounts are drawn up;

(h) a statement of the types of unmatured forward transactions outstanding at the balance sheet date indicating, in particular, for each type of transaction, whether they are made to a material extent for the purpose of hedging the effects of fluctuations in interest rates, exchange rates and market prices, and whether they are made to a material extent for dealing purposes. These types of transaction shall include all those in connection with which the income or expenditure is to be included in Article 27, item 6, Article 28, items A 3 or B 4 or Article 29 (3), for example, foreign currencies, precious metals, transferable securities, certificates of deposit and other assets.

SECTION 9

PROVISIONS RELATING TO CONSOLIDATED ACCOUNTS

Article 42

1. Credit institutions shall draw up consolidated accounts and consolidated annual reports in accordance with Directive 83/349/EEC, in so far as this section does not provide otherwise.

2. Insofar as a Member State does not have recourse to Article 5 of Directive 83/349/EEC, paragraph 1 of this Article shall also apply to parent undertakings the sole object of which is to acquire holdings in subsidiary undertakings and to manage such holdings and turn them to profit, where those subsidiary undertakings are either exclusively or mainly credit institutions.

Article 43

1. Directive 83/349/EEC shall apply, subject to Article 1 of this Directive and paragraph 2 of this Article.

2. (a) Articles 4, 6, 15 and 40 of Directive 83/349/EEC shall not apply.

(b) The Member States may make application of Article 7 of Directive 83/349/EEC subject to the following additional conditions:

— the parent undertaking must have declared that it guarantees the commitments entered into by the exempted undertaking; the existence of that declaration shall be disclosed in the accounts of the exempted undertaking;

— the parent undertaking must be a credit institution within the meaning of Article 2 (1) (a) of this Directive.

(c) The information referred to in the first two indents of Article 9 (2) of Directive 83/349/EEC, namely:

— the amount of the fixed assets and

— the net turnover

shall be replaced by:

— the sum of items 1, 3, 4, 6 and 7 in Article 27 or B 1, B 2, B 3, B 4 and B 7 in Article 28 of this Directive.

(d) Where, as a result of applying Article 13 (3) (c) of Directive 83/349/EEC, a subsidiary undertaking which is a credit institution is not included in consolidated accounts but where the shares of that undertaking are temporarily held as a result of a financial assistance operation with a view to the reorganization or rescue of the undertaking in question, the annual accounts of that undertaking shall be attached to the consolidated accounts and additional information shall be given in the notes on the accounts concerning the nature and terms of the financial assistance operation.

(e) A Member State may also apply Article 12 of Directive 83/349/EEC to two or more credit institutions which are not connected as described in Article 1 (1) or (2) of that Directive but are managed on a unified basis other than pursuant to a

contract or provisions in the memorandum or articles of association.

(f) Article 14 of Directive 83/349/EEC, with the exception of paragraph 2, shall apply subject to the following provision.

Where a parent undertaking is a credit institution and where one or more subsidiary undertakings to be consolidated do not have that status, those subsidiary undertakings shall be included in the consolidation if their activities are a direct extension of banking or concern services ancillary to banking, such as leasing, factoring, the management of unit trusts, the management of dataprocessing services or any other similar activity.

(g) For the purposes of the layout of consolidated accounts:

- Articles 3, 5 to 26 and 29 to 34 of this Directive shall apply;

— the reference in Article 17 of Directive 83/349/EEC to Article 15 (3) of Directive 78/660/EEC shall apply to the assets deemed to be fixed assets pursuant to Article 35 of this Directive.

(h) Article 34 of Directive 83/349/EEC shall apply in respect of the contents of the notes on consolidated accounts, subject to Articles 40 and 41 of this Directive.

SECTION 10

PUBLICATION

Article 44

1. The duly approved annual accounts of credit institutions, together with the annual reports and the reports by the persons responsible for auditing the accounts shall be published as laid down by national law in accordance with Article 3 of Directive 68/151/EEC (1).

National law may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report on request. The price of such a copy must not exceed its administrative cost.

2. Paragraph 1 shall also apply to the duly approved consolidated accounts, the consolidated annual reports and the reports by the persons responsible for auditing the accounts.

3. However, where a credit institution which has drawn up annual accounts or consolidated accounts is not established as one of the types of company listed in Article 1 (1) of Directive 78/660/EEC and is not required by its national law to publish the documents referred to in paragraphs 1 and 2 of this Article as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its registered office or, in the absence of a registered office, at its principal place of business. It must be possible to obtain copies of such documents on request. The prices of such copies must not exceed their administrative cost.

4. The annual accounts and consolidated accounts of a credit institution must be published in every Member State in which that credit institution has branches within the meaning of the third indent of Article 1 of Directive 77/780/EEC. Such Member States may require that those documents be published in their official languages.

5. The Member States shall provide for appropriate sanctions for failure to comply with the publication rules referred to in this Article.

SECTION 11

AUDITING

Article 45

A Member State need not apply Article 2 (1) (b) (iii) of Directive 84/253/EEC (2) to public savings banks where the statutory auditing of the documents of those undertakings referred to in Article 1 (1) of that Directive is reserved to an existing supervisory body for those savings banks at the time of the entry into force of this Directive and where the person responsible complies at least with the conditions laid down in Article 3 to 9 of Directive 84/253/EEC.

SECTION 12

FINAL PROVISIONS

Article 46

The Contact Committee established in accordance with Article 52 of Directive 78/660/EEC shall, when meeting as constituted appropriately, also have the following functions:

(1) OJ No L 65, 14. 3. 1968, p. 8.

(2) OJ No L 126, 12. 5. 1984, p. 20.

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Directive.

Article 47

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 31 December 1990. They shall forthwith inform the Commission thereof.

2. A Member State may provide that the provisions referred to in paragraph 1 shall first apply to annual accounts and consolidated accounts for financial years beginning on 1 January 1993 or during the calendar year 1993.

3. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 48

Five years after the date referred to in Article 47 (2), the Council, acting on a proposal from the Commission, shall examine and if need be revise all those provisions of this Directive which provide for Member State options, together with Articles 2 (1), 27, 28 and 41, in the light of the experience acquired in applying this Directive and in particular of the aims of greater transparency and harmonization of the provisions referred to by this Directive.

Article 49

This Directive is addressed to the Member States.

Done at Brussels, 8 December 1986.

For the Council

The President

N. LAWSON

III .b) **78/660/EEC**

Fourth Council Directive of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies
(OJ No L 222, 14.08.1978, p. 11-31)

Article 1

Section 1 : General provisions (Art. 2)

Section 2 : General provisions concerning the balance-sheet and the profit and loss account (Art. 3-7)

Section 3 : Layout of the balance-sheet (Art. 8-14)

Section 4 : Special provisions relating to certain balance-sheet items (Art 15-21)

Section 5 : Layout of the profit and loss account (Art. 22-27)

Section 6 : Special provisions relating to certain items in the profit and loss account (Art. 28-30)

Section 7 : Valuation rules (Art. 31-42)

Section 8 : Contents of the notes on the accounts (Art. 43-45)

Section 9 : Contents of the annual report (Art. 46)

Section 10 : Publication (Art. 47-50)

Section 11 : Auditing (Art. 51)

Section 12 : Final provisions (Art. 52-62)

Amend. Art. 11. 27. 43. 44. 46. 47. 50 and 53 (1) by Dir. 90/604/EEC.
(OJ. N° L. 317. 16.11.1990. p. 57 - 59).

Amend. Art. 1 (1). 43 (1). 47 and 57 by Dir. 90/603/EEC.
(OJ. N° L 317. 16.11.1990. p. 60 - 62).

Amend. Art. 11 and 27 by Dir. 94/8/EC
(OJ N° L 82 25.03.1994 p. 33 - 34).

FOURTH COUNCIL DIRECTIVE

of 25 July 1978

based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies

(78/660/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the coordination of national provisions concerning the presentation and content of annual accounts and annual reports, the valuation methods used therein and their publication in respect of certain companies with limited liability is of special importance for the protection of members and third parties;

Whereas simultaneous coordination is necessary in these fields for these forms of company because, on the one hand, these companies' activities frequently extend beyond the frontiers of their national territories and, on the other, they offer no safeguards to third parties beyond the amounts of their net assets; whereas, moreover, the necessity for and the urgency of such coordination have been recognized and confirmed by Article 2 (1) (f) of Directive 68/151/EEC (3);

Whereas it is necessary, moreover, to establish in the Community minimum equivalent legal requirements as regards the extent of the financial information that should be made available to the public by companies that are in competition with one another;

Whereas annual accounts must give a true and fair view of a company's assets and liabilities, financial position and profit or loss; whereas to this end a mandatory layout must be prescribed for the balance sheet and the profit and loss account and whereas the minimum content of the notes on the accounts and the annual report must be laid down; whereas, however, derogations may be granted for certain companies of minor economic or social importance;

Whereas the different methods for the valuation of assets and liabilities must be coordinated to the extent necessary to ensure that annual accounts disclose comparable and equivalent information;

Whereas the annual accounts of all companies to which this Directive applies must be published in accordance with Directive 68/151/EEC; whereas, however, certain derogations may likewise be granted in this area for small and medium-sized companies;

Whereas annual accounts must be audited by authorized persons whose minimum qualifications will be the subject of subsequent coordination; whereas only small companies may be relieved of this audit obligation;

Whereas, when a company belongs to a group, it is desirable that group accounts giving a true and fair view of the activities of the group as a whole be published; whereas, however, pending the entry into force of a Council Directive on consolidated accounts, derogations from certain provisions of this Directive are necessary;

Whereas, in order to meet the difficulties arising from the present position regarding legislation in certain Member States, the period allowed for the implementation of certain provisions of this Directive must be longer than the period generally laid down in such cases,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The coordination measures prescribed by this Directive shall apply to the laws, regulations and

(1) OJ No C 129, 11. 12. 1972, p. 38.
(2) OJ No C 39, 7. 6. 1973, p. 31.
(3) OJ No L 65, 14. 3. 1968, p. 8.

administrative provisions of the Member States relating to the following types of companies:

— in Germany:

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

— in Belgium:

la société anonyme/de naamloze vennootschap, la société en commandite par actions / de commanditaire vennootschap' op aandelen, la société de personnes à responsabilité limitée/de personenvennootschap met beperkte aansprakelijkheid;

— in Denmark:

aktieselskaber, kommanditaktieselskaber, anpartsselskaber;

— in France:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— in Ireland:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

— in Italy:

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

— in Luxembourg:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— in the Netherlands:

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

— in the United Kingdom:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee.

2. Pending subsequent coordination, the Member States need not apply the provisions of this Directive to banks and other financial institutions or to insurance companies.

SECTION 1

General provisions

Article 2

1. The annual accounts shall comprise the balance sheet, the profit and loss account and the notes on the accounts. These documents shall constitute a composite whole.

2. They shall be drawn up clearly and in accordance with the provisions of this Directive.

3. The annual accounts shall give a true and fair view of the company's assets, liabilities, financial position and profit or loss.

4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3, additional information must be given.

5. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.

6. The Member States may authorize or require the disclosure in the annual accounts of other information as well as that which must be disclosed in accordance with this Directive.

SECTION 2

General provisions concerning the balance sheet and the profit and loss account

Article 3

The layout of the balance sheet and of the profit and loss account, particularly as regards the form adopted for their presentation, may not be changed from one financial year to the next. Departures from this principle shall be permitted in exceptional cases. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons therefor.

Article 4

1. In the balance sheet and in the profit and loss account the items prescribed in Articles 9, 10 and 23 to 26 must be shown separately in the order indicated. A more detailed subdivision of the items shall be authorized provided that the layouts are complied with. New items may be added provided that their contents are not covered by any of the items prescribed by the layouts. Such subdivision or new items may be required by the Member States.

2. The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by Arabic numerals must be adapted where the special nature of an undertaking so requires. Such adaptations may be required by the Member States of undertakings forming part of a particular economic sector.

3. The balance sheet and profit and loss account items that are preceded by Arabic numerals may be combined where:

(a) they are immaterial in amount for the purposes of Article 2 (3); or

(b) such combination makes for greater clarity, provided that the items so combined are dealt with separately in the notes on the accounts. Such combination may be required by the Member States.

4. In respect of each balance sheet and profit and loss account item the figure relating to the corresponding item for the preceding financial year must be shown. The Member States may provide that, where these figures are not comparable, the figure for the preceding financial year must be adjusted. In any case, non-comparability and any adjustment of the figures must be disclosed in the notes on the accounts, with relevant comments.

5. Save where there is a corresponding item for the preceding financial year within the meaning of paragraph 4, a balance sheet or profit and loss account item for which there is no amount shall not be shown.

Article 5

1. By way of derogation from Article 4 (1) and (2), the Member States may prescribe special layouts for the annual accounts of investment companies and of financial holding companies provided that these layouts give a view of these companies equivalent to that provided for in Article 2 (3).

2. For the purposes of this Directive, 'investment companies' shall mean only:

(a) those companies the sole object of which is to invest their funds in various securities, real property and other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets;

(b) those companies associated with investment companies with fixed capital if the sole object of the companies so associated is to acquire fully paid shares issued by those investment companies without prejudice to the provisions of Article 20 (1) (h) of Directive 77/91/EEC [1].

3. For the purposes of this Directive, 'financial holding companies' shall mean only those companies the sole object of which is to acquire holdings in other undertakings, and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, the aforegoing without prejudice to their rights as shareholders. The limitations imposed on the activities of these companies must be such that compliance with them can be supervised by an administrative or judicial authority.

Article 6

The Member States may authorize or require adaptation of the layout of the balance sheet and profit and loss account in order to include the appropriation of profit or the treatment of loss.

Article 7

Any set-off between asset and liability items, or between income and expenditure items, shall be prohibited.

SECTION 3

Layout of the balance sheet

Article 8

For the presentation of the balance sheet, the Member States shall prescribe one or both of the

[1] OJ No L 26, 31. 1. 1977, p. 1.

layouts prescribed by Articles 9 and 10. If a Member State prescribes both, it may allow companies to choose between them.

Article 9

Assets

A. Subscribed capital unpaid

of which there has been called

(unless national law provides that called-up capital be shown under 'Liabilities'. In that case, the part of the capital called but not yet paid must appear as an asset either under A or under D (II) (5)).

B. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.

C. Fixed assets

I. *Intangible assets*

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:
   (a) acquired for valuable consideration and need not be shown under C (I) (3); or
   (b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.
4. Payments on account.

II. *Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

III. *Financial assets*

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

D. Current assets

I. *Stocks*

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

II. *Debtors*

(Amounts becoming due and payable after more than one year must be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown as an asset under A).
6. Prepayments and accrued income (unless national law provides for such items to be shown as an asset under E).

III. *Investments*

1. Shares in affiliated undertakings.

2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

3. Other investments.

IV. *Cash at bank and in hand*

E. **Prepayments and accrued income**

(unless national law provides for such items to be shown as an asset under D (II) (6)).

F. **Loss for the financial year**

(unless national law provides for it to be shown under A (VI) under 'Liabilities').

Liabilities

A. **Capital and reserves**

I. *Subscribed capital*

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

II. *Share premium account*

III. *Revaluation reserve*

IV. *Reserves*

1. Legal reserve, in so far as national law requires such a reserve.

2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.

3. Reserves provided for by the articles of association.

4. Other reserves.

V. *Profit or loss brought forward*

VI. *Profit or loss for the financial year*

(unless national law requires that this item be shown under F under 'Assets' or under E under 'Liabilities').

B. **Provisions for liabilities and charges**

1. Provisions for pensions and similar obligations.

2. Provisions for taxation.

3. Other provisions.

C. **Creditors**

(Amounts becoming due and payable within one year and amounts becoming due and payable after more than one year must be shown separately for each item and for the aggregate of these items.)

1. Debenture loans, showing convertible loans separately.

2. Amounts owed to credit institutions.

3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.

4. Trade creditors.

5. Bills of exchange payable.

6. Amounts owed to affiliated undertakings.

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.

8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under D under 'Liabilities').

D. **Accruals and deferred income**

(unless national law provides for such items to be shown under C (9) under 'Liabilities').

E. **Profit for the financial year**

(unless national law provides for it to be shown under A (VI) under 'Liabilities').

Article 10

A. Subscribed capital unpaid

of which there has been called

(unless national law provides that called-up capital be shown under L. In that case, the part of the capital called but not yet paid must appear either under A or under D (II) (5)).

B. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.

C. Fixed assets

I. *Intangible assets*

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:
   (a) acquired for valuable consideration and need not be shown under C (I) (3); or
   (b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.
4. Payments on account.

II. *Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

III. *Financial assets*

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

D. Current assets

I. *Stocks*

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

II. *Debtors*

(Amounts becoming due and payable after more than one year must be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown under A).
6. Prepayments and accrued income (unless national law provides that such items be shown under E).

III. *Investments*

1. Shares in affiliated undertakings.

2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

3. Other investments.

IV. *Cash at bank and in hand.*

E. **Prepayments and accrued income**

(unless national law provides for such items to be shown under D (II) (6)).

F. **Creditors: amounts becoming due and payable within one year**

1. Debenture loans, showing convertible loans separately.

2. Amounts owed to credit institutions.

3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.

4. Trade creditors.

5. Bills of exchange payable.

6. Amounts owed to affiliated undertakings.

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.

8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under K).

G. **Net current assets/liabilities** (taking into account prepayments and accrued income when shown under E and accruals and deferred income when shown under K).

H. **Total assets less current liabilities**

I. **Creditors: amounts becoming due and payable after more than one year**

1. Debenture loans, showing convertible loans separately.

2. Amounts owed to credit institutions.

3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.

4. Trade creditors.

5. Bills of exchange payable.

6. Amounts owed to affiliated undertakings.

7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.

8. Other creditors including tax and social security.

9. Accruals and deferred income (unless national law provides for such items to be shown under K).

J. **Provisions for liabilities and charges**

1. Provisions for pensions and similar obligations.

2. Provisions for taxation.

3. Other provisions.

K. **Accruals and deferred income**

(unless national law provides for such items to be shown under F (9) or I (9) or both).

L. **Capital and reserves**

I. *Subscribed capital*

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

II. *Share premium account*

III. *Revaluation reserve*

IV. *Reserves*

1. Legal reserve, in so far as national law requires such a reserve.

2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.

3. Reserves provided for by the articles of association.

4. Other reserves.

V. *Profit or loss brought forward*

VI. *Profit or loss for the financial year*

Article 11

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

— balance sheet total: 1 000 000 EUA,

— net turnover: 2 000 000 EUA,

— average number of employees during the financial year: 50

to draw up abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10, disclosing separately the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9 and in D (II) in Article 10, but in total for each.

Article 12

1. Where on its balance sheet date, a company exceeds or ceases to exceed the limits of two of the three criteria indicated in Article 11, that fact shall affect the application of the derogation provided for in that Article only if it occurs in two consecutive financial years.

2. For the purposes of translation into national currencies, the amounts in European units of account specified in Article 11 may be increased by not more than 10 %.

3. The balance sheet total referred to in Article 11 shall consist of the assets in A to E under 'Assets' in the layout prescribed in Article 9 or those in A to E in the layout prescribed in Article 10.

Article 13

1. Where an asset or liability relates to more than one layout item, its relationship to other items must be disclosed either under the item where it appears or in the notes on the accounts, if such disclosure is essential to the comprehension of the annual accounts.

2. Own shares and shares in affiliated undertakings may be shown only under the items prescribed for that purpose.

Article 14

All commitments by way of guarantee of any kind must, if there is no obligation to show them as liabilities, be clearly set out at the foot of the balance sheet or in the notes on the accounts, and a distinction made between the various types of guarantee which national law recognizes; specific disclosure must be made of any valuable security which has been provided. Commitments of this kind existing in respect of affiliated undertakings must be shown separately.

SECTION 4

Special provisions relating to certain balance sheet items

Article 15

1. Whether particular assets are to be shown as fixed assets or current assets shall depend upon the purpose for which they are intended.

2. Fixed assets shall comprise those assets which are intended for use on a continuing basis for the purposes of the undertaking's activities.

3. (a) Movements in the various fixed asset items shall be shown in the balance sheet or in the notes on the accounts. To this end there shall be shown separately, starting with the purchase price or production cost, for each fixed asset item, on the one hand, the additions, disposals and transfers during the financial year and, on the other, the cumulative value adjustments at the balance sheet date and the rectifications made during the financial year to the value adjustments of previous financial years. Value adjustments shall be shown either in the balance sheet, as clear deductions from the relevant items, or in the notes on the accounts.

(b) If, when annual accounts are drawn up in accordance with this Directive for the first

time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the residual value at the beginning of the financial year may be treated as the purchase price or production cost. Any application of this provision must be disclosed in the notes on the accounts.

(c) Where Article 33 is applied, the movements in the various fixed asset items referred to in subparagraph (a) of this paragraph shall be shown starting with the purchase price or production cost resulting from revaluation.

4. Paragraph 3 (a) and (b) shall apply to the presentation of 'Formation expenses'.

Article 16

Rights to immovables and other similar rights as defined by national law must be shown under 'Land and buildings'.

Article 17

For the purposes of this Directive, 'participating interest' shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the company's activities. The holding of part of the capital of another company shall be presumed to constitute a participating interest where it exceeds a percentage fixed by the Member States which may not exceed 20 %.

Article 18

Expenditure incurred during the financial year but relating to a subsequent financial year, together with any income which, though relating to the financial year in question, is not due until after its expiry must be shown under 'Prepayments and accrued income'. The Member States may, however, provide that such income shall be included in 'Debtors'. Where such income is material, it must be disclosed in the notes on the accounts.

Article 19

Value adjustments shall comprise all adjustments intended to take account of reductions in the values of individual assets established at the balance sheet date whether that reduction is final or not.

Article 20

1. Provisions for liabilities and charges are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

2. The Member States may also authorize the creation of provisions intended to cover charges which have their origin in the financial year under review or in a previous financial year, the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

3. Provisions for liabilities and charges may not be used to adjust the values of assets.

Article 21

Income receivable before the balance sheet date but relating to a subsequent financial year, together with any charges which, though relating to the financial year in question, will be paid only in the course of a subsequent financial year, must be shown under 'Accruals and deferred income'. The Member States may, however, provide that such charges shall be included in 'Creditors'. Where such charges are material, they must be disclosed in the notes on the accounts.

SECTION 5

Layout of the profit and loss account

Article 22

For the presentation of the profit and loss account, the Member States shall prescribe one or more of the layouts provided for in Articles 23 to 26. If a Member State prescribes more than one layout, it may allow companies to choose from among them.

Article 23

1. Net turnover.
2. Variation in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.

4. Other operating income.
5. (a) Raw materials and consumables.
   (b) Other external charges.
6. Staff costs:
   (a) wages and salaries;
   (b) social security costs, with a separate indication of those relating to pensions.
7. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.
   (b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
8. Other operating charges.
9. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
10. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
11. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
12. Value adjustments in respect of financial assets and of investments held as current assets.
13. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
14. Tax on profit or loss on ordinary activities.
15. Profit or loss on ordinary activities after taxation.
16. Extraordinary income.
17. Extraordinary charges.
18. Extraordinary profit or loss.
19. Tax on extraordinary profit or loss.
20. Other taxes not shown under the above items.
21. Profit or loss for the financial year.

Article 24

A. Charges

1. Reduction in stocks of finished goods and in work in progress:
2. (a) raw materials and consumables;
   (b) other external charges.
3. Staff costs:
   (a) wages and salaries;
   (b) social security costs, with a separate indication of those relating to pensions.
4. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.
   (b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
5. Other operating charges.
6. Value adjustments in respect of financial assets and of investments held as current assets.
7. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
8. Tax on profit or loss on ordinary activities.
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary charges.
11. Tax on extraordinary profit or loss.
12. Other taxes not shown under the above items.
13. Profit or loss for the financial year.

B. Income

1. Net turnover.
2. Increase in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.
4. Other operating income.
5. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
6. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
7. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
8. Profit or loss on ordinary activities after taxation.
9. Extraordinary income.
10. Profit or loss for the financial year.

Article 25

1. Net turnover.
2. Cost of sales (including value adjustments).
3. Gross profit or loss.
4. Distribution costs (including value adjustments).
5. Administrative expenses (including value adjustments).
6. Other operating income.
7. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
8. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
9. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
10. Value adjustments in respect of financial assets and of investments held as current assets.
11. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
12. Tax on profit or loss on ordinary activities.
13. Profit or loss on ordinary activities after taxation.
14. Extraordinary income.
15. Extraordinary charges.
16. Extraordinary profit or loss.
17. Tax on extraordinary profit or loss.
18. Other taxes not shown under the above items.
19. Profit or loss for the financial year.

Article 26

A. Charges

1. Cost of sales (including value adjustments).
2. Distribution costs (including value adjustments).
3. Administrative expenses (including value adjustments).
4. Value adjustments in respect of financial assets and of investments held as current assets.
5. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
6. Tax on profit or loss on ordinary activities.
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary charges.
9. Tax on extraordinary profit or loss.
10. Other taxes not shown under the above items.
11. Profit or loss for the financial year.

B. Income

1. Net turnover.
2. Other operating income.
3. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
4. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
5. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
6. Profit or loss on ordinary activities after taxation.
7. Extraordinary income.
8. Profit or loss for the financial year.

Article 27

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

— balance sheet total: 4 million EUA,

— net turnover: 8 million EUA,

— average number of employees during the financial year: 250

to adopt layouts different from those prescribed in Articles 23 to 26 within the following limits:

(a) in Article 23: 1 to 5 inclusive may be combined under one item called 'Gross profit or loss';

(b) in Article 24: A (1), A (2) and B (1) to B (4) inclusive may be combined under one item called 'Gross profit or loss';

(c) in Article 25: (1), (2), (3) and (6) may be combined under one item called 'Gross profit or loss';

(d) in Article 26, A (1), B (1) and B (2) may be combined under one item called 'Gross profit or loss'.

Article 12 shall apply.

SECTION 6

Special provisions relating to certain items in the profit and loss account

Article 28

The net turnover shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover.

Article 29

1. Income and charges that arise otherwise than in the course of the company's ordinary activities must be shown under 'Extraordinary income and extraordinary charges'.

2. Unless the income and charges referred to in paragraph 1 are immaterial for the assessment of the results, explanations of their amount and nature must be given in the notes on the accounts. The same shall apply to income and charges relating to another financial year.

Article 30

The Member States may permit taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss to be shown in total as one item in the profit and loss account before 'Other taxes not shown under the above items'. In that case, 'Profit or loss on ordinary activities after taxation' shall be omitted from the layouts prescribed in Articles 23 to 26.

Where this derogation is applied, companies must disclose in the notes on the accounts the extent to which the taxes on the profit or loss affect the profit or loss on ordinary activities and the 'Extraordinary profit or loss'.

SECTION 7

Valuation rules

Article 31

1. The Member States shall ensure that the items shown in the annual accounts are valued in accordance with the following general principles:

(a) the company must be presumed to be carrying on its business as a going concern;

(b) the methods of valuation must be applied consistently from one financial year to another;

(c) valuation must be made on a prudent basis, and in particular:

(aa) only profits made at the balance sheet date may be included,

(bb) account must be taken of all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up,

(cc) account must be taken of all depreciation, whether the result of the financial year is a loss or a profit;

(d) account must be taken of income and charges relating to the financial year, irrespective of the date of receipt or payment of such income or charges;

(e) the components of asset and liability items must be valued separately;

(f) the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year.

2. Departures from these general principles shall be permitted in exceptional cases. Any such departures must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss.

Article 32

The items shown in the annual accounts shall be valued in accordance with Articles 34 to 42, which are based on the principle of purchase price or production cost.

Article 33

1. The Member States may declare to the Commission that they reserve the power, by way of

derogation from Article 32 and pending subsequent coordination, to permit or require in respect of all companies or any classes of companies:

(a) valuation by the replacement value method for tangible fixed assets with limited useful economic lives and for stocks;

(b) valuation by methods other than that provided for in (a) which are designed to take account of inflation for the items shown in annual accounts, including capital and reserves;

(c) revaluation of tangible fixed assets and financial fixed assets.

Where national law provides for valuation methods as indicated in (a), (b) and (c), it must define their content and limits and the rules for their application.

The application of any such method, the balance sheet and profit and loss account items concerned and the method by which the values shown are calculated shall be disclosed in the notes on the accounts.

2. (a) Where paragraph 1 is applied, the amount of the difference between valuation by the method used and valuation in accordance with the general rule laid down in Article 32 must be entered in the revaluation reserve under 'Liabilities'. The treatment of this item for taxation purposes must be explained either in the balance sheet or in the notes on the accounts.

For purposes of the application of the last subparagraph of paragraph 1, companies shall, whenever the amount of the reserve has been changed in the course of the financial year, publish in the notes on the accounts *inter alia* a table showing:

— the amount of the revaluation reserve at the beginning of the financial year,

— the revaluation differences transferred to the revaluation reserve during the financial year,

— the amounts capitalized or otherwise transferred from the revaluation reserve during the financial year, the nature of any such transfer being disclosed,

— the amount of the revaluation reserve at the end of the financial year.

(b) The revaluation reserve may be capitalized in whole or in part at any time.

(c) The revaluation reserve must be reduced to the extent that the amounts transferred thereto are no longer necessary for the implementation of the valuation method used and the achievement of its purpose.

The Member States may lay down rules governing the application of the revaluation reserve, provided that transfers to the profit and loss account from the revaluation reserve may be made only to the extent that the amounts transferred have been entered as charges in the profit and loss account or reflect increases in value which have been actually realized. These amounts must be disclosed separately in the profit and loss account. No part of the revaluation reserve may be distributed, either directly or indirectly, unless it represents gains actually realized.

(d) Save as provided under (b) and (c) the revaluation reserve may not be reduced.

3. Value adjustments shall be calculated each year on the basis of the value adopted for the financial year in question, save that by way of derogation from Articles 4 and 22, the Member States may permit or require that only the amount of the value adjustments arising as a result of the application of the general rule laid down in Article 32 be shown under the relevant items in the layouts prescribed in Articles 23 to 26 and that the difference arising as a result of the valuation method adopted under this Article be shown separately in the layouts. Furthermore, Articles 34 to 42 shall apply *mutatis mutandis*.

4. Where paragraph 1 is applied, the following must be disclosed, either in the balance sheet or in the notes on the accounts, separately for each balance sheet item as provided for in the layouts prescribed in Articles 9 and 10, except for stocks, either:

(a) the amount at the balance sheet date of the valuation made in accordance with the general rule laid down in Article 32 and the amount of the cumulative value adjustments; or

(b) the amount at the balance sheet date of the difference between the valuation made in accordance with this Article and that resulting from the application of Article 32 and, where appropriate, the cumulative amount of the additional value adjustments.

5. Without prejudice to Article 52 the Council shall, on a proposal from the Commission and within seven years of the notification of this Directive, examine and, where necessary, amend this Article in the light of economic and monetary trends in the Community.

Article 34

1. (a) Where national law authorizes the inclusion of formation expenses under 'Assets', they must be written off within a maximum period of five years.

(b) In so far as formation expenses have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the expenses not written off.

2. The amounts entered under 'Formation expenses' must be explained in the notes on the accounts.

Article 35

1. (a) Fixed assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.

(b) The purchase price or production cost of fixed assets with limited useful economic lives must be reduced by value adjustments calculated to write off the value of such assets systematically over their useful economic lives.

(c) (aa) Value adjustments may be made in respect of financial fixed assets, so that they are valued at the lower figure to be attributed to them at the balance sheet date.

(bb) Value adjustments must be made in respect of fixed assets, whether their useful economic lives are limited or not, so that they are valued at the lower figure to be attributed to them at the balance sheet date if it is expected that the reduction in their value will be permanent.

(cc) The value adjustments referred to in (aa) and (bb) must be charged to the profit and loss account and disclosed separately in the notes on the accounts if they have not been shown separately in the profit and loss account.

(dd) Valuation at the lower of the values provided for in (aa) and (bb) may not be continued if the reasons for which the value adjustments were made have ceased to apply.

(d) If fixed assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them shall be indicated in the notes on the accounts.

2. The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.

3. (a) The production cost shall be calculated by adding to the purchasing price of the raw materials and consumables the costs directly attributable to the product in question.

(b) A reasonable proportion of the costs which are only indirectly attributable to the product in question may be added into the production costs to the extent that they relate to the period of production.

4. Interest on capital borrowed to finance the production of fixed assets may be included in the production costs to the extent that it relates to the period of production. In that event, the inclusion of such interest under 'Assets' must be disclosed in the notes on the accounts.

Article 36

By way of derogation from Article 35 (1) (c) (cc), the Member States may allow investment companies within the meaning of Article 5 (2) to set off value adjustments to investments directly against 'Capital and reserves'. The amounts in question must be shown separately under 'Liabilities' in the balance sheet.

Article 37

1. Article 34 shall apply to costs of research and development. In exceptional cases, however, the Member States may permit derogations from Article 34 (1) (a). In that case, they may also provide for derogations from Article 34 (1) (b). Such derogations and the reasons for them must be disclosed in the notes on the accounts.

2. Article 34 (1) (a) shall apply to goodwill. The Member States may, however, permit companies to write goodwill off systematically over a limited period exceeding five years provided that this period does not exceed the useful economic life of the asset and is disclosed in the notes on the accounts together with the supporting reasons therefore.

Article 38

Tangible fixed assets, raw materials and consumables which are constantly being replaced and the overall

value of which is of secondary importance to the undertaking may be shown under 'Assets' at a fixed quantity and value, if the quantity, value and composition thereof do not vary materially.

Article 39

1. (a) Current assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.

(b) Value adjustments shall be made in respect of current assets with a view to showing them at the lower market value or, in particular circumstances, another lower value to be attributed to them at the balance sheet date.

(c) The Member States may permit exceptional value adjustments where, on the basis of a reasonable commercial assessment, these are necessary if the valuation of these items is not to be modified in the near future because of fluctuations in value. The amount of these value adjustments must be disclosed separately in the profit and loss account or in the notes on the accounts.

(d) Valuation at the lower value provided for in (b) and (c) may not be continued if the reasons for which the value adjustments were made have ceased to apply.

(e) If current assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them must be disclosed in the notes on the accounts.

2. The definitions of purchase price and of production cost given in Article 35 (2) and (3) shall apply. The Member States may also apply Article 35 (4). Distribution costs may not be included in production costs.

Article 40

1. The Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or by the 'first in, first out' (FIFO) method, the 'last in, first out' (LIFO) method, or some similar method.

2. Where the value shown in the balance sheet, following application of the methods of calculation specified in paragraph 1, differs materially, at the balance sheet date, from the value on the basis of the last known market value prior to the balance sheet date, the amount of that difference must be disclosed in total by category in the notes on the accounts.

Article 41

1. Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown as an asset. It must be shown separately in the balance sheet or in the notes on the accounts.

2. The amount of this difference must be written off by a reasonable amount each year and completely written off no later than the time of repayment of the debt.

Article 42

Provisions for liabilities and charges may not exceed in amount the sums which are necessary.

The provisions shown in the balance sheet under 'Other provisions' must be disclosed in the notes on the accounts if they are material.

SECTION 8

Contents of the notes on the accounts

Article 43

1. In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least:

(1) the valuation methods applied to the various items in the annual accounts, and the methods employed in calculating the value adjustments. For items included in the annual accounts which are or were originally expressed in foreign currency, the bases of conversion used to express them in local currency must be disclosed;

(2) the name and registered office of each of the undertakings in which the company, either itself or through a person acting in his own name but on the company's behalf, holds at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where for the purposes of Article 2 (3) it is of negligible importance only. The information

concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and less than 50 % of its capital is held (directly or indirectly) by the company;

(3) the number and the nominal value or, in the absence of a nominal value, the accounting par value of the shares subscribed during the financial year within the limits of an authorized capital, without prejudice as far as the amount of this capital is concerned to Article 2 (1) (e) of Directive 68/151/EEC or to Article 2 (c) of Directive 77/91/EEC;

(4) where there is more than one class of shares, the number and the nominal value or, in the absence of a nominal value, the accounting par value for each class;

(5) the existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;

(6) amounts owed by the company becoming due and payable after more than five years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security. This information must be disclosed separately for each creditors item, as provided for in the layouts prescribed in Articles 9 and 10;

(7) the total amount of any financial commitments that are not included in the balance sheet, in so far as this information is of assistance in assessing the financial position. Any commitments concerning pensions and affiliated undertakings must be disclosed separately;

(8) the net turnover within the meaning of Article 28, broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organized, these categories and markets differ substantially from one another;

(9) the average number of persons employed during the financial year, broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the financial year, broken down as provided for in Article 23 (6);

(10) the extent to which the calculation of the profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in Articles 31 and 34 to 42, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on future tax charges is material, details must be disclosed;

(11) the difference between the tax charged for the financial year and for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;

(12) the amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies by reason of their responsibilities, and any commitments arising or entered into in respect of retirement pensions for former members of those bodies, with an indication of the total for each category;

(13) the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category.

2. Pending subsequent coordination, the Member States need not apply paragraph 1 (2) to financial holding companies within the meaning of Article 5 (3).

Article 44

The Member States may permit the companies referred to in Article 11 to draw up abridged notes on their accounts without the information required in Article 43 (1) (5) to (12). However, the notes must disclose the information specified in Article 43 (1) (6) in total for all the items concerned.

Article 12 shall apply.

Article 45

1. The Member States may allow the disclosures prescribed in Article 43 (1) (2):

(a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;

(b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings to which Article 43 (1) (2) relates. The Member States may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

2. Paragraph 1 (b) shall also apply to the information prescribed by Article 43 (1) (8).

The Member States may permit the companies referred to in Article 27 to omit the disclosures prescribed by Article 43 (1) (8). Article 12 shall apply.

SECTION 9

Contents of the annual report

Article 46

1. The annual report must include at least a fair review of the development of the company's business and of its position.

2. The report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the company's likely future development;

(c) activities in the field of research and development;

(d) the information concerning acquisitions of own shares prescribed by Article 22 (2) of Directive 77/91/EEC.

SECTION 10

Publication

Article 47

1. The annual accounts, duly approved, and the annual report, together with the opinion submitted by the person responsible for auditing the accounts, shall be published as laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

The laws of a Member State may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report free of charge upon request.

2. By way of derogation from paragraph 1, the Member States may permit the companies referred to in Article 11 to publish:

(a) abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10, disclosing separately the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9 and in D (II) in Article 10, but in total for all the items concerned; and

(b) abridged notes on their accounts without the explanations required in Article 43 (1) (5) to (12). However, the notes must disclose the information specified in Article 43 (1) (6) in total for all the items concerned.

Article 12 shall apply.

In addition, the Member States may relieve such companies from the obligation to publish their profit and loss accounts and annual reports and the opinions of the persons responsible for auditing the accounts.

3. The Member States may permit the companies mentioned in Article 27 to publish:

(a) abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10 disclosing separately, either in the balance sheet or in the notes on the accounts:

— C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6) and D (III) (1) and (2) under 'Assets' and C (1), (2), (6), (7) and (9) under 'Liabilities' in Article 9,

— C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6), D (III) (1) and (2), F (1), (2), (6), (7) and (9) and (I) (1), (2), (6), (7) and (9) in Article 10,

— the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9, in total for all the items concerned and separately for D (II) (2) and (3) under 'Assets' and C (1), (2), (6), (7) and (9) under 'Liabilities',

— the information required in brackets in D (II) in Article 10, in total for all the items

concerned, and separately for D (II) (2) and (3);

(b) abridged notes on their accounts without the information required in Article 43 (1) (5), (6), (8), (10) and (11). However, the notes on the accounts must give the information specified in Article 43 (1) (6) in total for all the items concerned.

This paragraph shall be without prejudice to paragraph 1 in so far as it relates to the profit and loss account, the annual report and the opinion of the person responsible for auditing the accounts.

Article 12 shall apply.

Article 48

Whenever the annual accounts and the annual report are published in full, they must be reproduced in the form and text on the basis of which the person responsible for auditing the accounts has drawn up his opinion. They must be accompanied by the full text of his report. If the person responsible for auditing the accounts has made any qualifications or refused to report upon the accounts, that fact must be disclosed and the reasons given.

Article 49

If the annual accounts are not published in full, it must be indicated that the version published is abridged and reference must be made to the register in which the accounts have been filed in accordance with Article 47 (1). Where such filing has not yet been effected, the fact must be disclosed. The report issued by the person responsible for auditing the accounts may not accompany this publication, but it must be disclosed whether the report was issued with or without qualification, or was refused.

Article 50

The following must be published together with the annual accounts, and in like manner:

— the proposed appropriation of the profit or treatment of the loss,

— the appropriation of the profit or treatment of the loss,

where these items do not appear in the annual accounts.

SECTION 11

Auditing

Article 51

1. (a) Companies must have their annual accounts audited by one or more persons authorized by national law to audit accounts.

(b) The person or persons responsible for auditing the accounts must also verify that the annual report is consistent with the annual accounts for the same financial year.

2. The Member States may relieve the companies referred to in Article 11 from the obligation imposed by paragraph 1.

Article 12 shall apply.

3. Where the exemption provided for in paragraph 2 is granted the Member States shall introduce appropriate sanctions into their laws for cases in which the annual accounts or the annual reports of such companies are not drawn up in accordance with the requirements of this Directive.

SECTION 12

Final provisions

Article 52

1. A Contact Committee shall be set up under the auspices of the Commission. Its function shall be:

(a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Directive.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Committee shall be convened by the chairman either on his own initiative or at the request of one of its members.

Article 53

1. For the purposes of this Directive, the European unit of account shall be that defined by Commission Decision No 3289/75/ECSC of 18 December 1975 (1). The equivalent in national currency shall be calculated initially at the rate obtaining on the date of adoption of this Directive.

2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in European units of account in this Directive, in the light of economic and monetary trends in the Community.

Article 54

This Directive shall not affect laws in the Member States requiring that the annual accounts of companies not falling within their jurisdiction be filed in a register in which branches of such companies are listed.

Article 55

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. The Member States may stipulate that the provisions referred to in paragraph 1 shall not apply until 18 months after the end of the period provided for in that paragraph.

That period of 18 months may, however, be five years:

(a) in the case of unregistered companies in the United Kingdom and Ireland;

(b) for purposes of the application of Articles 9 and 10 and Articles 23 to 26 concerning the layouts for the balance sheet and the profit and loss account, where a Member State has brought other layouts for these documents into force not more than three years before the notification of this Directive;

(c) for purposes of the application of this Directive as regards the calculation and disclosure in balance sheets of depreciation relating to assets covered by the asset items mentioned in Article 9, C (II) (2) and (3), and Article 10, C (II) (2) and (3);

(d) for purposes of the application of Article 47 (1) of this Directive except as regards companies already under an obligation of publication under Article 2 (1) (f) of Directive 68/151/EEC. In this case the second subparagraph of Article 47 (1) of this Directive shall apply to the annual accounts and to the opinion drawn up by the person responsible for auditing the accounts;

(e) for purposes of the application of Article 51 (1) of this Directive.

Furthermore, this period of 18 months may be extended to eight years for companies the principal object of which is shipping and which are already in existence on the entry into force of the provisions referred to in paragraph 1.

3. The Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 56

The obligation to show in the annual accounts the items prescribed by Articles 9, 10 and 23 to 26 which relate to affiliated undertakings, and the obligation to provide information concerning these undertakings in accordance with Article 13 (2), 14 or 43 (1) (7), shall enter into force at the same time as a Council Directive on consolidated accounts.

Article 57

1. Until the entry into force of a Council Directive on consolidated accounts, and without prejudice to the provisions of Directives 68/151/EEC and 77/91/EEC, the Member States need not apply to the dependent companies of any group governed by their national laws the provisions of this Directive concerning the content, auditing and publication of the annual accounts of such dependent companies where the following conditions are fulfilled:

(a) the dominant company must be subject to the laws of a Member State;

(b) all shareholders or members of the dependent company must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;

(c) the dominant company must have declared that it guarantees the commitments entered into by the dependent company;

(d) the declarations referred to in (b) and (c) must be published by the dependent company in accordance with the first subparagraph of Article 47 (1);

(e) the annual accounts of the dependent company must be consolidated in the group's annual accounts;

(1) OJ No L 327, 19. 12. 1975, p. 4.

(f) the exemption concerning the preparation, auditing and publication of the annual accounts of the dependent company must be disclosed in the notes on the group's annual accounts.

2. Articles 47 and 51 shall apply to the group's annual accounts.

3. Articles 2 to 46 shall apply as far as possible to the group's annual accounts.

Article 58

1. Until the entry into force of a Council Directive on consolidated accounts, and without prejudice to the provisions of Directive 77/91/EEC, the Member States need not apply to the dominant companies of groups governed by their national laws the provisions of this Directive concerning the auditing and publication of the profit and loss accounts of such dominant companies where the following conditions are fulfilled:

(a) this exemption must be published by the dominant company in accordance with Article 47 (1);

(b) the annual accounts of the dominant company must be consolidated in the group's annual accounts;

(c) the exemption concerning the auditing and publication of the profit and loss account of the dominant company must be mentioned in the notes on the group's annual accounts;

(d) the profit or loss of the dominant company, determined in accordance with the principles of this Directive, must be shown in the balance sheet of the dominant company.

2. Articles 47 and 51 shall apply to the group's annual accounts.

3. Articles 2 to 46 shall apply as far as possible to the group's annual accounts.

Article 59

Pending subsequent coordination, the Member States may permit the valuation of holdings in affiliated undertakings by the equity method provided the following conditions are fulfilled:

(a) the use of this method of valuation must be disclosed in the notes on the accounts of a company having such holdings;

(b) the amount of any differences existing when such holdings were acquired between their purchase price and the percentage of the capital which they represent, including the affiliated undertaking's reserves, profit and loss and profits and losses brought forward, must be shown separately in the balance sheet or in the notes on the accounts of a company having such holdings;

(c) the purchase price of these holdings shall be increased or reduced in the balance sheet of a company having such holdings by the profits or losses realized by the affiliated undertaking according to the percentage of capital held;

(d) the amounts specified in subparagraph (c) shall be shown each year in the profit and loss account of a company having such holdings as a separate item with an appropriate heading;

(e) when an affiliated undertaking distributes dividends to a company having such holdings, their book values shall be reduced accordingly;

(f) when the amounts shown in the profit and loss account in accordance with subparagraph (d) exceed the amounts of dividends already received or the payment of which can be claimed, the amount of the differences must be placed in a reserve which cannot be distributed to shareholders.

Article 60

Pending subsequent coordination, the Member States may prescribe that investments in which investment companies within the meaning of Article 5 (2) have invested their funds shall be valued on the basis of their market value.

In that case, the Member States may also waive the obligation on investment companies with variable capital to show separately the value adjustments referred to in Article 36.

Article 61

Until the entry into force of a Council Directive on consolidated accounts, the Member States need not apply to the dominant companies of groups governed by their national laws the provisions of Article 43 (1) (2) concerning the amount of capital and reserves and the profits and losses of the undertakings concerned if the annual accounts of such undertakings are

consolidated into the group's annual accounts or if the holdings in those undertakings are valued by the equity method.

Article 62

This Directive is addressed to the Member States.

Done at Brussels, 25 July 1978.

For the Council

The President

K. von DOHNANYI

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 8 November 1990

amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecus

(90/604/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the harmonization of the national provisions concerning the presentation and content of annual accounts and of the annual report, the valuation methods and the publication of these documents as concerns, in particular, public and private limited liability companies was the subject of Directive 78/660/EEC (4), as last amended by the Act of Accession of Spain and Portugal;

Whereas the administrative procedures imposed on small and medium-sized undertakings should be simplified in accordance with the Council resolution of 3 November 1986 on the action programme for small and medium-sized undertakings (SMUs) (5) and the Council resolution of 30 June 1988 on the improvement of the business environment and action to promote the development of enterprises, especially small and medium-sized enterprises in the Community (6), which calls more especially for a substantial simplification of the obligations arising from Directive 78/660/EEC;

Whereas, on the basis of Article 53 (2) of Directive 78/660/EEC, it is appropriate that a second review of the thresholds defining small and medium-sized undertakings should be carried out;

Whereas the derogations as regards establishment, audit and publication of accounts which Member States may provide for under Directive 78/660/EEC should be increased as far as small companies are concerned;

Whereas Member States should be afforded the possibility of allowing companies not to include in the notes to the accounts certain information concerning remuneration granted to members of the company's administrative or management body where such information enables the position of a given member of such bodies to be identified;

Whereas it is also appropriate to enable Member States to render less stringent the obligations imposed on small companies as regards the drawing up and publication of the notes to the accounts; whereas Member States should be able to exempt such companies from the obligation to supply, in the notes to the accounts, certain data which may be deemed of less importance for small companies; whereas, with the same interests in view, Member States should have the possibility of exempting such companies from the obligation to draw up an annual report providing they include, in the notes to the accounts, the data referred to in Article 22 (2) of Directive 77/91/EEC (7) concerning the acquisition of own shares;

(1) OJ No C 287, 11. 11. 1986, p. 5;
OJ No C 318, 20. 12. 1989, p. 12.
(2) OJ No C 158, 26. 6. 1989, p. 257;
Decision of 24 October 1990 (not yet published in the Official Journal).
(3) OJ No C 139, 5. 6. 1989, p. 42.
(4) OJ No L 222, 14. 8. 1978, p. 11.
(5) OJ No C 287, 14. 11. 1986, p. 1.
(6) OJ No C 197, 27. 7. 1988, p. 6.

(7) OJ No L 26, 31. 1. 1977, p. 1.

Whereas it is important to promote European monetary integration by allowing companies, at least, to publish their accounts in ecus; whereas this is simply an additional facility which does not change the position of companies which can at present already draw up and publish accounts in ecus; whereas, on this point, the provisions of Directives 78/660/EEC and 83/349/EEC (1), as amended by the Act of Accession of Spain and Portugal should be clarified by obliging companies which have recourse to this facility to indicate the conversion rate used in the notes to the accounts,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 11 of Directive 78/660/EEC is hereby amended as follows:

1. 'balance sheet total: ECU 1 550 000' is hereby replaced by 'balance sheet total: ECU 2 000 000';

2. 'net turnover: ECU 3 200 000' is hereby replaced by 'net turnover: ECU 4 000 000';

3. the following paragraph is hereby added:

'Member States may waive the application of Article 15 (3) (a) and (4) to the abridged balance sheet'.

The revision of the above amounts in ecus shall constitute the second five-yearly revision provided for in Article 53 (2) of Directive 78/660/EEC.

Article 2

Article 27 of Directive 78/660/EEC is hereby amended as follows:

1. 'balance sheet total: ECU 6 200 000' is hereby replaced by 'balance sheet total: ECU 8 000 000';

2. 'net turnover: ECU 12 800 000' is hereby replaced by 'net turnover: ECU 16 000 000'.

The revision of the above amounts in ecus shall constitute the second five-yearly revision provided for in Article 53 (2) of Directive 78/660/EEC.

Article 3

Article 53 (1) of Directive 78/660/EEC shall be replaced by the following:

'1. For the purposes of this Directive, the ecu shall be that defined in Regulation (EEC) No 3180/78 (*), as amended by Regulation (EEC) No 2626/84 (**), and by Regulation (EEC) No 1971/89 (***).

The equivalent in national currency shall be that applying on 8 November 1990.

(1) OJ No L 193, 18. 7. 1983, p. 1.

(*) OJ No L 379, 30. 12. 1978, p. 1.
(**) OJ No L 247, 16. 9. 1984, p. 1.
(***) OJ No L 189, 4. 7. 1989, p. 1.'

Article 4

The following paragraph is hereby added to Article 43 of Directive 78/660/EEC:

'3. Member States may waive the requirement to provide the information referred to in paragraph 1 point 12 where such information makes it possible to identify the position of a specific member of such a body.'

Article 5

Article 44 of Directive 78/660/EEC is hereby replaced by the following:

'Article 44

1. Member States may permit companies covered by Article 11 to draw up abridged notes on their accounts without the information prescribed in Article 43 (1) points 5 to 12. However, the notes must disclose the information prescribed in Article 43 (1) point 6 in total for all the items concerned.

2. Member States may also permit the companies referred to in paragraph 1 to be exempted from the obligation to disclose in the notes on their accounts the information prescribed in Article 15 (3) (a) and (4), Articles 18, 21 and 29 (2), the second subparagraph of Article 30, Article 34 (2), Article 40 (2) and the second subparagraph of Article 42.

3. Article 12 shall apply.'

Article 6

The following paragraph is hereby added to Article 46 of Directive 78/660/EEC;

'3. Member States may waive the obligation on companies covered by Article 11 to prepare annual reports, provided that the information referred to in Article 22 (2) of Directive 77/91/EEC concerning the acquisition by a company of its own shares is given in the notes to their accounts.'

Article 7

Article 47 (2) (b) of Directive 78/660/EEC is hereby replaced by the following :

'(b) abridged notes on their accounts in accordance with Article 44.'

Article 8

The following Article is hereby inserted in Directive 78/660/EEC :

'*Article 50a*

Annual accounts may be published in the currency in which they were drawn up and in ecus, translated at the exchange rate prevailing on the balance sheet date. That rate shall be disclosed in the notes on the accounts.'

Article 9

The following Article is hereby inserted in Directive 83/349/EEC :

'*Article 38a*

Consolidated accounts may be published in the currency in which they were drawn up and in ecus, translated at the exchange rate prevailing on the consolidated balance sheet date. That rate shall be disclosed in the notes on the accounts.'

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 1 January 1993. They shall forthwith inform the Commission thereof.

2. Member States may provide that this Directive shall only apply for the first time to accounts for the financial year beginning on 1 January 1995 or during the calendar year 1995.

3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 8 November 1990.

For the Council

The President

P. ROMITA

COUNCIL DIRECTIVE

of 8 November 1990

amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives

(90/605/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Directive 78/660/EEC (4), as last amended by Directive 90/604/EEC (5), applies to the annual accounts of public and private limited liability companies in particular because those types of company offer no safeguards to third parties beyond the amounts of their net assets;

Whereas, in accordance with Directive 83/349/EEC (6), as last amended by Directive 90/604/EEC, Member States need require only companies covered by Directive 78/660/EEC to draw up consolidated accounts;

Whereas, within the Community, there is a substantial and constantly growing number of partnerships and limited partnerships all of the fully liable members of which are constituted either as public or as private limited liability companies;

Whereas these fully liable members may also be companies which do not fall within the law of a Member State but which have a legal status comparable to that referred to in Directive 68/151/EEC (7);

Whereas it would run counter to the spirit and aims of those Directives to allow such partnerships and partnerships with limited liability not to be subject to Community rules;

Whereas the provisions covering the scope of the two Directives in question should therefore be explicitly supplemented;

Whereas it is of importance that the name, head office and legal status of any undertaking of which a limited liability company is a fully liable member should be indicated in the notes to the accounts of such member;

Whereas the obligation to draw up, publish and to have audited the accounts of partnerships and limited liability partnerships may also be imposed on the fully liable member; whereas it should also be possible to include these companies in consolidated accounts, drawn up by such member or established at a higher level;

Whereas some of the partnerships covered by this Directive are not subject, in the Member State where they have their head office, to entry in a register, which makes it difficult to apply accounting obligations to them; whereas, in particular in these cases, special rules are necessary according to whether the fully liable members are undertakings which fall within the law of the same Member State, another Member State or a third country,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 78/660/EEC is hereby amended as follows:

1. the following subparagraphs are added to Article 1 (1):

'The coordination measures prescribed by this Directive shall also apply to the Member States' laws, regulations and administrative provisions relating to the following types of company:

(a) in Germany:

die offene Handelsgesellschaft, die Kommanditgesellschaft;

(b) in Belgium:

la société en nom collectif/de vennootschap onder firma,
la société en commandité simple/de gewone commanditaire vennootschap;

(c) in Denmark:

interessentskaber, kommanditselskaber;

(d) in France:

la société en nom collectif, la société en commandite simple;

(e) in Greece:

η ομόρρυθμος εταιρεία, η ετερόρρυθμος εταιρεία;

(f) in Spain:

sociedad colectiva, sociedad en comandita simple;

(g) in Ireland:

partnerships, limited partnerships, unlimited companies;

(1) OJ No C 144, 11. 6. 1986, p. 10.
(2) OJ No C 125, 11. 5. 1987, p. 140.
(3) OJ No C 328, 22. 12. 1986, p. 43.
(4) OJ No L 222, 14. 8. 1978, p. 11.
(5) See page 57 of this Official Journal.
(6) OJ No L 193, 18. 7. 1983, p. 1.
(7) OJ No L 65, 14. 3. 1968, p. 8.

(h) in Italy

la società in nome collettivo, la società in accomandita semplice;

(i) in Luxembourg:

la société en nom collectif, la société en commandite simple;

(j) in the Netherlands:

de vennootschap onder firma, de commanditaire vennootschap;

(k) in Portugal:

sociedade em nome colectivo, sociedade em comandita simples,

(l) in the United Kingdom

partnerships, limited partnerships, unlimited companies,

where all members having unlimited liability are companies of the types set out in the first subparagraph or companies which are not governed by the laws of a Member State but which have a legal form comparable to those referred to in Directive 68/151/EEC.

This Directive shall also apply to the types of companies or firms referred to in the second subparagraph where all members having unlimited liability are themselves companies of the types set out in that or the first subparagraph.';

2. the following subparagraph is added in Article 43 (1), point 2:

'the name, the head or registered office and the legal form of each of the undertakings of which the company or firm is a member having unlimited liability. This information may be omitted where for the purposes of Article 2 (3) it is of negligible importance only';

3. the following paragraph is inserted in Article 47:

'1a. The Member State of a company or firm referred to in Article 1 (1), second and third subparagraphs (entity concerned) may exempt that entity from publishing its accounts in accordance with Article 3 of Directive 68/151/EEC, provided that those accounts are available to the public at its head office, where:

(a) all the members having unlimited liability of the entity concerned are the companies referred to in the first subparagraph of Article 1 (1) governed by the laws of Member States other than the Member State whose law governs that entity and none of those companies publishes the accounts of the entity concerned with its own accounts; or

(b) all the members having unlimited liability are companies which are not governed by the laws of a Member State but which have a legal form comparable to those referred to in Directive 68/151/EEC.

Copies of the accounts must be obtainable upon request. The price of such a copy may not exceed its administrative cost. Appropriate sanctions must be provided for failure to comply with the publication obligation imposed in this paragraph.',

4. the following Article is inserted:

'Article 57a

1. Member States may require the companies referred to in the first subparagraph of Article 1 (1) governed by their law, which are members having unlimited liability of any of the companies and firms listed in Article 1 (1), second and third subparagraphs (entity concerned), to draw up, have audited and publish, with their own accounts, the accounts of the entity concerned in conformity with the provisions of this Directive.

In this case, the requirements of this Directive do not apply to the entity concerned.

2. Member States need not apply the requirements of this Directive to the entity concerned where:

(a) the accounts of this entity are drawn up, audited and published in conformity with the provisions of this Directive by a company which is a member having unlimited liability of the entity and is governed by the law of another Member State;

(b) the entity concerned is included in consolidated accounts drawn up, audited and published in accordance with Directive 83/349/EEC by a member having unlimited liability or where the entity concerned is included in the consolidated accounts of a larger body of undertakings drawn up, audited and published in conformity with Council Directive 83/349/EEC by a parent undertaking governed by the law of a Member State. The exemption must be disclosed in the notes on the consolidated accounts.

3. In these cases, the entity concerned must reveal to whomsoever so requests the name of the entity publishing the accounts.'

Article 2

Directive 83/349/EEC is hereby amended as follows:

1. the following subparagraph is inserted in Article 4 (1):

'The first subparagraph shall also apply where either the parent undertaking or one or more subsidiary undertakings is constituted as one of the types of company mentioned in Article 1 (1), second or third subparagraph of Directive 78/660/EEC.';

2. In Article 4, paragraph 2 is replaced by the following:

'2. The Member States may, however, grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is not constituted as one of the types of company mentioned in Article 4 (1) of this Directive or in Article 1 (1), second or third subparagraph of Directive 78/660/EEC.'

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1993. They shall forthwith inform the Commission thereof.

2. Member States may provide that the provisions referred to in paragraph 1 shall first apply to the annual accounts and consolidated accounts for financial years beginning on 1 January 1995 or during the 1995 calendar year.

3. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 8 November 1990.

For the Council

The President

P. ROMITA

COUNCIL DIRECTIVE 94/8/EC

of 21 March 1994

amending Directive 78/660/EEC as regards the revision of amounts expressed in ecus

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (1), and in particular Article 53 (2) thereof,

Having regard to the proposal from the Commission,

Whereas Articles 11 and 27 of Directive 78/660/EEC and, by way of reference, Article 6 of Directive 83/349/EEC (2) and Articles 20 and 21 of Directive 84/253/EEC (3) contain thresholds expressed in ecus for the balance sheet total and the net turnover within which the Member States may grant derogations from the said Directives;

Whereas, in accordance with Article 53 (2) of Directive 78/660/EEC, every five years the Council, acting on a proposal from the Commission, is to examine, and, if need be, revise the amounts expressed in ecus in that Directive, in the light of economic and monetary trends in the Community;

Whereas to date the Council, in accordance with Article 53 (2) of Directive 78/660/EEC, has on two occasions revised the said amounts by means of Directives 84/569/EEC (4) and 90/604/EEC (5);

Whereas the third five-year period ended on 24 July 1993 and a review of those amounts is thus justified;

Whereas over the last five years, the ecu has lost part of its value, measured in real terms; whereas, on the basis of the economic and monetary trends in the Community, an increase in the amounts expressed in ecus is necessary,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Article 11 of Directive 78/660/EEC is hereby amended as follows:

— in the first indent, 'balance sheet total: ECU 2 000 000' shall be replaced by 'balance sheet total: ECU 2 500 000',

— in the second indent, 'net turnover: ECU 4 000 000' shall be replaced by 'net turnover: ECU 5 000 000'.

2. Article 27 of Directive 78/660/EEC is hereby amended as follows:

— in the first indent, 'balance sheet total: ECU 8 000 000' shall be replaced by 'balance sheet total: ECU 10 000 000',

— in the second indent 'net turnover: ECU 16 000 000' shall be replaced by 'net turnover: ECU 20 000 000'.

3. The revision of the above amounts in ecus shall constitute the third five-yearly revision provided for in Article 53 (2) of Directive 78/660/EEC.

Article 2

The equivalent amount of the ecu in national currency shall be that obtaining on 21 March 1994 as published in the *Official Journal of the European Communities*.

Article 3

1. Those Member States which intend to make use of the option provided for in Articles 11 and 27 of Directive 78/660/EEC, as amended by this Directive, shall bring into force the measures necessary for them to comply with this Directive at any time after its publication. They shall forthwith inform the Commission thereof.

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 reference shall be laid down by Member States.

3. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

(1) OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).
(2) OJ No L 193, 18. 7. 1983, p. 1.
(3) OJ No L 126, 12. 5. 1984, p. 20.
(4) OJ No L 314, 4. 12. 1984, p. 28.
(5) OJ No L 317, 16. 11. 1990, p. 57.

Article 4

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 21 March 1994.

For the Council

The President

Y. PAPANTONIOU

III.c) **83/349/EEC**

Seventh Council Directive of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts
(OJ No L 193, 18.07.1983, p. 1-17)

Amend Art 38 by Dir 90/604/EEC
(OJ N° L 317. 16.11 1990. p. 57 - 59) (see p .....291)

Amend. Art. 4 by Dir. 90/605/EEC
(OJ N° L 317. 16.11.1990. p. 60 - 62) (see p..295.....)

II

(Acts whose publication is not obligatory)

COUNCIL

SEVENTH COUNCIL DIRECTIVE

of 13 June 1983

based on the Article 54 (3) (g) of the Treaty on consolidated accounts

(83/349/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas on 25 July 1978 the Council adopted Directive 78/660/EEC (4) on the coordination of national legislation governing the annual accounts of certain types of companies; whereas many companies are members of bodies of undertakings; whereas consolidated accounts must be drawn up so that financial information concerning such bodies of undertakings may be conveyed to members and third parties; whereas national legislation governing consolidated accounts must therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which companies must publish within the Community;

Whereas on 25 July 1978 the Council adopted Directive 78/660/EEC (4) on the coordination of national

(1) OJ No C 121, 2. 6. 1976, p. 2.
(2) OJ No C 163, 10. 7. 1978, p. 60.
(3) OJ No C 75, 26. 3. 1977, p. 5.
(4) OJ No L 222, 14. 8. 1978, p. 11.

which the power of control is based on a majority of voting rights but also of those in which it is based on agreements, where these are permitted; whereas, furthermore, Member States in which the possibility occurs must be permitted to cover cases in which in certain circumstances control has been effectively exercised on the basis of a minority holding; whereas the Member States must be permitted to cover the case of bodies of undertakings in which the undertakings exist on an equal footing with each other;

Whereas the aim of coordinating the legislation governing consolidated accounts is to protect the interests subsisting in companies with share capital; whereas such protection implies the principle of the preparation of consolidated accounts where such a company is a member of a body of undertakings, and that such accounts must be drawn up at least where such a company is a parent undertaking; whereas, furthermore, the cause of full information also requires that a subsidiary undertaking which is itself a parent undertaking draw up consolidated accounts; whereas, nevertheless, such a parent undertaking may, and, in certain circumstances, must be exempted from the obligation to draw up such consolidated accounts provided that its members and third parties are sufficiently protected;

Whereas, for bodies of undertakings not exceeding a certain size, exemption from the obligation to prepare consolidated accounts may be justified; whereas, accordingly, maximum limits must be set for such exemptions; whereas it follows therefrom that the Member States may either provide that it is sufficient to exceed the limit of one only of the three criteria for the exemption not to apply or adopt limits lower than those prescribed in the Directive;

Whereas consolidated accounts must give a true and fair view of the assets and liabilities, the financial position and the profit and loss of all the undertakings consolidated taken as a whole; whereas, therefore, consolidation should in principle include all of those undertakings; whereas such consolidation requires the full incorporation of the assets and liabilities and of the income and expenditure of those undertakings and the separate disclosure of the interests of persons outwith such bodies; whereas, however, the necessary corrections must be made to eliminate the effects of the financial relations between the undertakings consolidated;

Whereas a number of principles relating to the preparation of consolidated accounts and valuation in the context of such accounts must be laid down in order to ensure that items are disclosed consistently, and may readily be compared not only as regards the methods used in their valuation but also as regards the periods covered by the accounts;

Whereas participating interests in the capital of undertakings over which undertakings included in a consolidation exercise significant influence must be included in consolidated accounts by means of the equity method;

Whereas the notes on consolidated accounts must give details of the undertakings to be consolidated;

Whereas certain derogations originally provided for on a transitional basis in Directive 78/660/EEC may be continued subject to review at a later date,

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

Conditions for the preparation of consolidated accounts

Article 1

1. A Member State shall require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking):

(a) has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking); or

(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking; or

(c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions. A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for such contracts or clauses shall not be required to apply this provision; or

(d) is a shareholder in or member of an undertaking, and:

(aa) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or

(bb) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders' or members' voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements.

The Member States shall prescribe at least the arrangements referred to in (bb) above.

They may make the application of (aa) above dependent upon the holding's representing 20 % or more of the shareholders' or members' voting rights.

However, (aa) above shall not apply where another undertaking has the rights referred to in subparagraphs (a), (b) or (c) above with regard to that subsidiary undertaking.

2. Apart from the cases mentioned in paragraph 1 above and pending subsequent coordination, the Member States may require any undertaking governed by their national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking) holds a participating interest as defined in Article 17 of Directive 78/660/EEC in another undertaking (a subsidiary undertaking), and:

(a) it actually exercises a dominant influence over it; or

(b) it and the subsidiary undertaking are managed on a unified basis by the parent undertaking.

Article 2

1. For the purposes of Article 1 (1) (a), (b) and (d), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking must be added to those of the parent undertaking.

2. For the purposes of Article 1 (1) (a), (b) and (d), the rights mentioned in paragraph 1 above must be reduced by the rights:

(a) attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof; or

(b) attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

3. For the purposes of Article 1 (1) (a) and (c), the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.

Article 3

1. Without prejudice to Articles 13, 14 and 15, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.

2. For the purposes of paragraph 1 above, any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent undertaking which is the parent of the undertakings to be consolidated.

Article 4

1. For the purposes of this Directive, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated where either the parent undertaking or one or more subsidiary undertakings is established as one of the following types of company:

(a) *in Germany:*

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

(b) *in Belgium:*

la société anonyme / de naamloze vennootschap – la société en commandite par actions / de commanditaire vennootschap op aandelen – la société de personnes à responsabilité limitée / de personenvennootschap met beperkte aansprakelijkheid;

(c) *in Denmark:*

aktieselskaber, kommanditaktieselskaber, anparts-selskaber;

(d) *in France:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(e) *in Greece:*

η ανώνυμη εταιρία, η εταιρία περιορισμένης ευθύνης, η ετερόρρυθμη κατά μετοχές εταιρία;

(f) *in Ireland:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

(g) *in Italy:*

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

(h) *in Luxembourg:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(i) *in the Netherlands:*

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

(j) *in the United Kingdom:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee.

2. A Member State may, however, grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is not established as one of the types of company listed in paragraph 1 above.

Article 5

1. A Member State may grant exemption from the obligation imposed in Article 1 (1) where the parent

undertaking is a financial holding company as defined in Article 5 (3) of Directive 78/660/EEC, and:

(a) it has not intervened during the financial year, directly or indirectly, in the management of a subsidiary undertaking;

(b) it has not exercised the voting rights attaching to its participating interest in respect of the appointment of a member of a subsidiary undertaking's administrative, management or supervisory bodies during the financial year or the five preceding financial years or, where the exercise of voting rights was necessary for the operation of the administrative, management or supervisory bodies of the subsidiary undertaking, no shareholder in or member of the parent undertaking with majority voting rights or member of the administrative, management or supervisory bodies of that undertaking or of a member thereof with majority voting rights is a member of the administrative, management or supervisory bodies of the subsidiary undertaking and the members of those bodies so appointed have fulfilled their functions without any interference or influence on the part of the parent undertaking or of any of its subsidiary undertakings;

(c) it has made loans only to undertakings in which it holds participating interests. Where such loans have been made to other parties, they must have been repaid by the end of the previous financial year; and

(d) the exemption is granted by an administrative authority after fulfilment of the above conditions has been checked.

2. (a) Where a financial holding company has been exempted, Article 43 (2) of Directive 78/660/EEC shall not apply to its annual accounts with respect to any majority holdings in subsidiary undertakings as from the date provided for in Article 49 (2).

(b) The disclosures in respect of such majority holdings provided for in point 2 of Article 43 (1) of Directive 78/660/EEC may be omitted when their nature is such that they would be seriously prejudicial to the company, to its shareholders or members or to one of its subsidiaries. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

Article 6

1. Without prejudice to Articles 4 (2) and 5, a Member State may provide for an exemption from the obligation imposed in Article 1 (1) if as at the balance sheet date of a parent undertaking the undertakings to be consolidated do not together, on the basis of their latest annual accounts, exceed the limits of two of the three criteria laid down in Article 27 of Directive 78/660/EEC.

2. A Member State may require or permit that the set-off referred to in Article 19 (1) and the elimination referred to in Article 26 (1) (a) and (b) be not effected when the aforementioned limits are calculated. In that case, the limits for the balance sheet total and net turnover criteria shall be increased by 20 %.

3. Article 12 of Directive 78/660/EEC shall apply to the above criteria.

4. This Article shall not apply where one of the undertakings to be consolidated is a company the securities of which have been admitted to official listing on a stock exchange established in a Member State.

5. For 10 years after the date referred to in Article 49 (2), the Member States may multiply the criteria expressed in ECU by up to 2,5 and may increase the average number of persons employed during the financial year to a maximum of 500.

Article 7

1. Notwithstanding Articles 4 (2), 5 and 6, a Member State shall exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking if its own parent undertaking is governed by the law of a Member State in the following two cases:

(a) where that parent undertaking holds all of the shares in the exempted undertaking. The shares in that undertaking held by members of its administrative, management or supervisory bodies pursuant to an obligation in law or in the memorandum or articles of association shall be ignored for this purpose; or

(b) where that parent undertaking holds 90 % or more of the shares in the exempted undertaking and the remaining shareholders in or members of that undertaking have approved the exemption.

In so far as the laws of a Member State prescribe consolidation in this case at the time of the adoption of this Directive, that Member State need not apply this provision for 10 years after the date referred to in Article 49 (2).

2. Exemption shall be conditional upon compliance with all of the following conditions:

(a) the exempted undertaking and, without prejudice to Articles 13, 14 and 15, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State;

(b) (aa) the consolidated accounts referred to in (a) above and the consolidated annual report of the larger body of undertakings must be drawn up by the parent undertaking of that body and audited, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed, in accordance with this Directive;

(bb) the consolidated accounts referred to in (a) above and the consolidated annual report referred to in (aa) above, the report by the person responsible for auditing those accounts and, where appropriate, the appendix referred to in Article 9 must be published for the exempted undertaking in the manner prescribed by the law of the Member State governing that undertaking in accordance with Article 38. That Member State may require that those documents be published in its official language and that the translation be certified;

(c) the notes on the annual accounts of the exempted undertaking must disclose:

(aa) the name and registered office of the parent undertaking that draws up the consolidated accounts referred to in (a) above; and

(bb) the exemption from the obligation to draw up consolidated accounts and a consolidated annual report.

3. A Member State need not, however, apply this Article to companies the securities of which have been admitted to official listing on a stock exchange established in a Member State.

Article 8

1. In cases not covered by Article 7 (1), a Member State may, without prejudice to Articles 4 (2), 5 and 6, exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a Member State, provided that all the conditions set out in Article 7 (2) are fulfilled and that the shareholders in or members of the exempted undertaking who own a minimum proportion of the subscribed capital of that undertaking have not requested the preparation of consolidated accounts at least six months before the end of the financial year. The Member States may fix that proportion at not more than 10% for public limited liability companies and for limited partnerships with share capital, and at not more than 20% for undertakings of other types.

2. A Member State may not make it a condition for this exemption that the parent undertaking which prepared the consolidated accounts described in Article 7 (2) (a) must also be governed by its national law.

3. A Member State may not make exemption subject to conditions concerning the preparation and auditing of the consolidated accounts referred to in Article 7 (2) (a).

Article 9

1. A Member State may make the exemptions provided for in Articles 7 and 8 dependent upon the disclosure of additional information, in accordance with this Directive, in the consolidated accounts referred to in Article 7 (2) (a), or in an appendix thereto, if that information is required of undertakings governed by the national law of that Member State which are obliged to prepare consolidated accounts and are in the same circumstances.

2. A Member State may also make exemption dependent upon the disclosure, in the notes on the consolidated accounts referred to in Article 7 (2) (a), or in the annual accounts of the exempted undertaking, of all or some of the following information regarding the body of undertakings, the parent undertaking of which it is exempting from the obligation to draw up consolidated accounts:

— the amount of the fixed assets,

— the net turnover,

— the profit or loss for the financial year and the amount of the capital and reserves,

— the average number of persons employed during the financial year.

Article 10

Articles 7 to 9 shall not affect any Member State's legislation on the drawing up of consolidated accounts or consolidated annual reports in so far as those documents are required:

— for the information of employees or their representatives, or

— by an administrative or judicial authority for its own purposes.

Article 11

1. Without prejudice to Articles 4 (2), 5 and 6, a Member State may exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State, if all of the following conditions are fulfilled:

(a) the exempted undertaking and, without prejudice to Articles 13, 14 and 15, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings;

(b) the consolidated accounts referred to in (a) above and, where appropriate, the consolidated annual report must be drawn up in accordance with this Directive or in a manner equivalent to consolidated accounts and consolidated annual reports drawn up in accordance with this Directive;

(c) the consolidated accounts referred to in (a) above must have been audited by one or more persons authorized to audit accounts under the national law governing the undertaking which drew them up.

2. Articles 7 (2) (b) (bb) and (c) and 8 to 10 shall apply.

3. A Member State may provide for exemptions under this Article only if it provides for the same exemptions under Articles 7 to 10.

Article 12

1. Without prejudice to Articles 1 to 10, a Member State may require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if:

(a) that undertaking and one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings; or

(b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up.

2. Where paragraph 1 above is applied, undertakings related as defined in that paragraph together with all of their subsidiary undertakings shall be undertakings to be consolidated, as defined in this Directive, where one or more of those undertakings is established as one of the types of company listed in Article 4.

3. Articles 3, 4 (2), 5, 6, 13 to 28, 29 (1), (3), (4) and (5), 30 to 38 and 39 (2) shall apply to the consolidated accounts and the consolidated annual report covered by this Article, references to parent undertakings being understood to refer to all the undertakings specified in paragraph 1 above. Without prejudice to Article 19 (2), however, the items 'capital', 'share premium account', 'revaluation reserve', 'reserves', 'profit or loss brought forward', and 'profit or loss for the financial year' to be included in the consolidated accounts shall be the aggregate amounts attributable to each of the undertakings specified in paragraph 1.

Article 13

1. An undertaking need not be included in consolidated accounts where it is not material for the purposes of Article 16 (3).

2. Where two or more undertakings satisfy the requirements of paragraph 1 above, they must nevertheless be included in consolidated accounts if, as a whole, they are material for the purposes of Article 16 (3).

3. In addition, an undertaking need not be included in consolidated accounts where:

(a) severe long-term restrictions substantially hinder:

(aa) the parent undertaking in the exercise of its rights over the assets or management of that undertaking; or

(bb) the exercise of unified management of that undertaking where it is in one of the relationships defined in Article 12 (1); or

(b) the information necessary for the preparation of consolidated accounts in accordance with this Directive cannot be obtained without disproportionate expense or undue delay; or

(c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

Article 14

1. Where the activities of one or more undertakings to be consolidated are so different that their inclusion in the consolidated accounts would be incompatible with the obligation imposed in Article 16 (3), such undertakings must, without prejudice to Article 33 of this Directive, be excluded from the consolidation.

2. Paragraph 1 above shall not be applicable merely by virtue of the fact that the undertakings to be consolidated

are partly industrial, partly commercial, and partly provide services, or because such undertakings carry on industrial or commercial activities involving different products or provide different services.

3. Any application of paragraph 1 above and the reasons therefor must be disclosed in the notes on the accounts. Where the annual or consolidated accounts of the undertakings thus excluded from the consolidation are not published in the same Member State in accordance with Directive 68/151/EEC (1), they must be attached to the consolidated accounts or made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

Article 15

1. A Member State may, for the purposes of Article 16 (3), permit the omission from consolidated accounts of any parent undertaking not carrying on any industrial or commercial activity which holds shares in a subsidiary undertaking on the basis of a joint arrangement with one or more undertakings not included in the consolidated accounts.

2. The annual accounts of the parent undertaking shall be attached to the consolidated accounts.

3. Where use is made of this derogation, either Article 59 of Directive 78/660/EEC shall apply to the parent undertaking's annual accounts or the information which would have resulted from its application must be given in the notes on those accounts.

SECTION 2

The preparation of consolidated accounts

Article 16

1. Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit-and-loss account and the notes on the accounts. These documents shall constitute a composite whole.

2. Consolidated accounts shall be drawn up clearly and in accordance with this Directive.

3. Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.

4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3 above, additional information must be given.

5. Where, in exceptional cases, the application of a provision of Articles 17 to 35 and 39 is incompatible with the obligation imposed in paragraph 3 above, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.

6. A Member State may require or permit the disclosure in the consolidated accounts of other information as well as that which must be disclosed in accordance with this Directive.

Article 17

1. Articles 3 to 10, 13 to 26 and 28 to 30 of Directive 78/660/EEC shall apply in respect of the layout of consolidated accounts, without prejudice to the provisions of this Directive and taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with annual accounts.

2. Where there are special circumstances which would entail undue expense a Member State may permit stocks to be combined in the consolidated accounts.

Article 18

The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.

Article 19

1. The book values of shares in the capital of undertakings included in a consolidation shall be set off against the proportion which they represent of the capital and reserves of those undertakings:

(a) That set-off shall be effected on the basis of book values as at the date as at which such undertakings are included in the consolidations for the first time. Differences arising from such set-offs shall as far as

(1) OJ No L 65, 14. 3. 1968, p. 8.

possible be entered directly against those items in the consolidated balance sheet which have values above or below their book values.

(b) A Member State may require or permit set-offs on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or, in the event of acquisition in two or more stages, as at the date on which the undertaking became a subsidiary.

(c) Any difference remaining after the application of (a) or resulting from the application of (b) shall be shown as a separate item in the consolidated balance sheet with an appropriate heading. That item, the methods used and any significant changes in relation to the preceding financial year must be explained in the notes on the accounts. Where the offsetting of positive and negative differences is authorized by a Member State, a breakdown of such differences must also be given in the notes on the accounts.

2. However, paragraph 1 above shall not apply to shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation. In the consolidated accounts such shares shall be treated as own shares in accordance with Directive 78/660/EEC.

Article 20

1. A Member State may require or permit the book values of shares held in the capital of an undertaking included in the consolidation to be set off against the corresponding percentage of capital only, provided that:

(a) the shares held represent at least 90 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares of that undertaking other than shares of the kind described in Article 29 (2) (a) of Directive 77/91/EEC (1);

(b) the proportion referred to in (a) above has been attained pursuant to an arrangement providing for the issue of shares by an undertaking included in the consolidation; and

(c) the arrangement referred to in (b) above did not include a cash payment exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares issued.

2. Any difference arising under paragraph 1 above shall be added to or deducted from consolidated reserves as appropriate.

3. The application of the method described in paragraph 1 above, the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes on the accounts.

Article 21

The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

Article 22

The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit-and-loss account.

Article 23

The amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit-and-loss account as a separate item with an appropriate heading.

Article 24

Consolidated accounts shall be drawn up in accordance with the principles enunciated in Articles 25 to 28.

Article 25

1. The methods of consolidation must be applied consistently from one financial year to another.

2. Derogations from the provisions of paragraph 1 above shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

Article 26

1. Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking. In particular:

(1) OJ No L 26, 31. 1. 1977, p. 1.

(a) debts and claims between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;

(b) income and expenditure relating to transactions between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;

(c) where profits and losses resulting from transactions between the undertakings included in a consolidation are included in the book values of assets, they shall be eliminated from the consolidated accounts. Pending subsequent coordination, however, a Member State may allow the eliminations mentioned above to be effected in proportion to the percentage of the capital held by the parent undertaking in each of the subsidiary undertakings included in the consolidation.

2. A Member State may permit derogations from the provisions of paragraph 1 (c) above where a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail undue expense. Any such derogation is must be disclosed and where the effect on the assets, liabilities, financial position and profit or loss of the undertakings, included in the consolidation, taken as a whole, is material, that fact must be disclosed in the notes on the consolidated accounts.

3. Derogations from the provisions of paragraph 1 (a), (b) or (c) above shall be permitted where the amounts concerned are not material for the purposes of Article 16 (3).

Article 27

1. Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent undertaking.

2. A Member State may, however, require or permit consolidated accounts to be drawn up as at another date in order to take account of the balance sheet date of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts together with the reasons therefor. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between that undertaking's balance sheet date and the consolidated balance sheet date.

3. Where an undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

Article 28

If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful. Where such a change is a major one, a Member State may require or permit this obligation to be fulfilled by the preparation of an adjusted opening balance sheet and an adjusted profit-and-loss account.

Article 29

1. Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with Articles 31 to 42 and 60 of Directive 78/660/EEC.

2. (a) An undertaking which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However, a Member State may require or permit the use in consolidated accounts of other methods of valuation in accordance with the abovementioned Articles of Directive 78/660/EEC.

(b) Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts and the reasons therefor given

3. Where assets and liabilities to be included in consolidated accounts have been valued by undertakings included in the consolidation by methods differing from those used for the consolidation, they must be revalued in accordance with the methods used for the consolidation, unless the results of such revaluation are not material for the purposes of Article 16 (3). Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes on the consolidated accounts and the reasons for them given.

4. Account shall be taken in the consolidated balance sheet and in the consolidated profit-and-loss account of any difference arising on consolidation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.

5. Where assets to be included in consolidated accounts have been the subject of exceptional value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments have been eliminated. A Member State may, however, require or permit that such assets be incorporated in the consolidated accounts without the elimination of the adjustments, provided that their amounts, together with the reasons for them, are disclosed in the notes on the consolidated accounts.

Article 30

1. A separate item as defined in Article 19 (1) (c) which corresponds to a positive consolidation difference shall be dealt with in accordance with the rules laid down in Directive 78/660/EEC for the item 'goodwill'.

2. A Member State may permit a positive consolidation difference to be immediately and clearly deducted from reserves.

Article 31

An amount shown as a separate item, as defined in Article 19 (1) (c), which corresponds to a negative consolidation difference may be transferred to the consolidated profit-and-loss account only:

(a) where that difference corresponds to the expectation at the date of acquisition of unfavourable future results in that undertaking, or to the expectation of costs which that undertaking would incur, in so far as such an expectation materializes; or

(b) in so far as such a difference corresponds to a realized gain.

Article 32

1. Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, a Member State may require or permit the inclusion of that other undertaking in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation.

2. Articles 13 to 31 shall apply *mutatis mutandis* to the proportional consolidation referred to in paragraph 1 above.

3. Where this Article is applied, Article 33 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in Article 33.

Article 33

1. Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in Article 17 of Directive 78/660/EEC, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 shall apply.

2. When this Article is applied for the first time to a participating interest covered by paragraph 1 above, that participating interest shall be shown in the consolidated balance sheet either:

(a) at its book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time; or

(b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time.

(c) A Member State may prescribe the application of one or other of (a) and (b) above. The consolidated balance sheet or the notes on the accounts must indicate whether (a) or (b) has been used.

(d) In addition, for the purposes of (a) and (b) above, a Member State may require or permit the calculation of the difference as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

3. Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 29 (2),

they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used for consolidation. Where such revaluation has not been carried out that fact must be disclosed in the notes on the accounts. A Member State may require such revaluation.

4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of the associated undertaking's capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to that participating interest.

5. In so far as the positive difference referred to in paragraph 2 (a) or (b) above cannot be related to any category of assets or liabilities it shall be dealt with in accordance with Articles 30 and 39 (3).

6. The proportion of the profit or loss of the associated undertakings attributable to such participating interests shall be shown in the consolidated profit and-loss account as a separate item under an appropriate heading.

7. The eliminations referred to in Article 26 (1) (c) shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) shall apply.

8. Where an associated undertaking draws up consolidated accounts, the foregoing provisions shall apply to the capital and reserves shown in such consolidated accounts.

9. This Article need not be applied where the participating interest in the capital of the associated undertaking is not material for the purposes of Article 16 (3).

Article 34

In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least:

1. The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in foreign currency the bases of conversion used to express them in the currency in which the consolidated accounts are drawn up must be disclosed.

2. (a) The names and registered offices of the undertakings included in the consolidation; the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; which of the conditions referred to in Articles 1 and 12 (1) following application of Article 2 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 1 (1) (a) and where the proportion of the capital and the proportion of the voting rights held are the same.

   (b) The same information must be given in respect of undertakings excluded from a consolidation pursuant to Articles 13 and 14 and, without prejudice to Article 14 (3), an explanation must be given for the exclusion of the undertakings referred to in Article 13.

3. (a) The names and registered offices of undertakings associated with an undertaking included in the consolidation as described in Article 33 (1) and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

   (b) The same information must be given in respect of the associated undertakings referred to in Article 33 (9), together with the reasons for applying that provision.

4. The names and registered offices of undertakings proportionally consolidated pursuant to Article 32, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

5. The name and registered office of each of the undertakings, other than those referred to in paragraphs 2, 3 and 4 above, in which undertakings included in the consolidation and those excluded pursuant to Article 14, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where, for the purposes of Article 16 (3), it is of

negligible importance only. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than 50 % of its capital is held (directly or indirectly) by the abovementioned undertakings.

6. The total amount shown as owed in the consolidated balance sheet and becoming due and payable after more than five years, as well as the total amount shown as owed in the consolidated balance sheet and covered by valuable security furnished by undertakings included in the consolidation, with an indication of the nature and form of the security.

7. The total amount of any financial commitments that are not included in the consolidated balance sheet, in so far as this information is of assistance in assessing the financial position of the undertakings included in the consolidation taken as a whole. Any commitments concerning pensions and affiliated undertakings which are not included in the consolidation must be disclosed separately.

8. The consolidated net turnover as defined in Article 28 of Directive 78/660/EEC broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the ordinary activities of the undertakings included in the consolidation taken as a whole are organized, these categories and markets differ substantially from one another.

9. (a) The average number of persons employed during the financial year by undertakings included in the consolidation broken down by categories and, if they are not disclosed separately in the consolidated profit-and-loss account, the staff costs relating to the financial year.

   (b) The average number of persons employed during the financial year by undertakings to which Article 32 has been applied shall be disclosed separately.

10. The extent to which the calculation of the consolidated profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in Articles 31 and 34 to 42 of Directive 78/660/EEC and in Article 29 (5) of this Directive, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on the future tax charges of the undertakings included in the consolidation taken as a whole is material, details must be disclosed.

11. The difference between the tax charged to the consolidated profit-and-loss account for the financial year and to those for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.

12. The amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies of the parent undertaking by reason of their responsibilities in the parent undertaking and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies, with an indication of the total for each category. A Member State may require that emoluments granted by reason of responsibilities assumed in undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

13. The amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies of the parent undertaking by that undertaking or by one of its subsidiary undertakings, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantee of any kind with an indication of the total for each category. A Member State may require that advances and credits granted by undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

Article 35

1. A Member State may allow the disclosures prescribed in Article 34 (2), (3), (4) and (5):

(a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;

(b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

2. Paragraph 1 (b) shall also apply to the information prescribed in Article 34 (8).

SECTION 3

The consolidated annual report

Article 36

1. The consolidated annual report must include at least a fair review of the development of business and the position of the undertakings included in the consolidation taken as a whole.

2. In respect of those undertakings, the report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year,

(b) the likely future development of those undertakings taken as a whole;

(c) the activities of those undertakings taken as a whole in the field of research and development;

(d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may require or permit the disclosure of these particulars in the notes on the accounts.

SECTION 4

The auditing of consolidated accounts

Article 37

1. An undertaking which draws up consolidated accounts must have them audited by one or more persons authorized to audit accounts under the laws of the Member State which govern that undertaking.

2. The person or persons responsible for auditing the consolidated accounts must also verify that the consolidated annual report is consistent with the consolidated accounts for the same financial year.

SECTION 5

The publication of consolidated accounts

Article 38

1. Consolidated accounts, duly approved, and the consolidated annual report, together with the opinion submitted by the person responsible for auditing the consolidated accounts, shall be published for the undertaking which drew up the consolidated accounts as laid down by the laws of the Member State which govern it in accordance with Article 3 of Directive 68/151/EEC.

2. The second subparagraph of Article 47 (1) of Directive 78/660/EEC shall apply with respect to the consolidated annual report.

3. The following shall be substituted for the second subparagraph of Article 47 (1) of Directive 78/660/EEC: 'It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost'.

4. However, where the undertaking which drew up the consolidated accounts is not established as one of the types of company listed in Article 4 and is not required by its national law to publish the documents referred to in paragraph 1 in the same manner as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its head office. It must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

5. Articles 48 and 49 of Directive 78/660/EEC shall apply.

6. The Member States shall provide for appropriate sanctions for failure to comply with the publication obligations imposed in this Article.

SECTION 6

Transitional and final provisions

Article 39

1. When, for the first time, consolidated accounts are drawn up in accordance with this Directive for a body of undertakings which was already connected, as described in Article 1 (1), before application of the provisions referred to in Article 49 (1), a Member State may require or permit that, for the purposes of Article 19 (1), account be taken of the book value of a holding and the proportion of the capital and reserves that it represents as at a date before or the same as that of the first consolidation.

2. Paragraph 1 above shall apply *mutatis mutandis* to the valuation for the purposes of Article 33 (2) of a holding, or of the proportion of capital and reserves that

it represents, in the capital of an undertaking associated with an undertaking included in the consolidation, and to the proportional consolidation referred to in Article 32.

3. Where the separate item defined in Article 19 (1) corresponds to a positive consolidation difference which arose before the date of the first consolidated accounts drawn up in accordance with this Directive, a Member State may:

(a) for the purposes of Article 30 (1), permit the calculation of the limited period of more than five years provided for in Article 37 (2) of Directive 78/660/EEC as from the date of the first consolidated accounts drawn up in accordance with this Directive; and

(b) for the purposes of Article 30 (2), permit the deduction to be made from reserves as at the date of the first consolidated accounts drawn up in accordance with this Directive.

Article 40

1. Until expiry of the deadline imposed for the application in national law of the Directives supplementing Directive 78/660/EEC as regards the harmonization of the rules governing the annual accounts of banks and other financial institutions and insurance undertakings, a Member State may derogate from the provisions of this Directive concerning the layout of consolidated accounts, the methods of valuing the items included in those accounts and the information to be given in the notes on the accounts:

(a) with regard to any undertaking to be consolidated which is a bank, another financial institution or an insurance undertaking;

(b) where the undertakings to be consolidated comprise principally banks, financial institutions or insurance undertakings.

They may also derogate from Article 6, but only in so far as the limits and criteria to be applied to the above undertakings are concerned.

2. In so far as a Member State has not required all undertakings which are banks, other financial institutions or insurance undertakings to draw up consolidated accounts before implementation of the provisions referred to in Article 49 (1), it may, until its national law implements one of the Directives mentioned in paragraph 1 above, but not in respect of financial years ending after 1993:

(a) suspend the application of the obligation imposed in Article 1 (1) with respect to any of the above undertakings which is a parent undertaking. That fact must be disclosed in the annual accounts of the parent undertaking and the information prescribed in point 2 of Article 43 (1) of Directive 78/660/EEC must be given for all subsidiary undertakings;

(b) where consolidated accounts are drawn up and without prejudice to Article 33, permit the omission from the consolidation of any of the above undertakings which is a subsidiary undertaking. The information prescribed in Article 34 (2) must be given in the notes on the accounts in respect of any such subsidiary undertaking.

3. In the cases referred to in paragraph 2 (b) above, the annual or consolidated accounts of the subsidiary undertaking must, in so far as their publication is compulsory, be attached to the consolidated accounts or, in the absence of consolidated accounts, to the annual accounts of the parent undertaking or be made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

Article 41

1. Undertakings which are connected as described in Article 1 (1) (a), (b) and (d) (bb), and those other undertakings which are similarly connected with one of the aforementioned undertakings, shall be affiliated undertakings for the purposes of this Directive and of Directive 78/660/EEC.

2. Where a Member State prescribes the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), the undertakings which are connected as described in those Articles and those other undertakings which are connected similarly, or are connected as described in paragraph 1 above to one of the aforementioned undertakings, shall be affiliated undertakings as defined in paragraph 1.

3. Even where a Member State does not prescribe the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), it may apply paragraph 2 of this Article.

4. Articles 2 and 3 (2) shall apply.

5. When a Member State applies Article 4 (2), it may exclude from the application of paragraph 1 above affiliated undertakings which are parent undertakings and which by virtue of their legal form are not required by

that Member State to draw up consolidated accounts in accordance with the provisions of this Directive, as well as parent undertakings with a similar legal form.

Article 42

The following shall be substituted for Article 56 of Directive 78/660/EEC:

'Article 56

1. The obligation to show in annual accounts the items prescribed by Articles 9, 10 and 23 to 26 which relate to affiliated undertakings, as defined by Article 41 of Directive 83/349/EEC, and the obligation to provide information concerning these undertakings in accordance with Articles 13 (2), and 14 and point 7 of Article 43 (1) shall enter into force on the date fixed in Article 49 (2) of that Directive.

2. The notes on the accounts must also disclose:

(a) the name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the company forms part as a subsidiary undertaking;

(b) the name and registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings of which the company forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in (a) above;

(c) the place where copies of the consolidated accounts referred to in (a) and (b) above may be obtained provided that they are available.'

Article 43

The following shall be substituted for Article 57 of Directive 78/660/EEC:

'Article 57

Notwithstanding the provisions of Directives 68/151/EEC and 77/91/EEC, a Member State need not apply the provisions of this Directive concerning the content, auditing and publication of annual accounts to companies governed by their national laws which are subsidiary undertakings, as defined in Directive 83/349/EEC, where the following conditions are fulfilled:

(a) the parent undertaking must be subject to the laws of a Member State;

(b) all shareholders or members of the subsidiary undertaking must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;

(c) the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary undertaking;

(d) the declarations referred to in (b) and (c) must be published by the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC;

(e) the subsidiary undertaking must be included in the consolidated accounts drawn up by the parent undertaking in accordance with Directive 83/349/EEC;

(f) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;

(g) the consolidated accounts referred to in (e), the consolidated annual report, and the report by the person responsible for auditing those accounts must be published for the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC.'

Article 44

The following shall be substituted for Article 58 of Directive 78/660/EEC:

'Article 58

A Member State need not apply the provisions of this Directive concerning the auditing and publication of the profit-and-loss account to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC where the following conditions are fulfilled:

(a) the parent undertaking must draw up consolidated accounts in accordance with Directive 83/349/EEC and be included in the consolidated accounts;

(b) the above exemption must be disclosed in the notes on the annual accounts of the parent undertaking;

(c) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;

(d) the profit or loss of the parent company, determined in accordance with this Directive, must be shown in the balance sheet of the parent company.'

Article 45

The following shall be substituted for Article 59 of Directive 78/660/EEC:

'Article 59

1. A Member State may require or permit that participating interests, as defined in Article 17, in the capital of undertakings over the operating and financial policies of which significant influence is exercised, be shown in the balance sheet in accordance with paragraphs 2 to 9 below, as sub-items of the items "shares in affiliated undertakings" or "participating interests", as the case may be. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 of Directive 83/349/EEC shall apply.

2. When this Article is first applied to a participating interest covered by paragraph 1, it shall be shown in the balance sheet either:

(a) at its book value calculated in accordance with Articles 31 to 42. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time; or

(b) at the amount corresponding to the proportion of the capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance with Articles 31 to 42 shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time.

(c) A Member State may prescribe the application of one or other of the above paragraphs. The balance sheet or the notes on the accounts must indicate whether (a) or (b) above has been used.

(d) In addition, when applying (a) and (b) above, a Member State may require or permit calculation of the difference as at the date of acquisition of the participating interest referred to in paragraph 1 or, where the acquisition took place in two or more stages, as at the date as at which the holding became a participating interest within the meaning of paragraph 1 above.

3. Where the assets or liabilities of an undertaking in which a participating interest within the meaning of paragraph 1 above is held have been valued by methods other than those used by the company drawing up the annual accounts, they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used by the company drawing up the annual accounts. Disclosure must be made in the notes on the accounts where such revaluation has not been carried out. A Member State may require such revaluation.

4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of the variation which has taken place during the financial year in the proportion of capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to the participating interest.

5. In so far as a positive difference covered by paragraph 2 (a) or (b) above cannot be related to any category of asset or liability, it shall be dealt with in accordance with the rules applicable to the item "goodwill".

6. (a) The proportion of the profit or loss attributable to participating interests within the meaning of paragraph 1 above shall be shown in the profit-and-loss account as a separate item with an appropriate heading.

(b) Where that amount exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference must be placed in a reserve which cannot be distributed to shareholders.

(c) A Member State may require or permit that the proportion of the profit or loss attributable to the participating interests referred to in paragraph 1 above be shown in the profit-and-loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.

7. The eliminations referred to in Article 26 (1) (c) of Directive 83/349/EEC shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) of that Directive shall apply.

8. Where an undertaking in which a participating interest within the meaning of paragraph 1 above is held draws up consolidated accounts, the foregoing paragraphs shall apply to the capital and reserves shown in such consolidated accounts.

9. This Article need not be applied where a participating interest as defined in paragraph 1 is not material for the purposes of Article 2 (3).'

Article 46

The following shall be substituted for Article 61 of Directive 78/660/EEC:

'Article 61

A Member State need not apply the provisions of point 2 of Article 43 (1) of this Directive concerning the amount of capital and reserves and profits and losses of the undertakings concerned to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC:

(a) where the undertakings concerned are included in consolidated accounts drawn up by that parent undertaking, or in the consolidated accounts of a larger body of undertakings as referred to in Article 7 (2) of Directive 83/349/EEC; or

(b) where the holdings in the undertakings concerned have been dealt with by the parent undertaking in its annual accounts in accordance with Article 59, or in the consolidated accounts drawn up by that parent undertaking in accordance with Article 33 of Directive 83/349/EEC.'

Article 47

The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall also:

(a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing, in particular, with practical problems arising in connection with its application;

(b) advise the Commission, if necessary, on additions or amendments to this Directive.

Article 48

This Directive shall not affect laws in the Member States requiring that consolidated accounts in which undertakings not falling within their jurisdiction are included be filed in a register in which branches of such undertakings are listed.

Article 49

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1988. They shall forthwith inform the Commission thereof.

2. A Member State may provide that the provisions referred to in paragraph 1 above shall first apply to consolidated accounts for financial years beginning on 1 January 1990 or during the calendar year 1990.

3. The Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 50

1. Five years after the date referred to in Article 49 (2), the Council, acting on a proposal from the Commission, shall examine and if need be revise Articles 1 (1) (d) (second subparagraph), 4 (2), 5, 6, 7 (1), 12, 43 and 44 in the light of the experience acquired in applying this Directive, the aims of this Directive and the economic and monetary situation at the time.

2. Paragraph 1 above shall not affect Article 53 (2) of Directive 78/660/EEC.

Article 51

This Directive is addressed to the Member States.

Done at Luxembourg, 13 June 1983.

For the Council

The President

H. TIETMEYER

III.d) 89/117/EEC

Council Directive of 13 February 1989 on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents
(OJ No L 44, 16.02.1989, p. 40-42)

Art. 1 : Scope

Art. 2 : Provisons relating to branches of credit institutions and financial institutions having their head offices in other Member States

Art. 3 : Provisions relating to branches of credit institutions and financial institutions having their head offices in non-member countries

Art. 4 : Language of publication

Art. 5 : Work of the Contact Committee

Final provisions (Art. 6-8)

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 13 February 1989

on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents

(89/117/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3)

Whereas the establishment of a European internal market presupposes that the branches of credit institutions and financial institutions having their head offices in other Member States should be treated in the same way as branches of credit institutions and financial institutions having their head offices in the same Member State; whereas this means that, with regard to the publication of annual accounting documents, it is sufficient for the branches of such institutions having their head offices in other Member States to publish the annual accounting documents of their institution as a whole;

Whereas, as part of a further instrument of coordination of the disclosure requirements in respect of branches, provision is made for certain documents and particulars relating to branches established in a Member State which certain types of companies governed by the law of another Member State, including banks and other financial institutions, have to publish; whereas, as regards disclosure of accounting documents, reference is made to specific provisions to be laid down for banks and other financial institutions;

Whereas the present practice of some Member States of requiring the branches of credit institutions and financial institutions having their head offices outside these Member States to publish annual accounts relating to their own activities is no longer justified following the adoption of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (4); whereas the publication of annual branch accounts cannot in any case provide the public, and in particular creditors, with an adequate view of the financial situation of the undertaking, since part of a whole cannot be viewed in isolation;

Whereas, on the other hand, in view of the present level of integration, the need for certain information on the activities of branches established in a Member State by credit institutions and financial institutions having their head offices outside that Member State cannot be disregarded; whereas, nevertheless, he extent of such information should be limited so as to prevent distortions of competition;

Whereas, however, this Directive affects only disclosure requirements concerning annual accounts, and does not in any way affect the obligations of branches of credit institutions and financial institutions to provide information pursuant to other requirements, deriving, for

(1) OJ No C 230, 11. 9. 1986, p. 4.
(2) OJ No C 319, 30. 11. 1987, p. 64 and OJ C 290, 14. 11. 1988, p. 66.
(3) OJ No C 345, 21. 12. 1987, p. 73.

(4) OJ No L 372, 31. 12. 1986, p. 1.

example, from social legislation, with regard to employees' rights to information, host countries' rights of supervision over credit institutions or financial institutions and fiscal legislation and also for statistical purposes;

Whereas equality of competition means, with regard to the branches of credit institutions and financial institutions having their head offices in non-member countries, that such branches must, on the one hand, in publishing annual accounting documents, adhere to a standard which is the same as, or equivalent to, that of the Community, but, on the other hand, that such branches should not have to publish annual accounts relating to their own activities if they fulfil the abovementioned condition;

Whereas the equivalence, required under this Directive, of annual accounting documents of credit institutions and financial institutions having their head offices in non-member countries may lead to problems of assessment; whereas it is therefore necessary for this and other problems in the area covered by the Directive, and in particular in its implementation, to be dealt with by representatives of the Member States and of the Commission jointly in a Contact Committee; whereas, in order to keep the number of such committees within limits, such cooperation should be carried out within the framework of the Committee set up under Article 52 of Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies (1), as last amended by Directive 84/569/EEC (2); whereas, however, where problems relating to credit institutions are to be dealt with, the Committee should be appropriately constituted,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. The coordination measures prescribed by this Directive shall apply to branches established in a Member State by credit institutions and financial institutions within the meaning of Article 2 (1) (a) and (b) of Directive 86/635/EEC having their head offices outside that Member State. Where a credit institution or financial institution has its head office in a non-member country, this Directive shall apply in so far as the credit institution or financial institution has a legal form which is comparable to the legal forms specified in the above-mentioned Article 2 (1) (a) and (b).

2. The third indent of Article 1 of Directive 77/780/EEC (3) shall apply *mutatis mutandis* to branches of credit institutions and financial institutions covered by this Directive.

Article 2

Provisions relating to branches of credit institutions and financial institutions having their head offices in other Member States

1. Member States shall require branches of credit institutions and financial institutions having their head offices in other Member States to publish, in accordance with Article 44 of Directive 86/635/EEC, the credit institution or financial institution documents referred to therein (annual accounts, consolidated accounts, annual report, consolidated annual report, opinions of the person responsible for auditing the annual accounts and consolidated accounts).

2. Such documents must be drawn up and audited in the manner required by the law of the Member State in which the credit institution or financial institution has its head office in accordance with Directive 86/635/EEC.

3. Branches may not be required to publish annual accounts relating to their own activities.

4. Member States may, pending further coordination, require branches to publish the following additional information:

— the income and costs of the branch deriving from items 1, 3, 4, 6, 7, 8 and 15 of Article 27 or from items A.4, A.9, B.1 to B.4 and B.7 of Article 28 of Directive 86/635/EEC,

— the average number of staff employed by the branch,

— the total claims and liabilities attributable to the branch, broken down into those in respect of credit institutions and those in respect of customers, together with the overall amount of such claims and liabilities expressed in the currency of the Member State in which the branch is established,

— the total assets and the amounts corresponding to items 2, 3, 4, 5 and 6 of the assets, 1, 2 and 3 of the liabilities and 1 and 2 of the off-balance sheet items defined in Article 4 and parallel Articles of Directive 86/635/EEC, and, in the case of items 2, 5 and 6 of the assets, a breakdown of securities according to whether they have or have not been regarded as financial fixed assets pursuant to Article 35 of Directive 86/635/EEC.

Where such information is required, its accuracy and its accordance with the annual accounts must be checked by one or more persons authorized to audit accounts under the law of the Member State in which the branch is established.

(1) OJ No L 222, 14. 8. 1978, p. 11.
(2) OJ No L 314, 4. 12. 1984, p. 28.
(3) OJ No L 322, 17. 12. 1977, p. 30.

Article 3

Provisions relating to branches of credit institutions and financial institutions having their head offices in non-members countries

1. Member States shall require branches of credit institutions and financial institutions having their head offices in non-member countries to publish the documents specified in Article 2 (1), drawn up and audited in the manner required by the law of the country of the head office, in accordance with the provisions set out therein.

2. Where such documents are in conformity with, or equivalent to, documents drawn up in accordance with Directive 86/635/EEC and the condition of reciprocity, for Community credit institutions and financial institutions, is fulfilled in the non-member country in which the head office is situated, Article 2 (3) shall apply.

3 In cases other than those referred to in paragraph 2, Member States may require the branches to publish annual accounts relating to their own activities.

4. In the cases specified in paragraphs 2 and 3, Member States may require branches to publish the information referred to in Article 2 (4) and the amount of the endowment capital.

5. Article 9 (1) and (3) of Directive 77/780/EEC shall apply by analogy to branches of credit institutions and financial institutions covered by this Directive.

Article 4

Language of publication

Member States may require that the documents provided for in this Directive be published in their official national language or languages and that translations thereof be certified.

Article 5

Work of the Contact Committee

The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall, when constituted appropriately, also :

(a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing, in particular, with practical problems arising in connection with its application, such as assessment of equivalence of documents, and facilitate decisions concerning the comparability and equivalence of the legal forms referred to in Article 1 (1);

(b) advise the Commission, if necessary, on additions or amendments to this Directive.

Final provisions

Article 6

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1991. They shall forthwith inform the Commission thereof.

2. A Member State may provide that the provisions referred to in paragraph 1 shall apply for the first time to annual accounts for the financial year beginning on 1 January 1993 or during the calendar year 1993.

3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 7

Five years after the date referred to in Article 6 (2), the Council, acting on a proposal from the Commission, shall examine and, upon a Commission proposal and in cooperation with the European Parliament, if need be, revise Article 2 (4), in the light of the experience acquired in applying this Directive and of the aim of eliminating the additional information referred to in Article 2 (4), taking account of the progress made in striving towards the harmonization of the accounts of banks and other financial institutions.

Article 8

This Directive is addressed to the Member States.

Done at Brussels, 13 February 1989.

For the Council

The President

C. SOLCHAGA CATALAN

III o) 89/666/EEC

Eleventh Council Directive of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State
(OJ No L 395, 30.12.1989, p. 36-39)

Section I : Branches of companies from other Member States (Art. 1-6)

Section II : Branches of companies from third countries (Art. 7-10)

Section III : Indication of branches in the company's annual report (Art. 11)

Section IV : Transitional and final provisions (Art. 12-18)

ELEVENTH COUNCIL DIRECTIVE

of 21 December 1989

concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State

(89/666/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas in order to facilitate the exercise of the freedom of establishment in respect of companies covered by Article 58 of the Treaty, Article 54 (3) (g) and the general programme on the elimination of restrictions on the freedom of establishment require coordination of the safeguards required of companies and firms in the Member States for the protection of the interests of members and others;

Whereas hitherto this coordination has been effected in respect of disclosure by the adoption of the First Directive 68/151/EEC (4) covering companies with share capital, as last amended by the 1985 Act of Accession; whereas it was continued in the field of accounting by the Fourth Directive 78/660/EEC (5) on the annual accounts of certain types of companies, as last amended by the 1985 Act of Accession, the Seventh Directive 83/349/EEC (6) on consolidated accounts, as amended by the 1985 Act of Accession, and the Eighth Directive 84/253/EEC (7) on the persons responsible for carrying out the statutory audits of accounting documents,

Whereas these Directives apply to companies as such but do not cover their branches; whereas the opening of a branch, like the creation of a subsidiary, is one of the possibilities currently open to companies in the exercise of their right of establishment in another Member State;

Whereas in respect of branches the lack of coordination, in particular concerning disclosure, gives rise to some disparities, in the protection of shareholders and third parties, between companies which operate in other Member States by opening branches and those which operate there by creating subsidiaries;

Whereas in this field the differences in the laws of the Member States may interfere with the exercise of the right of establishment; whereas it is therefore necessary to eliminate such differences in order to safeguard, *inter alia*, the exercise of that right;

Whereas to ensure the protection of persons who deal with companies through the intermediary of branches, measures in respect of disclosure are required in the Member State in which a branch is situated; whereas, in certain respects, the economic and social influence of a branch may be comparable to that of a subsidiary company, so that there is public interest in disclosure of the company at the branch; whereas to effect such disclosure it is necessary to make use of the procedure already instituted for companies with share capital within the Community;

Whereas such disclosure relates to a range of important documents and particulars and amendments thereto;

Whereas such disclosure, with the exception of the powers of representation, the name and legal form and the winding-up of the company and the insolvency proceedings to which it is subject, may be confined to information concerning a branch itself together with a reference to the register of the company of which that branch is part, since under existing Community rules all information covering the company as such is available in that register;

Whereas national provisions in respect of the disclosure of accounting documents relating to a branch can no longer be justified following the coordination of national law in respect of the drawing up, audit and disclosure of companies' accounting documents; whereas it is accordingly sufficient to disclose, in the register of the branch, the accounting documents as audited and disclosed by the company;

Whereas letters and order forms used by a branch must give at least the same information as letters and order forms used by the company, and state the register in which the branch is entered;

Whereas to ensure that the purposes of this Directive are fully realized and to avoid any discrimination on the basis of a

(1) OJ No C 105, 21. 4. 1988, p. 6.
(2) OJ No C 345, 21. 12. 1987, p. 76 and OJ No C 256, 9. 10. 1989, p. 27.
(3) OJ No C 319, 30. 11. 1987, p. 61
(4) OJ No L 65, 14. 3. 1968, p. 8.
(5) OJ No L 222, 14. 8. 1978, p. 11.
(6) OJ No L 193, 18. 7. 1983, p. 1.
(7) OJ No L 126, 12. 5. 1984, p. 20

company's country of origin, this Directive must also cover branches opened by companies governed by the law of non-member countries and set up in legal forms comparable to companies to which Directive 68/151/EEC applies; whereas for these branches it is necessary to apply certain provisions different from those that apply to the branches of companies governed by the law of other Member States since the Directives referred to above do not apply to companies from non-member countries;

Whereas this Directive in no way affects the disclosure requirements for branches under other provisions of, for example, employment law on workers' rights to information and tax law, or for statistical purposes;

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Branches of companies from other Member States

Article 1

1. Documents and particulars relating to a branch opened in a Member State by a company which is governed by the law of another Member State and to which Directive 68/151/EEC applies shall be disclosed pursuant to the law of the Member State of the branch, in accordance with Article 3 of that Directive.

2. Where disclosure requirements in respect of the branch differ from those in respect of the company, the branch's disclosure requirements shall take precedence with regard to transactions carried out with the branch.

Article 2

1. The compulsory disclosure provided for in Article 1 shall cover the following documents and particulars only:

(a) the address of the branch;

(b) the activities of the branch;

(c) the register in which the company file mentioned in Article 3 of Council Directive 68/151/EEC is kept, together with the registration number in that register;

(d) the name and legal form of the company and the name of the branch if that is different from the name of the company;

(e) the appointment, termination of office and particulars of the persons who are authorized to represent the company in dealings with third parties and in legal proceedings:

— as a company organ constituted pursuant to law or as members of any such organ, in accordance with the disclosure by the company as provided for in Article 2 (1) (d) of Directive 68/151/EEC,

— as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;

(f) the winding-up of the company, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation in accordance with disclosure by the company as provided for in Article 2 (1) (h), (j) and (k) of Directive 68/151/EEC,

— insolvency proceedings, arrangements, compositions, or any analogous proceedings to which the company is subject;

(g) the accounting documents in accordance with Article 3;

(h) the closure of the branch.

2. The Member State in which the branch has been opened may provide for the disclosure, as referred to in Article 1, of

(a) the signature of the persons referred to in paragraph 1 (e) and (f) of this Article;

(b) the instruments of constitution and the memorandum and articles of association if they are contained in a separate instrument in accordance with Article 2 (1) (a), (b) and (c) of Directive 68/151/EEC, together with amendments to those documents;

(c) an attestation from the register referred to in paragraph 1 (c) of this Article relating to the existence of the company;

(d) an indication of the securities on the company's property situated in that Member State, provided such disclosure relates to the validity of those securities.

Article 3

The compulsory disclosure provided for by Article 2 (1) (g) shall be limited to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the Member State by which the company is governed in accordance with Directives 78/660/EEC, 83/349/EEC and 84/253/EEC.

Article 4

The Member State in which the branch has been opened may stipulate that the documents referred to in Article 2 (2) (b) and Article 3 must be published in another official language of the Community and that the translation of such documents must be certified.

Article 5

Where a company has opened more than one branch in a Member State, the disclosure referred to in Article 2 (2) (b)

and Article 3 may be made in the register of the branch of the company's choice.

In this case, compulsory disclosure by the other branches shall cover the particulars of the branch register of which disclosure was made, together with the number of that branch in that register.

Article 6

The Member States shall prescribe that letters and order forms used by a branch shall state, in addition to the information prescribed by Article 4 of Directive 68/151/EEC, the register in which the file in respect of the branch is kept together with the number of the branch in that register.

SECTION II

Branches of companies from third countries

Article 7

1. Documents and particulars concerning a branch opened in a Member State by a company which is not governed by the law of a Member State but which is of a legal form comparable with the types of company to which Directive 68/151/EEC applies shall be disclosed in accordance with the law of the Member State of the branch as laid down in Article 3 of that Directive.

2. Article 11 (2) shall apply.

Article 8

The compulsory disclosure provided for in Article 7 shall cover at least the following documents and particulars:

(a) the address of the branch,

(b) the activities of the branch;

(c) the law of the State by which the company is governed,

(d) where that law so provides, the register in which the company is entered and the registration number of the company in that register;

(e) the instruments of constitution, and memorandum and articles of association if they are contained in a separate instrument, with all amendments to these documents;

(f) the legal form of the company, its principal place of business and its object and, at least annually, the amount of subscribed capital if these particulars are not given in the documents referred to in subparagraph (e);

(g) the name of the company and the name of the branch if that is different from the name of the company;

(h) the appointment, termination of office and particulars of the persons who are authorized to represent the company in dealings with third parties and in legal proceedings:

— as a company organ constituted pursuant to law or as members of any such organ,

— as permanent representatives of the company for the activities of the branch.

The extent of the powers of the persons authorized to represent the company must be stated, together with whether they may do so alone or must act jointly;

(i) — the winding-up of the company and the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation;

— insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject;

(j) the accounting documents in accordance with Article 7;

(k) the closure of the branch.

Article 9

1. The compulsory disclosure provided for by Article 8 (1) (j) shall apply to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the State which governs the company. Where they are not drawn up in accordance with or in a manner equivalent to Directives 78/660/EEC and 83/349/EEC, Member States may require that accounting documents relating to the activities of the branch be drawn up and disclosed.

2. Articles 4 and 5 shall apply.

Article 10

The Member States shall prescribe that letters and order forms used by a branch state the register in which the file in respect of the branch is kept together with the number of the branch in that register. Where the law of the State by which the company is governed requires entry in a register, the register in which the company is entered, and the registration number of the company in that register must also be stated.

SECTION III

Indication of branches in the company's annual report

Article 11

The following subparagraph is added to Article 46 (2) of Directive 78/660/EEC:

'(e) the existence of branches of the company'.

SECTION IV

Transitional and final provisions

Article 12

The Member States shall provide for appropriate penalties in the event of failure to disclose the matters set out in Articles 1, 2, 3, 7, 8 and 9 and of omission from letters and order forms of the compulsory particulars provided for in Articles 6 and 10.

Article 13

Each Member State shall determine who shall carry out the disclosure formalities provided for in this Directive.

Article 14

1. Articles 3 and 9 shall not apply to branches opened by credit institutions and financial institutions covered by Directive 89/117/EEC (1).

2. Pending subsequent coordination, the Member States need not apply Articles 3 and 9 to branches opened by insurance companies.

Article 15

Article 54 of Directive 78/660/EEC and Article 48 of Directive 83/349/EEC shall be deleted.

Article 16

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1992. They shall forthwith inform the Commission thereof.

2. Member States shall stipulate that the provisions referred to in paragraph 1 shall apply from 1 January 1993 and, with regard to accounting documents, shall apply for the first time to annual accounts for the financial year beginning on 1 January 1993 or during 1993.

3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 17

The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall also:

(a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, the harmonized application of this Directive, through regular meetings dealing, in particular, with practical problems arising in connection with its application;

(b) advise the Commission, if necessary, on any additions or amendments to this Directive.

Article 18

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1989.

For the Council

The President

E. CRESSON

(1) OJ No L 44, 16. 2. 1989, p. 40.

IV ACTS IN THE FIELD OF PAYMENTS

IV.a) 87/598/EEC

Commission Recommendation of 8 December 1987 on a European Code of Conduct relating to electronic payment
(Relations between financial institutions, traders and service establishments, and consumers)
(OJ No L 365, 24.12.1987, p. 72-76)

European Code of Conduct relating to electronic payment

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION RECOMMENDATION

of 8 December 1987

on a European Code of Conduct relating to electronic payment

(Relations between financial institutions, traders and service establishments, and consumers)

(87/598/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the second indent of Article 155 thereof,

Whereas in the White Paper on completing the internal market the Commission undertook to formulate proposals with a view to adapting innovations and laws relating to new means of payment to the dimensions of that market;

Whereas on 12 January 1987 the Commission sent to the Council the communication 'Europe could play an ace: the new payment cards' (1),

Whereas, since there is a close link between technological development and the unification of the internal market, electronic payment should contribute to the rapid modernization of banking services, distribution and the telecommunications and information industries;

Whereas consumers are entitled to except definite advantages from such a development;

Whereas Community action should add to this the benefit of a large market;

Whereas the development of new means of payment is to be seen in the context of the Community's financial and monetary integration and the extension of a people's Europe;

Whereas the free movement of goods and capital will be fully effective only if it enjoys the technological support provided by the new means of payment;

Whereas such means should be made available to economic partners in comparable circumstances in all Member States, although the Commission is aware that the development of payment cards (that is, payment cards incorporating a magnetic strip and/or a microcircuit) can vary in importance, depending on the Member State concerned, and that alternative forms of payment do exist;

Whereas it is necessary to cooperate in order to arrive at standards and implementing rules which will make it possible, in the interests of users in the Community, for payment systems to be compatible and complementary;

Whereas certain general principles should be established concerning fair practice in relations between financial institutions (i.e. banks and credit institutions), traders and service establishments, and card-holding consumers;

Whereas establishment of such principles will favour rapid and effective application of the new technology;

Whereas the heterogeneous, uncoordinated development of such technology should not diminish the opportunity which the technology itself affords of achieving the desired objective of compatible electronic payment systems within the Community;

(1) COM(86) 754 final.

Whereas compatible cards and interconnected Community networks are essential prerequisites for mutually accessible systems and harmonized rules of use;

Whereas, although it is for the banks and the other financial institutions concerned to decide to make systems compatible, the Commission is responsible for seeing that progress in this direction does not conflict with free competition within the Community market;

Whereas it is clear that to try now, at Community level, to produce a rigid, detailed definition of the operation of systems in the midst of change might result in the establishment of rules that would be rapidly overtaken by developments, even constituting obstacles to electronic development, whereas this in no way prejudices the benefits of laying down the basic principles of consumer protection in this area,

Whereas, nevertheless, it is appropriate that the Commission should see, at the present stage, that all changes in this sphere take place in accordance with the Treaty's rules and that it should seek, in the Community's interest, to establish and promote consensus as regards development of such systems;

Whereas the fact that this new technology is not being developed on a large scale in any of the Member States makes it impossible as yet to determine with any accuracy all the specific problems that are likely to arise in particular as networks are completed and arrangements for the use of the new means of payment are finalized;

Whereas, for these reasons, an instigative approach such as a code of conduct must be flexible so as to make it easier to adapt to changes in the new technology,

HEREBY RECOMMENDS

that all the economic partners concerned should comply with the provisions of the European Code of Conduct relating to electronic payment, as set out in the following.

EUROPEAN CODE OF CONDUCT RELATING TO ELECTRONIC PAYMENT

I. OBJECTIVE

1 The Code sets out the conditions which should be fulfilled if the new, electronic means of payment are to be developed for the benefit of all economic partners and are to afford :

— for consumers, security and convenience,

— for traders and issuers, greater security and productivity,

— for industry in the Community, a leading market.

2. The principles of fair practice must be observed by all those who bring card payment systems into operation or make use of them.

3. The technological development of electronic means of payment should have an eye to their European dimension : such means must be as widely interoperable as possible, to avoid having isolated systems and, hence, a partitioned market.

II. DEFINITIONS

For the purposes of this Code :

1 'Electronic payment' means any payment transaction carried out by means of a card incorporating a magnetic strip or microcircuit used at an electronic payment terminal (EPT) or point-of-sale (POS) terminal.

The Code does not cover :

— 'company-specific' cards not covered by the above definition,

— cards serving purposes other than direct or deferred payment,

— payments by cheque with bank-card guarantee,

— payments by card using mechanical processes (invoice slips).

2 'Issuer' means any banking or credit institution issuing a payment card for electronic use, plus any production or service undertaking which can also issue such a card.

3. 'Trader' means distributive trading or service establishment.

4 'Consumer' means cardholder.

5 'Interoperability' means a state of affairs whereby cards issued in one Member State and/or belonging to a given card system can be used in other Member States and/or in the networks installed by other systems This requires that the cards and readers used in the various systems must be technologically compatible and that systems must be opened up by means of reciprocity agreements.

III. GENERAL PRINCIPLES

1 Contracts

(a) Contracts concluded by issuers, or their agents, with traders and consumers shall be in writing and must be the result of a prior application. They shall set out in detail the general and specific conditions of the agreement.

(b) They shall be drawn up in the official language(s) of the Member State in which the contract is concluded.

(c) Any scale of charges must be determined in a transparent manner, taking account of actual costs and risks and without involving any restriction of competition.

(d) All conditions, provided they are in conformity with the law, shall be freely negotiable and clearly stipulated in the contract.

(e) Conditions specific to termination of a contract must be stated and brought to the notice of the parties prior to such contract being concluded.

2. Interoperability

By a given date (1), interoperability, in the Community at any rate, should be full and complete, so that traders and consumers can join the network(s) or contract with the issuer(s) of their choice, with each terminal being able to process all cards.

3. Equipment

(a) Electronic payment terminals are required to register, control and transmit payments and may be integrated into a point-of-sale terminal.

(b) Traders must be able, if they wish, to install a single, multi-card-terminal.

(c) Traders must be free to choose which point-of-sale terminal they will install. They must be at liberty either to rent or purchase such equipment, provided only that it is certified as satisfying the requirements of the whole payment system and can be used on an interoperable basis.

4. Data protection and security

(a) Electronic payments are irreversible. An order given by means of a payment card shall be irrevocable and may not be countermanded.

(b) The information transmitted, at the time of payment, to the trader's bank and subsequently to the issuer must not in any circumstances prejudice the protection of privacy. It shall be strictly limited to that normally laid down for cheques and transfers.

(c) Any problems whatsoever that arise in connection with the protection of information or with security must be openly acknowledged and cleared up at whatever stage in the contract between the parties.

(d) Contracts must not restrict trader's freedom of operation or freedom to compete.

5. Fair access to the system

(a) Irrespective of their economic size, all service establishments concerned must be allowed fair access to the system of electronic payment. A trader may be refused access for a legitimate reason only.

(b) There must be no unwarranted difference in the remuneration for services concerning transactions within one Member State and the remuneration for the same services concerning transnational transactions with other Community countries, especially in border regions.

IV. SUPPLEMENTARY PROVISIONS

1. Relations between issuers and traders

(a) To promote mutual access among different card systems, contracts between card issuers and traders must contain no exclusive trading clause requiring the trader to operate only the system with which he has contracted an agreement.

(b) Contracts with traders must admit effective competition between the various issuers. Compulsory provisions must be limited strictly to technical requirements for ensuring that the system functions properly.

(1) 31 December 1992, i.e. the date by which the internal market must be complete.

2 Relations between issuers and consumers

Cardholders shall take all reasonable precautions to ensure the safety of the card issued and shall observe the special conditions (loss or theft) in the contract which they have signed.

3 Relations between traders and consumers

Traders shall display, in a fully visible manner, the signs of the companies to which they are affiliated ; they shall be obliged to accept such cards.

Done at Brussels, 8 December 1987.

For the Commission
COCKFIELD
Vice-President

IV.b) 88/590/EEC

Commisson Recommendation of 17 November 1988 concerning payment systems, and in particular the relationship between cardholder and card issuer
(OJ No L 317, 24.11.1988, p. 55-58)

Annex

COMMISSION RECOMMENDATION

of 17 November 1988

concerning payment systems, and in particular the relationship between cardholder and card issuer

(88/590/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the second indent of Article 155 thereof,

Whereas one of the main objectives of the Community is to complete not later than 1992 the internal market, of which payment systems are essential parts;

Whereas paragraph 18 of the Annex to the Council resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy (1), indicated that the protection of the economic interests of consumers should be based on the following principles (2): (i) that purchasers of goods and services should be protected against standard contracts, and in particular against the exclusion of essential rights in contracts, (ii) that the consumer should be protected against damage to his economic interests caused by unsatisfactory services, and (iii) that the presentation and promotion of goods and services, including financial services, should not be designed to mislead, either directly or indirectly, the person to whom they are offered or by whom they have been requested; whereas paragraph 24 in the Annex to the said preliminary programme specified that the protection of the consumer against unfair commercial practices, *inter alia*, as regards terms of contracts, is to be given priority treatment in implementing that programme;

Whereas the Commission's White Paper on 'Completing the Internal Market' (3), communicated to the Council in June 1985, referred in paragraph 121 to new technologies which will transform the European marketing and distribution system and engender a need for adequate consumer protection, and further referred in paragraph 122 to electronic banking, payment cards and videotex;

Whereas the Commission's policy document entitled 'A New Impetus for Consumer Protection Policy', communicated to the Council in July 1985 (4) which was the subject of a Council resolution adopted on 23 June 1986 (5) referred in paragraph 34 to electronic fund transfer and announced in the timetable contained in the Annex thereto a proposal for a directive on that matter, for adoption by the Council in 1989; whereas it is appropriate to accelerate financial consumer protection in the field of payment systems and certain other services available to consumers; whereas the forms of financial service, including financial self-service, and the means of purchasing goods and services which are now in use in market places in Member States (some of them even in the homes of consumers) are furnished upon divergent terms of contract and of consumer protection from one Member State to another;

Whereas there has been much change in recent years in the types of financial service available to and used by consumers, particularly as regards payment methods and as regards the purchasing of goods and services; whereas new forms thereof have emerged and are continuing to develop;

Whereas the various terms of contract currently used in this field in Member States are not only divergent from one to another (and indeed within any one Member State) but also in some cases disadvantageous to the consumer; whereas more effective protection of consumers can be achieved by the use of common terms which are to apply to all these forms of financial service;

Whereas the consumer should receive adequate information concerning the terms of contract, including the fees and other costs, if any, payable by the consumer for these services, and concerning his rights and obligations under the contract; whereas this information should include an unequivocal statement of the extent of the consumer's obligations as holder (hereinafter called 'contracting holder') of a card or other device enabling him to make payments in favour of third persons, as well as to perform certain financial services for himself;

Whereas the protection of the consumer as a contracting holder is further improved if such contracts are made in writing and contain certain minimum particulars concerning the contractual terms, including an indication of the period within which his operations will normally be credited, debited or invoiced;

Whereas no payment device, whether in the form of a plastic card or otherwise, should be dispatched to a member of the public except in response to an application from such person; whereas the contract concluded between that person and the issuer of the payment device should not be binding before the applicant has received the device and also knows the applicable terms of contract;

(1) OJ No C 92, 25. 4. 1975, p. 1
(2) Confirmed in paragraph 28 of the second programme (OJ No C 133, 3. 6. 1981, p. 1)
(3) COM(85) 310 final, 14. 6. 1985
(4) COM(85) 314 final, 27. 6. 1985.
(5) OJ No C 167, 5. 7. 1986, p. 1

Whereas, given the nature of the technology currently used in the field of payment devices, including both the manufacture and use of them, it is essential that operations effected by means of them should be the subject of records in order that operations can be traced and errors can be rectified; whereas the contracting holder has no means of access to those records, and consequently the burden of proof to show that an operation was accurately recorded and entered into the accounts and was not affected by technical breakdown or other deficiency should lie upon the person who under a contract furnishes the payment device to him, namely the issuer;

Whereas payment instructions communicated electronically by a contracting holder should be irrevocable, so that a payment made thereby shall not be reversed; whereas the contracting holder should be supplied with a record of the operations he effects by means of a payment device;

Whereas common rules need to specified concerning the issuer's liability for non-execution or for defective execution of a contracting holder's payment instructions and allied operations, and for transactions which have not been authorized by the contracting holder, subject always to the contracting holder's own obligations in the case of lost, stolen or copied payment devices;

Whereas common terms of contract need also to be specified concerning the consequences to the contracting holder if he loses his payment device or it is stolen from him or copied;

Whereas for the purpose of ensuring that electronic payment networks can function and payment devices be used internationally, it is necessary that certain minimum data relating to a contracting holder can be transmitted across fontiers, but subject to certain ocnditions;

Whereas the Commission will monitor the implementation of this recommendation, and if, after 12 months, it finds the implementation unsatisfactory, the Commission will take appropriate measures,

RECOMMENDS:

That not later than 12 months after the date hereof:

1. issuers of payment devices and system providers conduct their activities in accordance with the provisions contained in the Annex hereto;.
2. Member States ensure, in order to facilitate the operations referred to in the Annex, that data relating to contracting holders may be transmitted, but that the data transmitted shall be kept:
   - to the requisite minimum, and
   - confidential by all persons to whose knowledge they are brought in the course of such operations.

Done at Brussels, 17 November 1988.

For the Commission

Grigoris VARFIS

Member of the Commission

ANNEX

1. This Annex applies to the following operations:

— electronic payment involving the use of a card, in particular at point of sale,

— the withdrawing of banknotes, the depositing of banknotes and cheques, and connected operations, at electronic devices such as cash dispensing machines and automated teller machines,

— non-electronic payment by card, including processes for which a signature is required and a voucher is produced, but not including cards whose sole function is to guarantee payment made by cheque,

— electronic payment effected by a member of the public without the use of a card, such as home banking

2. For the purposes of this Annex the following definitions apply

'Payment device': a card or some other means enabling its user to effect operations of the kind specified in paragraph 1

'Issuer': a person who, in the course of his business, makes available to a member of the public a payment device pursuant to a contract concluded with him.

'System provider': a person who makes available a financial product under a specific trade name, and usually with a network, thus enabling payment devices to be used for the operations aforesaid.

'Contracting holder': a person who, pursuant to a contract concluded between him and an issuer, holds a payment device.

'Company-specific card': a card issued by a retailer to his client, or by a group of retailers to their clients, in order to allow or facilitate, without giving access to a bank account, payment for purchases of goods or services exclusively from the issuing retailer or retailers, or from retailers who under contract accept the card.

3.1. Each issuer shall draw up full and fair terms of contract, in writing, to govern the issuing and use of the payment devices he issues.

3.2. Those terms of contract shall be expressed:

— in easily understandable words and in so clear a form that they are easy to read,

— in the language or languages which are ordinarily used for such or similar purposes in the regions where the terms of contract are offered

3.3. The terms of contract shall specify the basis of calculation of the amount of the charges (including interest), if any, which the contracting holder must pay to the issuer

3.4. The terms of contract shall specify

— whether the debiting or crediting of operations will be instantaneous and, if not, the period of time within which this will be done,

— for those operations which lead to invoicing of the contracting cardholder, the period of time within which this will be done;

3.5. The terms of contract shall not be altered except by agreement between the parties; however, such agreement shall be deemd to exist where the issuer proposes an amendment to the contract terms and the contracting holder, having received notice thereof, continues to make use of the payment device.

4.1. The terms of contract shall put the contracting holder under obligation *vis-à-vis* the issuer:

(a) to take all reasonable steps to keep safe the payment device and the means (such as a personal identification number or code) which enable it to be used;

(b) to notify the issuer or a central agency without undue delay after becoming aware:

— of the loss or theft or copying of the payment device or of the means which enable it to be used,

— of the recording on the contracting holder's account of any unauthorized transaction,

— of any error or other irregularity in the maintaining of that account by the issuer.

(c) not to record on the payment device the contracting holder's personal identification number or code, if any, nor to record those things on anything which he usually keeps or carries with the payment device, particularly if they are likely to be lost or stolen or copied together;

(d) not to countermand an order which he has given by means of his payment device.

4.2. The terms of contract shall state that provided the contracting holder complies with the obligations imposed upon him pursuant to subparagraphs (a), (b) first indent, and (c) of paragraph 4.1, and otherwise does not act with extreme negligence, or fraudulently, in the circumstances in which he uses his payment device he shall not, after notification, be liable for damage arising from such use.

4.3. The terms of contract shall put the issuer under obligation *vis-à-vis* the contracting holder not to disclose the contracting holder's personal identification number or code or similar confidential data, if any, except to the contracting holder himself.

5. No payment device shall be dispatched to a member of the public except in response to an application from such person ; and the contract between the issuer and the contracting holder shall be regarded as having been concluded at the time when the applicant receives the payment device and a copy of the terms of contract accepted by him.

6.1. In relation to the operations referred to in paragraph 1, issuers shall keep, or cause to be kept, internal records which are sufficiently substantial to enable operations to be traced and errors to be rectified. To this end, issuers shall make the requisite arrangements with the system providers, as necessary ;

6.2 In any dispute with a contracting holder concerning an operation referred to in the first, second and fourth indents of paragraph 1 and relating to liability for an unauthorized electronic fund transfer, the burden of proof shall be upon the issuer to show that the operation was accurately recorded and accurately entered into accounts and was not affected by technical breakdown or other deficiency.

6.3. The contracting holder, if he so requests, shall be supplied with a record of each of his operations, instantaneously or shortly after he has completed it ; however in the case of payment at point of sale the till receipt supplied by the retailer at the time of purchase and containing the references to the payment device shall satisfy the requirements of this provision.

7.1 *Vis-à-vis* a contracting holder the issuer shall be liable, subject to paragraphs 4 and 8 :

— for the non-execution or defective execution of the contracting holder's operations as referred to in paragraphe 1, even if an operation is initiated at electronic devices which are not under the issuer's direct or exclusive control,

— for operations not authorized by the contracting holder.

7.2 Save as stated in paragraph 7.3 the liability indicated in the paragraph 7.1 shall be limited as follows :

— in the case of non-execution or defective execution of an operation, the amount of the liability shall be limited to the amount of the unexecuted or defectively executed operation,

— in the case of an unauthorized operation, the amount of the liability shall extend to the sum required to restore the contracting holder to the position he was in before the unauthorized operation took place.

7.3 Any further financial consequences, and, in particular, questions concerning the extent of the damage for which compensation is to be paid, shall be governed by the law applicable to the contract concluded between the issuer and the contracting holder.

8.1 Each issuer shall provide means whereby his customers may at any time of the day or night notify the loss; theft or copying of their payment devices ; but in the case of company-specific cards these means of notification need only be made available during the issuer's hours of business ;

8.2 Once the contracting holder has notified the issuer or a central agency, as required by paragraph 4.1 (b), the contracting holder shall not thereafter be liable ; but this provision shall not apply if the contracting holder acted with extreme negligence or fraudulently.

8.3 The contracting holder shall bear the loss sustained, up to the time of notification, in consequence of the loss, theft or copying of the payment device, but only up to the equivalent of 150 ecus for each event, except where he acted with extreme negligence or fraudulently.

8.4 The issuer, upon receipt of notification, shall be under obligation, even if the contracting holder acted with extreme negligence or fraudulently, to take all action open to him to stop any further use of the payment device.

IV. d) 90/109/EEC

Commission Recommendation of 14 February 1990 on the transparency of banking conditions relating to cross-border financial transactions

(OJ No L 67, 15.03.1990, p. 39-43)

Annex : Principles governing the transparency of banking conditions relating to cross-border financial transactions

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION RECOMMENDATION

of 14 February 1990

on the transparency of banking conditions relating to cross-border financial transactions

(90/109/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 155 thereof,

Whereas the removal of economic barriers within the Community and the progress achieved in the field of monetary and banking cooperation fostered by the directives adopted under the Single European Act should logically lead to an increase in purchases of goods and services in other Member States and to greater mobility for individuals, particularly workers, tourists and pensioners;

Whereas this free movement of individuals and products will increase the number of cross-border financial transactions and the number of operators carrying out such transactions;

Whereas the way in which international transfer systems operate is much more complex than the system of national transfers because one or more intermediary institutions are involved, because different clearing arrangements apply in countries not having the same currency and because an exchange transaction takes place;

Whereas, in view of this complexity, better-qualified staff and a wider range of checks are needed than in the case of national transfers; whereas this adds significantly to the cost of, and time needed for, cross-border financial transactions; whereas those undertaking such transactions should, therefore, be clearly informed in advance of the cost and time needed;

Whereas rules of conduct based on common principles of transparency and concerning the information to be supplied and the details to be indicated on the statement relating to the transfer of funds would be such as to encourage institutions undertaking cross-border financial transactions to estimate their costs more accurately and to rationalize as far as possible their methods of transfer;

Whereas, however, since customer information is linked, as regards the choice of means, to the commercial policy of banking institutions, it should not be subject to uniform and binding rules;

Whereas the introduction of reference periods is essential in order to make an assessment of the prices charged for cross-border transactions and to preserve the confidence of those effecting or receiving transfers;

Whereas certain national departments should specialize in dealing with complaints in connection with cross-border financial transactions which require special attention because institutions in more than one Member State are involved;

Whereas, although several Member States have binding legislation on the transparency of banking conditions, it does not appear expedient to ask those Member States to amend their legislation by inserting rules relating solely to cross-border transactions; whereas the same applies *a fortiori* to the Member States where legislation on transparency covers the entire services sector and not simply banking transactions;

Whereas there are also a number of Member States which wish to retain proven cooperation procedures in order to improve relations between financial institutions and users;

Whereas a recommendation enabling the competent authorities to secure on a voluntary basis the cooperation of the institutions concerned is an appropriate instrument for bringing about a change of behaviour and devising new structures apt to reduce the cost of cross-border transfers under conditions of free competition,

HEREBY RECOMMENDS:

(i) that Member States ensure that institutions which undertake cross-border financial transactions within the meaning of this recommendation apply the principles set out in the Annex;

(ii) that Member States notify the Commission not later than 30 September 1990 of the names and addresses of the bodies referred to in paragraph 2 of the Sixth Principle set out in the Annex.

Done at Brussels, 14 February 1990.

For the Commission

Leon BRITTAN

Vice-President

ANNEX

PRINCIPLES GOVERNING THE TRANSPARENCY OF BANKING CONDITIONS RELATING TO CROSS-BORDER FINANCIAL TRANSACTIONS

GENERAL

The aim of the principles set out in this recommendation is to make more transparent the information supplied, and the invoicing rules to be observed by the institutions concerned in connection with cross-border financial transactions as defined below.

The principles apply to all categories of customer of the institutions concerned, without prejudice to the possibility of allowing certain customers to benefit from more favourable banking conditions by virtue, for example, of the size of the transaction or transactions involved.

'Institutions concerned', hereafter referred to as 'institutions', means all legal persons, and in particular credit institutions and postal services, providing facilities for effecting or facilitating cross-border transfers. For the purposes of this recommendation, branches of institutions are deemed to be 'institutions'.

'Cross-border financial transactions' means transfers as defined below where the institutions of the transferor and the transferee are situated in two different Member States.

'Transfer' means the complete movement of funds denominated in ecus or in a currency that is legal tender in a Member State from a transferor to a transferee, regardless of whether the latter holds an account with an institution situated in another Member State.

'Transfer order' means the written, oral or electronic instruction given to an institution to credit to an account or to keep available for a given person a sum of money or to arrange for that instruction to be executed by another institution.

'Transferor' means the person who issues the first transfer order.

'Transferee' means the final recipient who is to receive the funds in a Member State other than that in which the first transfer order was issued either by way of an operation crediting his account or by way of a notification enabling him to obtain payment of the funds

FIRST PRINCIPLE

Each institution should bring to the attention of its customers easily understandable and readily available information concerniang cross-border financial transactions

This principle could be applied in one of the following ways:

— a notice or some other permanent form of information drawing attention to the cost of, and time needed for, all cross-border financial transactions and encouraging customers to seek further information,

— standardized information (in the form of a notice, booklet, brochure or some other appropriate means of providing information) specifying the amount or, where appropriate, percentage of commission fees and charges applied by the institution in respect of each transaction that may be invoiced either to the transferor or the transferee when a cross-border financial transaction is undertaken, as well as, if necessary, the provisions relating to the value dates,

— information of a more specific nature (in the form of a booklet, brochure or some other appropriate means of providing information) should also be given to the transferor, if he so requests, regarding the procedures applied by the institution in executing his orders, together with an estimate from intermediary banks of expected charges and time needed, having due regard to those various procedures.

SECOND PRINCIPLE

In the statement relating to a cross-border financial transaction, the institution should inform its customer in detail of the commission fees and charges it is invoicing and of the exchange rate it has applied

This principle could be applied in the following way:

The institution concerned could clearly specify in a statement or some other document sent or handed to its customer, regardless of whether he is the transferor or the transferee:

— the exchange rate applied in converting the amount of foreign currency,

— the amount of the commission fee or fees applied or invoiced by the institution,

— the list and amount of any taxes payable,

— the nature and amount of the charges payable by the customer,

— the nature and amount of any additional invoice.

THIRD PRINCIPLE

1. Without prejudice to the possibility for the transferor to choose other ways of apportioning commission fees and charges, the transferor's institution should inform its customer when the latter gives his order:

   — that the commission fees and charges it imposes for transmitting the order may either remain payable by the transferor or be invoiced to the transferee,

   — that any commission fees and charges invoiced by the transferee's institution to its customer when it places the funds at his disposal may either remain payable by the latter or be invoiced to the transferor.

2. Where the transferor has specifically instructed his institution to ensure that the transferee is credited with the exact amount shown on the transfer order, it is recommended that the institution apply a method of transfer which will make it possible to achieve this result and that, before undertaking the transfer operation, it inform the transferor of the additional amount which will be invoiced to him. However, this amount will represent only a non-binding estimate for the institution except where it applies a flat-rate calculation.

This principle could be applied by making available to the transferor who wanted the transferee to be credited with an exact amount prior information based on a flat-rate calculation or an estimate that could take account of the average of the commission fees and charges applied by institutions in the country of the transferee where information permitting a more accurate calculation was not available. If the amount estimated were smaller than the amount of commission fees and charges actually payable, the difference could be invoiced only to be transferor.

FOURTH PRINCIPLE

1. In the absence of instructions to be contrary and except in cases of *force majeure*, each intermediary institution should deal with a transfer order within two working days of receipt of the funds specified in the order or should give notification of its refusal to execute the order or of any foreseeable delay to the institution issuing the order and, where different, to the transferor's institution.

2. The transferor should be able to obtain a refund of part of the costs of the transfer in the event of any delay in executing his order.

This principle could be applied in the following way:

On expiry of a period of two working days, the transferor's institution should pay the amount of the transfer order to the transferee's institution or to any intermediary institution unless the transferee's institution (or this intermediary institution) gives notification within two working days of receipt of the transfer order of its refusal to execute the order received.

Where it is not the transferee's institution and where it has not given notification of its refusal to execute an order, the recipient institution should, within that same period of two working days from receipt of the funds specified in the transfer order, issue to the transferee's institution or to another intermediary institution a new transfer order containing the instructions necessary for the transfer to proceed in the appropriate fashion.

FIFTH PRINCIPLE

1. The transferee's institution should fulfil its obligations arising from a transfer order not later than the working day following receipt of the funds specified in the order unless the said order stipulates a later date of execution.

2. If the transferee's institution is unable to execute the order within the time indicated in paragraph 1, it should, as soon as possible, inform the institution issuing the order and, where different, the transferor's institution of the reasons for its failure to execute the order or for the delay in execution.

SIXTH PRINCIPLE

1. Any institution participating in a cross-border financial transaction should be capable of dealing rapidly with complaints lodged by the transferor or the transferee in connection with the execution of the transaction or with the statement relating to it.

2. If no action is taken on a complaint or no answer received within three months, the complainants may refer the matter to one of the Member States' bodies competent to deal with complaints from users. The list and addresses of such national bodies should be available on request from any institution undertaking cross-border financial transactions.

One way of applying this principle would be to entrust the task of dealing with complaints to bodies independent of the parties concerned and forming part of :

— the public sector (ministerial department),

— the central bank,

— a specialist body such as the ombudsman's office,

— a contact committee comprising bank representatives and users.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 24 June 1988

for the implementation of Article 67 of the Treaty

(88/361/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 69 and 70 (1) thereof,

Having regard to the proposal from the Commission, submitted following consultation with the Monetary Committee (1),

Having regard to the opinion of the European Parliament (2),

Whereas Article 8a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of capital is ensured, without prejudice to the other provisions of the Treaty;

Whereas Member States should be able to take the requisite measures to regulate bank liquidity; whereas these measures should be restricted to this purpose;

Whereas Member States should, if necessary, be able to take measures to restrict, temporarily and within the framework of appropriate Community procedures, short-term capital movements which, even where there is no appreciable divergence in economic fundamentals, might seriously disrupt the conduct of their monetary and exchange-rate policies;

Whereas, in the interests of transparency, it is advisable to indicate the scope, in accordance with the arrangements laid down in this Directive, of the transitional measures adopted for the benefit of the Kingdom of Spain and the Portuguese Republic by the 1985 Act of Accession in the field of capital movements;

Whereas the Kingdom of Spain and the Portuguese Republic may, under the terms of Articles 61 to 66 and 222 to 232 respectively of the 1985 Act of Accession, postpone the liberalization of certain capital movements in derogation from the obligations set out in the First Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty (3), as last amended by Directive 86/566/EEC (4); whereas Directive 86/566/EEC also provides for transitional arrangements to be applied for the benefit of those two Member States in respect of their obligations to liberalize capital movements; whereas it is appropriate for those two Member States to be able to postpone the application of the new liberalization obligations resulting from this Directive;

Whereas the Hellenic Republic and Ireland are faced, albeit to differing degrees, with difficult balance-of-payments situations and high levels of external indebtedness; whereas the immediate and complete liberalization of capital movements by those two Member States would make it more difficult for them to continue to apply the measures they have taken to improve their external positions and to reinforce the capacity of their financial systems to adapt to the requirements of an integrated financial market in the Community; whereas it is appropriate, in accordance with Article 8c of the Treaty, to grant to those two Member States, in the light of their specific circumstances, further time in which to comply with the obligations arising from this Directive;

Whereas, since the full liberalization of capital movements could in some Member States, and especially in border areas, contribute to difficulties in the market for secondary residences; whereas existing national legislation regulating these purchases should not be affected by the entry into effect of this Directive;

(1) OJ No C 25, 1. 2. 1988, p. 1.
(2) Opinion delivered on 17 June 1988 (not yet published in the Official Journal).

(3) OJ No 43, 12. 7. 1960, p. 921/60.
(4) OJ No L 332, 26. 11. 1986, p. 22.

Whereas advantage should be taken of the period adopted for bringing this Directive into effect in order to enable the Commission to submit proposals designed to eliminate or reduce risks of distortion, tax evasion and tax avoidance resulting from the diversity of national systems for taxation and to permit the Council to take a position on such proposals;

Whereas, in accordance with Article 70 (1) of the Treaty, the Community shall endeavour to attain the highest possible degree of liberalization in respect of the movement of capital between its residents and those of third countries;

Whereas large-scale short-term capital movements to or from third countries may seriously disturb the monetary or financial situation of Member States or cause serious stresses on the exchange markets; whereas such developments may prove harmful for the cohesion of the European Monetary System, for the smooth operation of the internal market and for the progressive achievement of economic and monetary union; whereas it is therefore appropriate to create the requisite conditions for concerted action by Member States should this prove necessary;

Whereas this Directive replaces Council Directive 72/156/EEC of 21 March 1972 on regulating international capital flows and neutralizing their undesirable effects on domestic liquidity (1); whereas Directive 72/156/EEC should accordingly be repealed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Without prejudice to the following provisions, Member States shall abolish restrictions on movements of capital taking place between persons resident in Member States. To facilitate application of this Directive, capital movements shall be classified in accordance with the Nomenclature in Annex I.

2. Transfers in respect of capital movements shall be made on the same exchange rate conditions as those governing payments relating to current transactions.

Article 2

Member States shall notify the Committee of Governors of the Central Banks, the Monetary Committee and the Commission, by the date of their entry into force at the latest, of measures to regulate bank liquidity which have a specific impact on capital transactions carried out by credit institutions with non-residents.

Such measures shall be confined to what is necessary for the purposes of domestic monetary regulation. The Monetary Committee and the Committee of Governors of the Central Banks shall provide the Commission with opinions on this subject.

(1) OJ No L 91, 18. 4. 1972, p. 13.

Article 3

1. Where short-term capital movements of exceptional magnitude impose severe strains on foreign-exchange markets and lead to serious disturbances in the conduct of a Member State's monetary and exchange rate policies, being reflected in particular in substantial variations in domestic liquidity, the Commission may, after consulting the Monetary Committee and the Committee of Governors of the Central Banks, authorize that Member State to take, in respect of the capital movements listed in Annex II, protective measures the conditions and details of which the Commission shall determine.

2. The Member State concerned may itself take the protective measures referred to above, on grounds of urgency, should these measures be necessary. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. The Commission, after consulting the Monetary Committee and the Committee of Governors of the Central Banks, shall decide whether the Member State concerned may continue to apply these measures or whether it should amend or abolish them.

3. The decisions taken by the Commission under paragraphs 1 and 2 may be revoked or amended by the Council acting by a qualified majority.

4. The period of application of protective measures taken pursuant to this Article shall not exceed six months.

5. Before 31 December 1992, the Council shall examine, on the basis of a report from the Commission, after delivery of an opinion by the Monetary Committee and the Committee of Governors of the Central Banks, whether the provisions of this Article remain appropriate, as regards their principle and details, to the requirements which they were intended to satisfy.

Article 4

This Directive shall be without prejudice to the right of Member States to take all requisite measures to prevent infringements of their laws and regulations, *inter alia* in the field of taxation and prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information.

Application of those measures and procedures may not have the effect of impeding capital movements carried out in accordance with Community law.

Article 5

For the Kingdom of Spain and the Portuguese Republic, the scope, in accordance with the Nomenclature of capital movements contained in Annex I, of the provisions of the

1985 Act of Accession in the field of capital movements shall be as indicated in Annex III.

Article 6

1. Member States shall take the measures necessary to comply with this Directive no later than 1 July 1990. They shall forthwith inform the Commission thereof. They shall also make known, by the date of their entry into force at the latest, any new measure or any amendment made to the provisions governing the capital movements listed in Annex I.

2. The Kingdom of Spain and the Portuguese Republic, without prejudice for these two Member States to Articles 61 to 66 and 222 to 232 of the 1985 Act of Accession, and the Hellenic Republic and Ireland may temporarily continue to apply restrictions to the capital movements listed in Annex IV, subject to the conditions and time limits laid down in that Annex.

If, before expiry of the time limit set for the liberalization of the capital movements referred to in Lists III and IV of Annex IV, the Portuguese Republic or the Hellenic Republic considers that it is unable to proceed with liberalization, in particular because of difficulties as regards its balance of payments or because the national financial system is insufficiently adapted, the Commission, at the request of one or other of these Member States, shall in collaboration with the Monetary Committee, review the economic and financial situation of the Member State concerned. On the basis of the outcome of this review, the Commission shall propose to the Council an extension of the time limit set for liberalization of all or part of the capital movements referred to. This extension may not exceed three years. The Council shall act in accordance with the procedure laid down in Article 69 of the Treaty.

3. The Kingdom of Belgium and the Grand Duchy of Luxembourg may temporarily continue to operate the dual exchange market under the conditions and for the periods laid down in Annex V.

4. Existing national legislation regulating purchases of secondary residences may be upheld until the Council adopts further provisions in this area in accordance with Article 69 of the Treaty. This provision does not affect the applicability of other provisions of Community law.

5. The Commission shall submit to the Council, by 31 December 1988, proposals aimed at eliminating or reducing risks of distortion, tax evasion and tax avoidance linked to the diversity of national systems for the taxation of savings and for controlling the application of these systems.

The Council shall take a position on these Commission proposals by 30 June 1989. Any tax provisions of a Community nature shall, in accordance with the Treaty, be adopted unanimously.

Article 7

1. In their treatment of transfers in respect of movements of capital to or from third countries, the Member States shall endeavour to attain the same degree of liberalization as that which applies to operations with residents of other Member States, subject to the other provisions of this Directive.

The provisions of the preceding subparagraph shall not prejudice the application to third countries of domestic rules or Community law, particularly any reciprocal conditions, concerning operations involving establishment, the provisions of financial services and the admission of securities to capital markets.

2. Where large-scale short-term capital movements to or from third countries seriously disturb the domestic or external monetary or financial situation of the Member States, or of a number of them, or cause serious strains in exchange relations within the Community or between the Community and third countries, Member States shall consult with one another on any measure to be taken to counteract such difficulties. This consultation shall take place within the Committee of Governors of the Central Banks and the Monetary Committee on the initiative of the Commission or of any Member State.

Article 8

At least once a year the Monetary Committee shall examine the situation regarding free movement of capital as it results from the application of this Directive. The examination shall cover measures concerning the domestic regulation of credit and financial and monetary markets which could have a specific impact on international capital movements and on all other aspects of this Directive. The Committee shall report to the Commission on the outcome of this examination.

Article 9

The First Directive of 11 May 1960 and Directive 72/156/EEC shall be repealed with effect from 1 July 1990.

Article 10

This Directive is addressed to the Member States.

Done at Luxembourg, 24 June 1988.

For the Council

The President

M. BANGEMANN

ANNEX I

NOMENCLATURE OF THE CAPITAL MOVEMENTS REFERRED TO IN ARTICLE 1 OF THE DIRECTIVE

In this Nomenclature, capital movements are classified according to the economic nature of the assets and liabilities they concern, denominated either in national currency or in foreign exchange.

The capital movements listed in this Nomenclature are taken to cover:

— all the operations necessary for the purposes of capital movements: conclusion and performance of the transaction and related transfers. The transaction is generally between residents of different Member States although some capital movements are carried out by a single person for his own account (e.g. transfers of assets belonging to emigrants),

— operations carried out by any natural or legal person (1), including operations in respect of the assets or liabilities of Member States or of other public administrations and agencies, subject to the provisions of Article 68 (3) of the Treaty,

— access for the economic operator to all the financial techniques available on the market approached for the purpose of carrying out the operation in question. For example, the concept of acquisition of securities and other financial instruments covers not only spot transactions but also all the dealing techniques available: forward transactions, transactions carrying an option or warrant, swaps against other assets, etc. Similarly, the concept of operations in current and deposit accounts with financial institutions, includes not only the opening and placing of funds on accounts but also forward foreign exchange transactions, irrespective of whether these are intended to cover an exchange risk or to take an open foreign exchange position,

— operations to liquidate or assign assets built up, repatriation of the proceeds of liquidation thereof (1) or immediate use of such proceeds within the limits of Community obligations,

— operations to repay credits or loans.

This Nomenclature is not an exhaustive list for the notion of capital movements — whence a heading XIII — F. 'Other capital movements — Miscellaneous'. It should not therefore be interpreted as restricting the scope of the principle of full liberalization of capital movements as referred to in Article 1 of the Directive.

I — DIRECT INVESTMENTS (1)

1. Establishment and extension of branches or new undertakings belonging solely to the person providing the capital, and the acquisition in full of existing undertakings.

2. Participation in new or existing undertaking with a view to establishing or maintaining lasting economic links.

3. Long-term loans with a view to establishing or maintaining lasting economic links.

4. Reinvestment of profits with a view to maintaining lasting economic links.

A — Direct investments on national territory by non-residents (1)

B — Direct investments abroad by residents (1)

II — INVESTMENTS IN REAL ESTATE (not included under I) (1)

A — Investments in real estate on national territory by non-residents

B — Investments in real estate abroad by residents

III — OPERATIONS IN SECURITIES NORMALLY DEALT IN ON THE CAPITAL MARKET (not included under I, IV and V)

(a) *Shares and other securities of a participating nature (1).*

(b) *Bonds (1).*

(1) See Explanatory Notes below.

A — **Transactions in securities on the capital market**

1. Acquisition by non-residents of domestic securities dealt in on a stock exchange (1).
2. Acquisition by residents of foreign securities dealt in on a stock exchange.
3. Acquisition by non-residents of domestic securities not dealt in on a stock exchange (1).
4. Aquisition by residents of foreign securities not dealt in on a stock exchange.

B — **Admission of securities to the capital market** (1)

(i) *Introduction on a stock exchange* (1).

(ii) *Issue and placing on a capital market* (*).

1. Admission of domestic securities to a foreign capital market.
2. Administration of foreign securities to the domestic capital market.

IV — OPERATIONS IN UNITS OF COLLECTIVE INVESTMENT UNDERTAKINGS (1)

(a) **Units of undertakings for collective investment in securities normally dealt in on the capital market (shares, other equities and bonds).**

(b) **Units of undertakings for collective investment in securities or instruments normally dealt in on the money market.**

(c) **Units of undertakings for collective investment in other assets.**

A — **Transactions in units of collective investment undertakings**

1. Acquisition by non-residents of units of national undertakings dealt in on a stock exchange.
2. Acquisition by residents of units of foreign undertakings dealt in on a stock exchange.
3. Acquisition by non-residents of units of national undertakings not dealt in on a stock exchange.
4. Acquisition by residents of units of foreign undertakings not dealt in on a stock exchange.

B — **Administration of units of collective investment undertakings to the capital market**

(i) *Introduction on a stock exchange.*

(ii) *Issue and placing on a capital market.*

1. Admission of units of national collective investment undertakings to a foreign capital market.
2. Admission of units of foreign collective investment undertakings to the domestic capital market.

V — OPERATIONS IN SECURITIES AND OTHER INSTRUMENTS NORMALLY DEALT IN ON THE MONEY MARKET (1)

A — **Transactions in securities and other instruments on the money market**

1. Acquisition by non-residents of domestic money market securities and instruments.
2. Acquisition by residents of foreign money market securities and instruments.

B — **Admission of securities and other instruments to the money market**

(i) ***Introduction on a recognized money market*** (*).

(ii) ***Issue and placing on a recognized money market.***

1. **Admission of domestic securities and instruments to a foreign money market.**
2. **Admission of foreign securities and instruments to the domestic money market.**

(1) See Explanatory Notes below.

VI — OPERATIONS IN CURRENT AND DEPOSIT ACCOUNTS WITH FINANCIAL INSTITUTIONS (1)

A — Operations carried out by non-residents with domestic financial institutions

B — Operations carried out by residents with foreign financial institutions

VII — CREDITS RELATED TO COMMERCIAL TRANSACTIONS OR TO THE PROVISION OF SERVICES IN WHICH A RESIDENT IS PARTICIPATING (1)

1. Short-term (less than one year).
2. Medium-term (from one to five years).
3. Long-term (five years or more).

A — Credits granted by non-residents to residents

B — Credits granted by residents to non-residents

VIII — FINANCIAL LOANS AND CREDITS (not included under I, VII and XI) (1)

1. Short-term (less than one year).
2. Medium-term (from one to five years).
3. Long-term (five years or more).

A — Loans and credits granted by non-residents to residents

B — Loans and credits granted by residents to non-residents

IX — SURETIES, OTHER GUARANTEES AND RIGHTS OF PLEDGE

A — Granted by non-residents to residents

B — Granted by residents to non-residents

X — TRANSFERS IN PERFORMANCE OF INSURANCE CONTRACTS

A — Premiums and payments in respect of life assurance

1. Contracts concluded between domestic life assurance companies and non-residents.
2. Contracts concluded between foreign life assurance companies and residents.

B — Premiums and payments in respect of credit insurance

1. Contracts concluded between domestic credit insurance companies and non-residents.
2. Contracts concluded between foreign credit insurance companies and residents.

C — Other transfers of capital in respect of insurance contracts

XI — PERSONAL CAPITAL MOVEMENTS

A — Loans

B — Gifts and endowments

C — Dowries

D — Inheritances and legacies

E — Settlement of debts by immigrants in their previous country of residence

F — Transfers of assets constituted by residents, in the event of emigration, at the time of their installation or during their period of stay abroad

G — Transfers, during their period of stay, of immigrants' savings to their previous country of residence

(1) See Explanatory Notes below.

XII — PHYSICAL IMPORT AND EXPORT OF FINANCIAL ASSETS

A — Securities

B — Means of payment of every kind

XIII — OTHER CAPITAL MOVEMENTS

A — Death duties

B — Damages (where these can be considered as capital)

C — Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)

D — Authors' royalties: patents, designs, trade marks and inventions (assignments and transfers arising out of such assignments)

E — Transfers of the monies required for the provision of services (not included under VI)

F — Miscellaneous

EXPLANATORY NOTES

For the purposes of this Nomenclature and the Directive only, the following expressions have the meanings assigned to them respectively:

Direct investments

Investments of all kinds by natural persons or commercial, industrial or financial undertakings, and which serve to establish or to maintain lasting and direct links between the person providing the capital and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity. This concept must therefore be understood in its widest sense.

The undertakings mentioned under I-1 of the Nomenclature include legally independent undertakings (wholly-owned subsidiaries) and branches.

As regards those undertakings mentioned under I-2 of the Nomenclature which have the status of companies limited by shares, there is participation in the nature of direct investment where the block of shares held by a natural person of another undertaking or any other holder enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control.

Long term loans of a participating nature, mentioned under I-3 of the Nomenclature, means loans for a period of more than five years which are made for the purpose of establishing or maintaining lasting economic links. The main examples which may be cited are loans granted by a company to its subsidiaries or to companies in which it has a share and loans linked with a profit-sharing arrangement. Loans granted by financial institutions with a view to establishing or maintaining lasting economic links are also included under this heading.

Investments in real estate

Purchases of buildings and land and the construction of buildings by private persons for gain or personal use. This category also includes rights of usufruct, easements and building rights.

Introduction on a stock exchange or on a recognized money market

Access — in accordance with a specified procedure — for securities and other negotiable instruments to dealings, whether controlled officially or unofficially, on an officially recognized stock exchange or in an officially recognized segment of the money market.

Securities dealt in on a stock exchange (quoted or unquoted)

Securities the dealings in which are controlled by regulations, the prices for which are regularly published, either by official stock exchanges (quoted securities) or by other bodies attached to a stock exchange — e.g. committees of banks (unquoted securities).

Issue of securities and other negotiable instruments

Sale by way of an offer to the public.

Placing of securities and other negotiable instruments

The direct sale of securities by the issuer of by the consortium which the issuer has instructed to sell them, with no offer being made to the public.

Domestic or foreign securities and other instruments

Securities according to the country in which the issuer has his principal place of business. Acquisition by residents of domestic securities and other instruments issued on a foreign market ranks as the acquisition of foreign securities.

Shares and other securities of a participating nature

Including rights to subscribe to new issues of shares.

Bonds

Negotiable securities with a maturity of two years or more from issue for which the interest rate and the terms for the repayment of the principal and the payment of interest are determined at the time of issue.

Collective investment undertakings

Untertakings:

- the object of which is the collective investment in transferable securities or other assets of the capital they raise and which operate on the principle of risk-spreading, and
- the units of which are, at the request of holders, under the legal, contractual or statutory conditions governing them, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a collective investment undertaking to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

Such undertakings may be constituted according to law either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of the Directive, 'common funds' shall also include unit trusts.

Securities and other instruments normally dealt in on the money market

Treasury bills and other negotiable bills, certificates of deposit, bankers' acceptances, commercial paper and other like instruments.

Credits related to commercial transactions or to the provision of services

Contractual trade credits (advances or payments by instalment in respect of work in progress or on order and extended payment terms, whether or not involving subscription to a commercial bill) and their financing by credits provided by credit institutions. This category also includes factoring operations.

Financial loans and credits

Financing of every kind granted by financial institutions, including financing related to commercial transactions or to the provision of services in which no resident is participating.

This category also includes mortgage loans, consumer credit and financial leasing, as well as back-up facilities and other note-issuance facilities.

Residents or non-residents

Natural and legal persons according to the definitions laid down in the exchange control regulations in force in each Member State.

Proceeds of liquidation (of investments, securities, etc.)

Proceeds of sale including any capital appreciation, amount of repayments, proceeds of execution of judgements, etc.

Natural or legal persons

As defined by the national rules.

Financial institutions

Banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit, and insurance companies, building societies, investment companies and other institutions of like character.

Credit institutions

Banks, savings banks and institutions specializing in the provision of short-term, medium-term and long-term credit.

ANNEX II

LIST OF OPERATIONS REFERRED TO IN ARTICLE 3 OF THE DIRECTIVE

Nature of operation	Heading
Operations in securities and other instruments normally dealt in on the money market	V
Operations in current and deposit accounts with financial institutions	VI
Operations in units of collective investment undertakings — undertakings for investment in securities or instruments normally dealt in on the money market	IV-A and B (c)
Financial loans and credits — short-term	VIII-A and B-1
Personal capital movements — loans	XI-A
Physical import and export of financial assets — securities normally dealt in on the money market — means of payment	XII
Other capital movements: Miscellaneous — short-term operations similar to those listed above	XIII-F

The restrictions which Member States may apply to the capital movements listed above must be defined and applied in such a way as to cause the least possible hindrance to the free movement of persons, goods and services.

ANNEX III

REFERRED TO IN ARTICLE 5 OF THE DIRECTIVE

Scope of the provisions of the 1985 Act of Accession relating to capital movements, in accordance with the Nomenclature of capital movements set out in Annex I to the Directive

Articles of the Act of Accession (dates of expiry of transitional provisions)	Nature of operation	Heading
	(a) Provisions concerning the Kingdom of Spain	
Article 62 (31. 12. 1990)	Direct investments abroad by residents	I-B
Article 63 (31. 12. 1990)	Investments in real estate abroad by residents	II-B
Article 64 (31. 12. 1988)	Operations in securities normally dealt in on the capital market	
	— Acquisition by residents of foreign securities dealt in on a stock exchange	III-A-2
	— excluding bonds issued on a foreign market and denominated in national currency	
	Operations in units of collective investment undertakings	
	— Acquisition by residents of units of collective investment undertakings dealt in on a stock exchange	IV-A-2
	— excluding units of undertakings taking the form of common funds	
	(b) Provisions concerning the Portuguese Republic	
Article 222 (31. 12. 1989)	Direct investments on national territory by non-residents	I-A
Article 224 (31. 12. 1992)	Direct investments abroad by residents	I-B
Articles 225 and 226 (31. 12. 1990)	Investments in real estate on national territory by non-residents	II-A
Article 227 (31. 12. 1992)	Investments in real estate abroad by residents	II-B
Article 228 (31. 12. 1990)	Personal capital movements	
	(i) for the purpose of applying the higher amounts specified in Article 228 (2):	
	— Dowries	XI-C
	— Inheritances and legacies	XI-D
	— Transfers of assets built up by residents in case of emigration at the time of their installation or during their period of stay abroad	XI-F
	(ii) for the purpose of applying the lower amounts specified in Article 228 (2):	
	— Gifts and endowments	XI-B
	— Settlement of debts by immigrants in their previous country of residence	XI-E
	— Transfers of immigrants' savings to their previous country of residence during their period of stay	XI-G

Articles of the Act of Accession (dates of expiry of transitional provisions)	Nature of operation	Heading
	(b) Provisions concerning the Portuguese Republic *(cont'd)*	
Article 229 (31. 12. 1990)	Operations in securities normally dealt in on the capital market	
	— Acquisition by residents of foreign securities dealt in on a stock exchange	III-A-2
	— excluding bonds issued on a foreign market and denominated in national currency	
	Operations in units of collective investment undertakings	
	— Acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	IV-A-2
	— excluding units of undertakings taking the form of common funds	

ANNEX IV

REFERRED TO IN ARTICLE 6 (2) OF THE DIRECTIVE

I. The Portuguese Republic may continue to apply or reintroduce, until 31 December 1990 restrictions existing on the date of notification of the Directive on capital movements given in List I below:

LIST I

Nature of operation	Heading
Operations in units of collective investment undertakings	
— acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	IV-A-2 (a)
— undertakings subject to Directive 85/611/EEC (1) and taking the form of common funds	
— Acquisition by residents of units of foreign collective investment undertakings not dealt in on a stock exchange	IV-A-4 (a)
— undertakings subject to Directive 85/611/EEC (1)	

(1) Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ No L 375, 31. 12. 1985, p. 3).

II. The Kingdom of Spain and the Portuguese Republic may continue to apply or reintroduce, until 31 December 1990 and 31 December 1992 respectively, restrictions existing on the date of notification of the Directive on capital movements given in List II below:

LIST II

Nature of operation	Heading
Operations in securities normally dealt in on the capital market	
— Acquisition by residents of foreign securities dealt in on a stock exchange	III-A-2 (b)
— bonds issued on a foreign market and denominated in national currency	
— Acquisition by residents (non-residents) of foreign (domestic) securities not dealt in on a stock exchange	III-A-3 and 4
— Admission of securities to the capital market	III-B-1 and 2
— where they are dealt in on or in the process of introduction to a stock exchange in a Member State	
Operations in units of collective investment undertakings	
— Acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	IV-A-2
— undertakings not subject to Directive 85/611/EEC (1) and taking the form of common funds	
— Acquisition by residents (non-residents) of units of foreign (domestic) collective investment undertakings not dealt in on a stock exchange	IV-A-3 and 4
— undertakings not subject to Directive 85/611/EEC (1) and the sole object of which is the acquisition of assets that have been liberalized	
— Admission to the capital market of units of collective investment of undertakings	IV-B-1 and 2 (a)
— undertakings subject to Directive 85/611/EEC (1)	
— Credits related to commercial transactions or to the provision of services in which a resident is participating	VII-A and B-3
— Long-term credits	

(1) See footnote to List I.

III. The Hellenic Republic, the Kingdom of Spain, Ireland and the Portuguese Republic may, until 31 December 1992, continue to apply or reintroduce restrictions existing at the date of notification of the Directive on capital movements given in List III below:

LIST III

Nature of operation	Heading
Operations in securities dealt in on the capital market	
— Admission of securities to the capital market	III-B-1 and 2
— where they are not dealt in on or in the process of introduction to a stock exchange in a Member State	
Operations in units of collective investment undertakings	
— Admission to the capital market of units of collective investment undertakings	IV-B-1 and 2
— undertakings not subject to Directive 85/611/EEC (1) and the sole object of which is the acquisition of assets that have been liberalized	
Financial loans and credits	VIII-A, B-2 and 3
— medium-term and long-term	

(1) See footnote to List I.

IV. The Hellenic Republic, the Kingdom of Spain, Ireland and the Portuguese Republic may, until 31 December 1992, defer liberalization of the capital movements given in List IV below:

LIST IV

Nature of operation	Heading
Operations in securities and other instruments normally dealt in on the money market	V
Operations in current and deposit accounts with financial institutions	VI
Operations in units of collective investment undertakings	IV-A and B (c)
— undertakings for investment in securities or instruments normally dealt in on the money market	
Financial loans and credits	VIII-A and B-1
— short term	
Personal capital movements	XI-A
— loans	
Physical import and export of financial assets	XII
— securities normally dealt in on the money market	
— means of payment	
Other capital movements: Miscellaneous	XIII-F

ANNEX V

Since the dual exchange market system, as operated by the Kingdom of Belgium and the Grand Duchy of Luxembourg, has not had the effect of restricting capital movements but nevertheless constitutes an anomaly in the EMS and should therefore be brought to an end in the interests of effective implementation of the Directive and with a view to strengthening the European Monetary System, these two Member States undertake to abolish it by 31 December 1992. They also undertake to administer the system, until such time as it is abolished, on the basis of procedures which will still ensure the *de facto* free movement of capital on such conditions that the exchange rates ruling on the two markets show no appreciable and lasting differences.

V. OTHER ACTS

V. a) **87/102/EEC**

Council Directive of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit
(OJ No L 42, 12.02.1987, p. 48-53)

Articles 1-18

Annex : List of terms referred to in Article 4(3)

1. Credit agreements for financing the supply of particular goods or services
2. Credit agreements operated by credit cards
3. Credit agreements operated by running account which are not otherwise covered by the Directive
4. Other credit agreements covered by the Directive

Modified by Directive 90/88/EEC (OJ No L 61, 10.03.1990, p. 14-18)

COUNCIL DIRECTIVE

of 22 December 1986

for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

(87/102/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas wide differences exist in the laws of the Member States in the field of consumer credit;

Whereas these differences of law can lead to distortions of competition between grantors of credit in the common market;

Whereas these differences limit the opportunities the consumer has to obtain credit in other Member States; whereas they affect the volume and the nature of the credit sought, and also the purchase of goods and services;

Whereas, as a result, these differences have an influence on the free movement of goods and services obtainable by consumers on credit and thus directly affect the functioning of the common market;

Whereas, given the increasing volume of credit granted in the Community to consumers, the establishment of a common market in consumer credit would benefit alike consumers, grantors of credit, manufacturers, wholesalers and retailers of goods and providers of services;

Whereas the programmes of the European Economic Community for a consumer protection and information policy (4) provide, *inter alia*, that the consumer should be protected against unfair credit terms and that a harmonization of the general conditions governing consumer credit should be undertaken as a priority;

Whereas differences of law and practice result in unequal consumer protection in the field of consumer credit from one Member State to another;

Whereas there has been much change in recent years in the types of credit available to and used by consumers; whereas new forms of consumer credit have emerged and continue to develop;

Whereas the consumer should receive adequate information on the conditions and cost of credit and on his obligations; whereas this information should include, *inter alia*, the annual percentage rate of charge for credit, or, failing that, the total amount that the consumer must pay for credit; whereas, pending a decision on a Community method or methods of calculating the annual percentage rate of charge, Member States should be able to retain existing methods or practices for calculating this rate, or failing that, should establish provisions for indicating the total cost of the credit to the consumer;

Whereas the terms of credit may be disadvantageous to the consumer; whereas better protection of consumers can be achieved by adopting certain requirements which are to apply to all forms of credit;

Whereas, having regard to the character of certain credit agreements or types of transaction, these agreements or transactions should be partially or entirely excluded from the field of application of this Directive;

Whereas it should be possible for Member States, in consultation with the Commission, to exempt from the Directive certain forms of credit of a non-commercial character granted under particular conditions;

Whereas the practices existing in some Member States in respect of authentic acts drawn up before a notary or judge are such as to render the application of certain provisions of this Directive unnecessary in the case of such acts; whereas it should therefore be possible for Member States to exempt such acts from those provisions;

Whereas credit agreements for very large financial amounts tend to differ from the usual consumer credit agreements; whereas the application of the provisions of this Directive to agreements for very small amounts could create unnecessary administrative burdens both for consumers and grantors of credit; whereas therefore, agreements above or below specified financial limits should be excluded from the Directive;

(1) OJ No C 80, 27. 3. 1979, p. 4 and OJ No C 183, 10. 7. 1984, p. 4.
(2) OJ No C 242, 12. 9. 1983, p. 10.
(3) OJ No C 113, 7. 5. 1980, p. 22.
(4) OJ No C 92, 25. 4. 1975, p. 1 and OJ No C 133, 3. 6. 1981, p. 1.

Whereas the provision of information on the cost of credit in advertising and at the business premises of the creditor or credit broker can make it easier for the consumer to compare different offers;

Whereas consumer protection is further improved if credit agreements are made in writing and contain certain minimum particulars concerning the contractual terms;

Whereas, in the case of credit granted for the acquisition of goods, Member States should lay down the conditions in which goods may be repossessed, particularly if the consumer has not given his consent; whereas the account between the parties should upon repossession be made up in such manner as to ensure that the repossession does not entail any unjustified enrichment;

Whereas the consumer should be allowed to discharge his obligations before the due date; whereas the consumer should then be entitled to an equitable reduction in the total cost of the credit;

Whereas the assignment of the creditor's rights arising under a credit agreement should not be allowed to weaken the position of the consumer;

Whereas those Member States which permit consumers to use bills of exchange, promissory notes or cheques in connection with credit agreements should ensure that the consumer is suitably protected when so using such instruments;

Whereas, as regards goods or services which the consumer has contracted to acquire on credit, the consumer should, at least in the circumstances defined below, have rights *vis-à-vis* the grantor of credit which are in addition to his normal contractual rights against him and against the supplier of the goods or services; whereas the circumstances referred to above are those where the grantor of credit and the supplier of goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the purpose of enabling the consumer to acquire goods or services from the latter;

Whereas the ECU is as defined in Council Regulation (EEC) No 3180/78 (1), as last amended by Regulation (EEC) No 2626/84 (2); whereas Member States should to a limited extent be at liberty to round off the amounts in national currency resulting from the conversion of amounts of this Directive expressed in ECU; whereas the amounts in this Directive should be periodically re-examined in the light of economic and monetary trends in the Community, and, if need be, revised;

Whereas suitable measures should be adopted by Member States for authorizing persons offering credit or offering to arrange credit agreements or for inspecting or monitoring the activities of persons granting credit or arranging for credit to be granted or for enabling consumers to complain about credit agreements or credit conditions;

Whereas credit agreements should not derogate, to the detriment of the consumer, from the provisions adopted in implementation of this Directive or corresponding to its provisions; whereas those provisions should not be circumvented as a result of the way in which agreements are formulated;

Whereas, since this Directive provides for a certain degree of approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit and for a certain level of consumer protection, Member States should not be prevented from retaining or adopting more stringent measures to protect the consumer, with due regard for their obligations under the Treaty;

Whereas, not later than 1 January 1995, the Commission should present to the Council a report concerning the operation of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive applies to credit agreements.

2. For the purpose of this Directive:

(a) 'consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which can be regarded as outside his trade or profession;

(b) 'creditor' means a natural or legal person who grants credit in the course of his trade, business or profession, or a group of such persons;

(c) 'credit agreement' means an agreement whereby a creditor grants or promises to grant to a consumer a credit in the form of a deferred payment, a loan or other similar financial accommodation.

Agreements for the provision on a continuing basis of a service or a utility, where the consumer has the right to pay for them, for the duration of their provision, by means of instalments, are not deemed to be credit agreements for the purpose of this Directive;

(d) 'total cost of the credit to the consumer' means all the costs of the credit including interest and other charges directly connected with the credit agreement, determined in accordance with the provisions or practices existing in, or to be established by, the Member States.

(1) OJ No L 379, 30. 12. 1978, p. 1.
(2) OJ No L 247, 16. 9. 1984, p. 1.

(c) 'annual percentage rate of charge' means the total cost of the credit to the consumer expressed as an annual percentage of the amount of the credit granted and calculated according to existing methods of the Member States.

Article 2

1. This Directive shall not apply to :

(a) credit agreements or agreements promising to grant credit :

— intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building,

— intended for the purpose of renovating or improving a building as such ;

(b) hiring agreements except where these provide that the title will pass ultimately to the hirer ;

(c) credit granted or made available without payment of interest or any other charge ;

(d) credit agreements under which no interest is charged provided the consumer agrees to repay the credit in a single payment ;

(e) credit in the form of advances on a current account granted by a credit institution or financial institution other than on credit card accounts.

Nevertheless, the provisions of Article 6 shall apply to such credits ;

(f) credit agreements involving amounts less than 200 ECU or more than 20 000 ECU ;

(g) credit agreements under which the consumer is required to repay the credit :

— either, within a period not exceeding three months,

— or, by a maximum number of four payments within a period not exceeding 12 months.

2. A Member State may, in consultation with the Commission, exempt from the application of this Directive certain types of credit which fulfil the following conditions :

— they are granted at rates of charge below those prevailing in the market, and

— they are not offered to the public generally.

3. The provisions of Article 4 and of Articles 6 to 12 shall not apply to credit agreements or agreements promising to grant credit, secured by mortgage on immovable property, in so far as these are not already excluded from the Directive under paragraph 1 (a) of this Article.

4. Member States may exempt from the provisions of Articles 6 to 12 credit agreements in the form of an authentic act signed before a notary or judge.

Article 3

Without prejudice to Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (1), and to the rules and principles applicable to unfair advertising, any advertisement, or any offer which is displayed at business premises, in which a person offers credit or offers to arrange a credit agreement and in which a rate of interest or any figures relating to the cost of the credit are indicated, shall also include a statement of the annual percentage rate of charge, by means of a representative example if no other means is practicable.

Article 4

1. Credit agreements shall be made in writing. The consumer shall receive a copy of the written agreement.

2. The written agreement shall include :

(a) a statement of the annual percentage rate of charge ;

(b) a statement of the conditions under which the annual percentage rate of charge may be amended.

In cases where it is not possible to state the annual percentage rate of charge, the consumer shall be provided with adequate information in the written agreement. This information shall at least include the information provided for in the second indent of Article 6 (1).

3. The written agreement shall further include the other essential terms of the contract.

By way of illustration, the Annex to this Directive contains a list of terms which Member States may require to be included in the written agreement as being essential.

Article 5

By way of derogation from Articles 3 and 4 (2), and pending a decision on the introduction of a Community method or methods of calculating the annual percentage rate of charge, those Member States which, at the time of notification of this Directive, do not require the annual percentage rate of charge to be shown or which do not have an established method for its calculation, shall at least require the total cost of the credit to the consumer to be indicated.

Article 6

1. Notwithstanding the exclusion provided for in Article 2 (1) (e), where there is an agreement between a credit institution or financial institution and a consumer for the granting of credit in the form of an advance on a current account, other than on credit card accounts, the consumer shall be informed at the time or before the agreement is concluded :

— of the credit limit, if any,

— of the annual rate of interest and the charges applicable from the time the agreement is concluded and the conditions under which these may be amended,

— of the procedure for terminating the agreement.

(1) OJ No L 250, 19. 9. 1984, p. 17.

This information shall be confirmed in writing.

2. Furthermore, during the period of the agreement, the consumer shall be informed of any change in the annual rate of interest or in the relevant charges at the time it occurs. Such information may be given in a statement of account or in any other manner acceptable to Member States.

3. In Member States where tacitly accepted overdrafts are permissible, the Member States concerned shall ensure that the consumer is informed of the annual rate of interest and the charges applicable, and of any amendment thereof, where the overdraft extends beyond a period of three months.

Article 7

In the case of credit granted for the acquisition of goods, Member States shall lay down the conditions under which goods may be repossessed, in particular if the consumer has not given his consent. They shall further ensure that where the creditor recovers possession of the goods the account between the parties shall be made up so as to ensure that the repossession does not entail any unjustified enrichment.

Article 8

The consumer shall be entitled to discharge his obligations under a credit agreement before the time fixed by the agreement. In this event, in accordance with the rules laid down by the Member States, the consumer shall be entitled to an equitable reduction in the total cost of the credit.

Article 9

Where the creditor's rights under a credit agreement are assigned to a third person, the consumer shall be entitled to plead against that third person any defence which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned.

Article 10

The Member States which, in connection with credit agreements, permit the consumer:

(a) to make payment by means of bills of exchange including promissory notes;

(b) to give security by means of bills of exchange including promissory notes and cheques,

shall ensure that the consumer is suitably protected when using these instruments in those ways.

Article 11

1. Member States shall ensure that the existence of a credit agreement shall not in any way affect the rights of the consumer against the supplier of goods or services purchased by means of such an agreement in cases where the goods or services are not supplied or are otherwise not in conformity with the contract for their supply.

2. Where:

(a) in order to buy goods or obtain services the consumer enters into a credit agreement with a person other than the supplier of them;

and

(b) the grantor of the credit and the supplier of the goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the acquisition of goods or services from that supplier; and

(c) the consumer referred to in subparagraph (a) obtains his credit pursuant to that pre-existing agreement; and

(d) the goods or services covered by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for supply of them; and

(e) the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled,

the consumer shall have the right to pursue remedies against the grantor of credit. Member States shall determine to what extent and under what conditions these remedies shall be exercisable.

3. Paragraph 2 shall not apply where the individual transaction in question is for an amount less than the equivalent of 200 ECU.

Article 12

1. Member States shall:

(a) ensure that persons offering credit or offering to arrange credit agreements shall obtain official authorization to do so, either specifically or as suppliers of goods and services; or

(b) ensure that persons granting credit or arranging for credit to be granted shall be subject to inspection or monitoring of their activities by an institution or official body; or

(c) promote the establishment of appropriate bodies to receive complaints concerning credit agreements or credit conditions and to provide relevant information or advice to consumers regarding them.

2. Member States may provide that the authorization referred to in paragraph 1 (a) shall not be required where persons offering to conclude or arrange credit agreements satisfy the definition in Article 1 of the first Council Directive of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (1) and are authorized in accordance with the provisions of that Directive.

(1) OJ No L 322, 17. 12. 1977, p. 30

Where persons granting credit or arranging for credit to be granted have been authorized both specifically, under the provisions of paragraph 1 (a) and also under the provisions of the aforementioned Directive, but the latter authorization is subsequently withdrawn, the competent authority responsible for issuing the specific authorization to grant credit under paragraph 1 (a) shall be informed and shall decide whether the persons concerned may continue to grant credit, or arrange for credit to be granted, or whether the specific authorization granted under paragraph 1 (a) should be withdrawn.

Article 13

1. For the purposes of this Directive, the ECU shall be that defined by Regulation (EEC) No 3180/78, as amended by Regulation (EEC) No 2626/84. The equivalent in national currency shall initially be calculated at the rate obtaining on the date of adoption of this Directive.

Member States may round off the amounts in national currency resulting from the conversion of the amounts in ECU provided such rounding off does not exceed 10 ECU.

2. Every five years, and for the first time in 1995, the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts in this Directive, in the light of economic and monetary trends in the Community

Article 14

1. Member States shall ensure that credit agreements shall not derogate, to the detriment of the consumer, from the provisions of national law implementing or corresponding to this Directive.

2. Member States shall further ensure that the provisions which they adopt in implementation of this directive are not circumvented as a result of the way in which agreements are formulated, in particular by the device of distributing the amount of credit over several agreements.

Article 15

This Directive shall not preclude Member States from retaining or adopting more stringent provisions to protect consumers consistent with their obligations under the Treaty.

Article 16

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 1 January 1990 and shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 17

Not later than 1 January 1995 the Commission shall present a report to the Council concerning the operation of this Directive.

Article 18

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1986.

For the Council

The President

G. SHAW

ANNEX

LIST OF TERMS REFERRED TO IN ARTICLE 4 (3)

1. **Credit agreements for financing the supply of particular goods or services:**

   (i) a description of the goods or services covered by the agreement;

   (ii) the cash price and the price payable under the credit agreement;

   (iii) the amount of the deposit, if any, the number and amount of instalments and the dates on which they fall due, or the method of ascertaining any of the same if unknown at the time the agreement is concluded;

   (iv) an indication that the consumer will be entitled, as provided in Article 8, to a reduction if he repays early;

   (v) who owns the goods (if ownership does not pass immediately to the consumer) and the terms on which the consumer becomes the owner of them;

   (vi) a description of the security required, if any;

   (vii) the cooling-off period, if any;

   (viii) an indication of the insurance (s) required, if any, and, when the choice of insurer is not left to the consumer, an indication of the cost thereof.

2. **Credit agreements operated by credit cards:**

   (i) the amount of the credit limit, if any;

   (ii) the terms of repayment or the means of determining them;

   (iii) the cooling-off period, if any.

3. **Credit agreements operated by running account which are not otherwise covered by the Directive:**

   (i) the amount of the credit limit, if any, or the method of determining it;

   (ii) the terms of use and repayment;

   (iii) the cooling-off period, if any.

4. **Other credit agreements covered by the Directive:**

   (i) the amount of the credit limit, if any;

   (ii) an indication of the security required, if any;

   (iii) the terms of repayment;

   (iv) the cooling-off period, if any;

   (v) an indication that the consumer will be entitled, as provided in Article 8, to a reduction if he repays early.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 22 February 1990

amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

(90/88/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Article 5 of Council Directive 87/102/EEC (4) provides for the introduction of a Community method or methods of calculating the annual percentage rate of lcharge for consumer credit;

Whereas it is desirable, in order to promote the establishment and functioning the internal market and to ensure that consumers benefit from a high level of protection, that one method of calculating the said annual percentage rate of charge should be used throughout the Community;

Whereas it is desirable, with a view to introducing such a method and in accordance with the definition of the total cost of credit to the consumer, to draw up a single mathematical formula for calculating the annual percentage rate of charge and for determining credit cost items to be used in the calculation by indicating those costs which must not be taken into acount;

Whereas, during a trasitional period, Member States which prior to the date of notification of this Directive, apply laws which permit the use of another mathematical formula for calculating the annual percentage rate of charge may continue to apply such laws;

Whereas, before expiry of the transitional period and in the light of experience, the Council will, on the basis of a proposal from the Commission, take a decision which will make it possible to apply a single Community mathematical formula;

Whereas it is desirable, whenever necessary, to adopt certain hypotheses for calculating the annual percentage rate of charge;

Whereas by virtue of the special nature of loans guaranteed by a mortgage secured on immoveable property it is desirable that such credit should continue to be partially excluded from this Directive;

Whereas the information which must be communicated to the consumer in the written contract should be amplified,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 87/102/EEC is hereby amended as follows:

1. In Article 1 (2), points (d) and (e) shall be replaced by the following:

'(d) "total cost of the credit to the consumer" means all the costs, including interest and other charges, which the consumer has to pay for the credit.';

(1) OJ No C 155, 14. 6. 1988, p. 10.
(2) OJ No C 96, 17. 4. 1989, p. 87 and OJ No C 291, 20. 11. 1989, p. 50.
(3) OJ No C 337, 31. 12. 1988, p. 1.
(4) OJ No L 42, 12. 2. 1987, p. 48.

'(e) "annual percentage rate of charge" means the total cost of the credit to theconsumer, expressed as an annual percentage of the amount of the credit granted and calculated in accordance with Article 1a'.

2. The following Article shall be inserted:

'Article 1a

1. (a) The annual percentage rate of charge, which shall be that equivalent, on an annual basis, to the present value of all commitments (loans, repayments and charges), future or existing, agreed by the creditor and the borrower, shall be calculated in accordance with the mathematical formula set out in Annex II.

(b) Four examples of the method of calculation are given in Annex III, by way of illustration.

2. For the purpose of calculating the annual percentage rate of charge, the "total cost of the credit to the consumer" as defined in Article 1 (2) (d) shall be determined, with the exception of the following charges:

(i) charges payable by the borrower for non-compliance with any of his commitments laid down in the credit agreement;

(ii) charges other than the purchase price which, in purchases of goods or services, the consumer is obliged to pay whether the transaction is paid in cash or by credit;

(iii) charges for the transfer of funds and charges for keeping an account intended to receive payments towards the reimbursement of the credit the payment of interest and other charges except where the consumer doesn ot have reasonable freedom of choice in the matter and where such charges are abnormally high; this provision shall not, however, apply to charges for collection of such reimbursements or payments, whether made in cash or otherwise;

(iv) membership subscriptions to associations or groups and arising from agreements separate from the credit agreement, even though such subscriptions have an effect on the credit terms;

(v) charges for insurance or guarantees; included are, however, those designed to ensure payment to the creditor, in the event of the death, invalidity, illness or unemployment of the consumer, of a sum equal to or less than the total amount of the credit togehter with relevant interest and other charges which have to be imposed by the creditor as a condition for credit being granted.

3. (a) Where credit transactions referred to in this Directive are subject to the provisions of national laws in force on 1 March 1990 which impose maximum limits on the annual percentage rate of charge for such transactions and, where such provisions permit standard costs other than those described in paragraph 2 (i) to (v) not to be included in those maximum limits, Member States may, solely in respect of such transactions, not include the aforementioned costs when calculating the annual percentage rate of charge, as stipulated in this Directive, provided that there is a requirement, in the cases mentioned in Article 3 and in the credit agreement, that the consumer be informed of the amount and inclusion thereof in the payments to be made.

(b) Member States may no longer apply point (a) from the date of entry into force of the single mathematical formula for calculating the annual percentage rate of charge in the Community, pursuant to the provisions of paragraph 5 (c).

4. (a) The annual percentage rate of charge shall be calculated at the time the credit contract is concluded, without prejudice to the provisions of Article 3 concerning advertisements and special offers.

(b) The calculation shall be made on the assumption that the credit contract is valid for the period agreed and that the creditor and the consumer fulfil their obligations under the terms and by the dates agreed.

5. (a) As a transitional measure, notwithstanding the provisions of paragraph 1 (a), Member States which, prior to 1 March 1990, applied legal provisions whereby a mathematical formula different from that given in Annex II could be used for calculating the annual percentage rate of charge, may continue applying that formula within their territory for a period of three years starting from 1 January 1993.

Member States shall take the appropriate measures to ensure that only one mathematical formula for calculating the annual percentage rate of charge is used within their territory.

(b) Six months before the expiry of the time limit laid down in point (a) the Commission shall submit to the Council a report, accompanied by a proposal, which will make it possible in the light of experience, to apply a single Community mathematical formula for calculating the annual percentage rate of charge.

(c) The Council shall, acting by a qualified majority on the basis of the proposal from the Commission, take a decision before 1 January 1996.

6. In the case of credit contracts containing clauses allowing variations in the rate of interest and the amount or level of other charges contained in the annual percentage rate of charge but unquantifiable at the time when it is calculated, the annual percentage rate of charge shall be calculated on the assumption that interest and other charges remain fixed and will apply until the end of the credit contract.

7. Where necessary, the following assumptions may be made in calculating the annual percentage rate of charge :

— if the contract does not specify a credit limit, the amount of credit granted shall be equal to the amount fixed by the relevant Member State, without exceeding a figure equivalent to ECU 2 000 ;

— if there is no fixed timetable for repayment, and one cannot be deduced from the terms of the agreement and the means for repaying the credit granted, the duration of the credit shall be deemed to be one year ;

— unless otherwise specified, where the contract provides for more than one repayment date, the credit will be made available and the repayments made at the earliest time provided for in the agreement'.

3. Article 2 (3) shall be replaced by the following :

'3. The provisions of Article 1a and of Articles 4 to 12 shall not apply to credit agreements or agreements promising to grant credit, secured by mortgage on immovable property, insofar as these are not already excluded from the Directive under paragraph 1 (a).'

4. The following subparagraph shall be added to Article 4 (2) :

'(c) a statement of the amount, number and frequency or dates of the payments which the consumer must make to repay the credit, as well as of the payments for interest and other charges ; the total amount of these payments should also be indicated where possible ;

(d) a statement of the cost items referred to in Article 1a (2) with the exception of expenditure related to the breach of contractual obligations which were not included in the calculation of the annual percentage rate of charge but which have to be paid by the consumer in given circumstances, together with a statement indentifying such circumstances. Where the exact amount of those items is known, that sum is to be indicated ; if that is not the case, either a method of calculation or as accurate an estimate as possibe is to be provided where possible'.

5. Article 5 shall be deleted.

6. The Annex shall become Annex I and the following point shall be added to paragraph 1 :

'(ix) the obligation on the consumer to save a certain amount of money which must be placed in a special account'.

7. Annexes II and III attached hereto shall be added.

Article 2

1. Member States shall take the measures necessary to cumply with this Directive not later than 31 December 1992 and shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 22 February 1990.

For the Council

The President

D. J. O'MALLEY

ANNEX

'ANNEX II

THE BASIC EQUATION EXPRESSING THE EQUIVALENCE OF LOANS ON THE ONE HAND, AND REPAYMENTS AND CHARGES ON THE OTHER:

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^{t_K}} = \sum_{K'=1}^{K'=m'} \frac{A'_{K'}}{(1+i)^{t_{K'}}}$$

Meaning of letters and symbols:

K	is the number of a loan
K'	is the number of a repayment or a payment of charges
A_K	is the amount of loan number K
$A'_{K'}$	is the amount of repayment number K'
$\sum$	represents a sum
m	is the number of the last loan
m'	is the number of the last repayment or payment of charges
t_K	is the interval, expressed in years and fractions of a year, between the date of loan No 1 and those of subsequent loans Nos 2 to m
$t_{K'}$	is the interval expressed in years and fractions of a year between the date of loan No 1 and those of repayments or payments of charges Nos 1 to m'
i	is the percentage rate that can be calculated (either by algebra, by successive approximations, or by a computer programme) where the other terms in the equation are known from the contract or otherwise.

Remarks

(a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.

(b) The starting date shall be that of the first loan.

(c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year.

ANNEX III

EXAMPLES OF CALCULATIONS

First example

Sum loaned S = ECU 1 000.

It is repaid in a single payment of ECU 1 200 made 18 months, i. e. 1,5 years, after the date of the loan.

The equation becomes $1\,000 = \frac{1\,200}{(1+i)^{1,5}}$

$$\text{or } (1+i)^{1,5} = 1,2$$
$$1+i = 1,129243\ldots$$
$$i = 0,129243\ldots$$

This amount will be rounded down to 12,9 % or 12,92 % depending on whether the State or habitual practice allows the percentage to be rounded off to the first or second decimal.

Second example

The sum agreed is S = ECU 1 000 but the creditor retains ECU 50 for enquiry and administrative expenses, so that the loan is in fact ECU 950; the repayment of ECU 1 200, as in the first example, is made 18 months after the date of the loan.

The equation becomes $950 = \frac{1\,200}{(1+i)^{1,5}}$

$$\text{or } (1+i)^{1,5} = \frac{1\,200}{950} = 1,263157\ldots$$
$$1+i = 1,16851\ldots$$
$$i = 0,16851\ldots \text{ rounded off to 16,9 \% or 16,85 \%.}$$

Third example

The sum lent is ECU 1 000, repayable in two amounts each of ECU 600, paid after one and two years respectively.

The equation becomes $1\,000 = \frac{600}{1+i} + \frac{600}{(1+i)^2}$;

it is solved by algebra and produces i = 0,1306623, rounded off to 13,1 % or 13,07 %.

Fourth example

The sum lent is ECU 1 000 and the amounts to be paid by the borrower are:

After three months	(0,25 years)	ECU 272
After six months	(0,50 years)	ECU 272
After twelve months	(1 year)	ECU 544
Total		ECU 1 088

The equation becomes:

$$1\,000 = \frac{272}{(1+i)^{0,25}} + \frac{272}{(1+o)^{0,50}} + \frac{544}{1+i}$$

This equation allows i to be calculated by successive approximations, which can be programmed on a ocket computer.

The result is:

i = 0,1321 rounded off 13,2 or 13,21 %.

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APPENDIX

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Legislation

I Acts whose publication is obligatory

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.
The titles of all other Acts are printed in bold type and preceded by an asterisk.

DIRECTIVE 98/31/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 1998

amending Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the European Monetary Institute [3],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [4],

(1) Whereas the risks associated with commodities trading and commodity derivatives are currently subject to Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [5]; whereas, however, the market risks associated with those positions are not captured accurately by Directive 89/647/EEC; whereas it is necessary to extend the concept of the 'trading book' to positions in commodities or commodity derivatives which are held for trading purposes and are subject mainly to market risks; whereas institutions must comply with this Directive as regards the coverage of commodity risks on their overall business; whereas the perpetration of serious fraud by certain commodity futures traders is of growing concern to the Community and a threat to the image and integrity of the futures trading business; whereas it is desirable that the Commission should consider defining an appropriate prudential framework in order to prevent these fraudulent practices in the future;

(2) Whereas Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions [6] lays down a standardised method for the calculation of capital requirements for market risks incurred by investment firms and credit institutions; whereas institutions have developed their own risk-management systems (internal models), designed to measure more accurately than the standardised method the market risks incurred by investment firms and credit institutions; whereas the use of more accurate methods of measuring risks should be encouraged;

(3) Whereas the use of such internal models for the purpose of calculating capital requirements requires strict internal control mechanisms and should be subject to recognition and supervision by the competent authorities; whereas the continued reliability of the results of the internal model calculation should be verified by a back-testing procedure;

(4) Whereas it is appropriate that competent authorities may allow margin requirements for exchange-traded futures and options, and on a transitional basis for cleared over-the-counter derivatives of the same nature, to be used as substitutes for the capital requirement calculated for such instruments in accordance with this Directive, provided that this does not lead to a capital requirement which is lower than the capital requirement calculated according to the other methods prescribed in this Directive; whereas the application of this principle does not require that

[1] OJ C 240, 6.8.1997, p. 24, and OJ C 118, 17.4.1998, p. 16.
[2] OJ C 19, 21.1.1998, p. 9.
[3] Opinion delivered on 7 October 1997.
[4] Opinion of the European Parliament of 18 December 1997 (OJ C 14, 19.1.1998), Council common position of 9 March 1998 (OJ C 135, 30.4.1998, p. 7) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Council Decision of 19 May 1998.
[5] OJ L 386, 30.12.1989, p. 14. Directive as last amended by Directive 98/32/EC of the European Parliament and of the Council (see page 26 of this Official Journal).
[6] OJ L 141, 11.6.1993, p. 1. Directive as amended by Directive 98/33/EC of the European Parliament and of the Council (see page 29 of this Official Journal).

the equivalence between such margin requirements and the capital requirements calculated according to the other methods prescribed in this Directive must be continually verified by the institutions applying this principle;

(5) Whereas the rules adopted at the wider international level may, in order to encourage more sophisticated risk-management methods based on internal models, lower capital requirements for credit institutions from third countries; whereas those credit institutions compete with investment firms and credit institutions incorporated in the Member States; whereas for investment firms and credit institutions incorporated in the Member States, only an amendment of Directive 93/6/EEC can provide similar incentives for the development and use of internal models;

(6) Whereas for the purpose of calculating market-risk-capital requirements, positions in gold and gold derivatives should be treated in a similar fashion to foreign-exchange positions;

(7) Whereas the issue of subordinated debt should not automatically exclude an issuer's equity from being included in a portfolio qualifying for a 2 % specific-risk weighting according to point 33 of Annex I to Directive 93/6/EEC;

(8) Whereas this Directive is in accordance with the work of an international forum of banking supervisors on the supervisory treatment of market risk and of positions in commodities and commodity derivatives;

(9) Whereas it is necessary to have a transitional capital regime on an optional basis for investment firms and credit institutions undertaking significant commodities business, having a diversified commodity portfolio and being not yet able to use models for the purpose of calculating the commodities risk capital requirement, in order to ensure a harmonious application of this Directive;

(10) Whereas this Directive is the most appropriate means of attaining the objectives sought and does not go beyond what is necessary to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 93/6/EEC is hereby amended as follows:

1. Article 2 is amended as follows:

(a) point 6(a) and the introductory phrase and subpoints (i) and (ii) of point 6(b) shall be replaced by the following:

'(a) its proprietary positions in financial instruments, commodities and commodity derivatives which are held for resale and/or which are taken on by the institution with the intention of benefiting in the short term from actual and/or expected differences between their buying and selling prices, or from other price or interest-rate variations, and positions in financial instruments, commodities and commodity derivatives, arising from matched principal broking, or positions taken in order to hedge other elements of the trading book;

(b) the exposures due to the unsettled transactions, free deliveries and over-the-counter (OTC) derivative instruments referred to in paragraphs 1, 2, 3 and 5 of Annex II, the exposures due to repurchase agreements and securities and commodities lending which are based on securities or commodities included in the trading book as defined in (a) referred to in paragraph 4 of Annex II, those exposures due to reverse repurchase agreements and securities-borrowing and commodities-borrowing transactions described in the same paragraph, provided the competent authorities so approve, which meet either conditions (i), (ii), (iii) and (v) or conditions (iv) and (v) as follows:

(i) the exposures are marked to market daily following the procedures laid down in Annex II;

(ii) the collateral is adjusted in order to take account of material changes in the value of the securities or commodities involved in the agreement or transaction in question, according to a rule acceptable to the competent authorities';

(b) points 15 and 16 shall be replaced by the following:

'15. "warrant" shall mean a security which gives the holder the right to purchase an underlying at a stipulated price until or at the warrant's expiry date. It may be settled by the delivery of the underlying itself or by cash settlement.

16. "stock financing" shall means positions where physical stock has been sold forward and the cost of funding has been locked in until the date of the forward sale';

(c) point 17, first paragraph, shall be replaced by the following:

'17. "repurchase agreement" and "reverse repurchase agreement" shall mean any agreement in which an institution or its counter-party transfers securities or commodities or guaranteed rights relating to title to securities or commodities where that guarantee is issued by a recognised exchange which holds the rights to the securities or commodities and the agreement does not allow an institution to transfer or pledge a particular security or commodity to more than one counter-party at one time, subject to a commitment to repurchase them (or substituted securities or commodities of the same description) at a specified price on a future date specified, or to be specified, by the transferor, being a repurchase agreement for the institution selling the securities or commodities and a reverse repurchase agreement for the institution buying them';

(d) point 18 shall be replaced by the following:

'18. "securities or commodities lending" and "securities or commodities borrowing" shall mean any transaction in which an institution or its counter-party transfers securities or commodities against appropriate collateral subject to a commitment that the borrower will return equivalent securities or commodities at some future date or when requested to do so by the transferor, that transaction being securities or commodities lending for the institution transferring the securities or commodities and being securities or commodities borrowing for the institution to which they are transferred.

Securities or commodities borrowing shall be considered an interprofessional transaction when the counter-party is subject to prudential coordination at Community level or is a Zone A credit institution as defined in Directive 89/647/EEC or is a recognised third-country investment firm or when the transaction is concluded with a recognised clearing house or exchange';

2. in Article 4(1), first subparagraph, points (i) and (ii) shall be replaced by the following:

'(i) the capital requirements, calculated in accordance with Annexes I, II and VI and, as appropriate, Annex VIII, for their trading-book business;

(ii) the capital requirements, calculated in accordance with Annexes III and VII and, as appropriate, Annex VIII, for all of their business activities'.

3. Article 5(2) shall be replaced by the following:

'2. Notwithstanding paragraph 1, those institutions which calculate the capital requirements for their trading-book business in accordance with Annexes I and II, and as appropriate Annex VIII, shall monitor and control their large exposures in accordance with Directive 92/121/EEC subject to the modifications laid down in Annex VI to this Directive';

4. Article 7(10) and the introductory part of Article 7(11), shall be replaced by the following:

'10. Where the rights of waiver provided for in paragraphs 7 and 9 are not exercised, the competent authorities may, for the purpose of calculating the capital requirements set out in Annexes I and VIII and the exposures to clients set out in Annex VI on a consolidated basis, permit positions in the trading book of one institution to offset positions in the trading book of another institution according to the rules set out in Annexes I, VI and VIII.

In addition, they may allow foreign-exchange positions in one institution to offset foreign-exchange positions in another institution in accordance with the rules set out in Annex III and/or Annex VIII. They may also allow commodities positions in one institution to offset commodities positions in another institution in accordance with the rules set out in Annex VII and/or Annex VIII.

11. The competent authorities may also permit offsetting of the trading book and of the foreign-exchange and commodities positions, respectively, of undertakings located in third countries, subject to the simultaneous fulfilment of the following conditions:'.

5. Article 8(5) shall be replaced by the following:

'5. The competent authorities shall oblige institutions to report to them immediately any case in which their counter-parties in repurchase and reverse repurchase agreements or securities and commodities-lending and securities and commodities-borrowing transactions default on their obligations. The Commission shall report to the Council on such cases and their implications for the treatment of such agreements and transactions in this Directive not more than three years after the date referred to in Article 12. Such

report shall also describe the way that institutions meet those of conditions (i) to (v) in Article 2(6)(b) that apply to them, in particular condition (v). Furthermore it shall give details of any changes in the relative volume of institutions' traditional lending and their lending through reverse repurchase agreements and securities-borrowing or commodities-borrowing transactions. If the Commission concludes on the basis of this report and other information that further safeguards are needed to prevent abuse, it shall make appropriate proposals'.

6. The following Article shall be inserted:

'*Article 11a*

Until 31 December 2006, Member States may authorise their institutions to use the minimum spread, carry and outright rates set out in the following table instead of those indicated in paragraphs 13, 14, 17 and 18 of Annex VII provided that the institutions, in the opinion of their competent authorities:

(i) undertake significant commodities business,

(ii) have a diversified commodities portfolio, and

(iii) are not yet in a position to use internal models for the purpose of calculating the capital requirement on commodities risk in accordance with Annex VIII.

Table

	Precious metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
Spread rate (%)	1,0	1,2	1,5	1,5
Carry rate (%)	0,3	0,5	0,6	0,6
Outright rate (%)	8	10	12	15

Member States shall inform the Commission of the use they make of this Article'.

7. Annexes I, II, III and V shall be amended, and Annexes VII and VIII added in accordance with the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 months after the date of its entry into force. They shall forthwith inform the Commission thereof.

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 reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	J. CUNNINGHAM

ANNEX

1. Annex I is amended as follows:

(a) In Paragraph 4, the last sentence is deleted and the following subparagraph is added:

'The competent authorities may allow the capital requirement for an exchange-traded future to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the future and that it is at least equal to the capital requirement for a future that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. Until 31 December 2006 the competent authorities may also allow the capital requirement for an OTC derivatives contract of the type referred to in this paragraph cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the derivatives contract and that it is at least equal to the capital requirement for the contract in question that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII'.

(b) In paragraph 5, the third subparagraph is replaced by the following:

'The competent authorities shall require that the other risks, apart from the delta risk, associated with options are safeguarded against. The competent authorities may allow the requirement against a written exchange-traded option to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement against an option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. Until 31 December 2006 the competent authorities may also allow the capital requirement for an OTC option cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement for an OTC option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. In addition they may allow the requirement on a bought exchange-traded or OTC option to be the same as that for the instrument underlying it, subject to the constraint that the resulting requirement does not exceed the market value of the option. The requirement against a written OTC option shall be set in relation to the instrument underlying it'.

(c) Paragraph 6 is replaced by the following:

'6. Warrants relating to debt instruments and equities shall be treated in the same way as options under paragraph 5'.

(d) Paragraph 33(i) is replaced by the following:

'(i) the equities shall not be those of issuers which have issued only traded debt instruments that currently attract an 8 % requirement in Table 1 appearing in paragraph 14 or that attract a lower requirement only because they are guaranteed or secured'.

2. Annex II is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. In the case of transactions in which debt instruments, equities and commodities (excluding repurchase and reverse repurchase agreements and securities or commodities lending and securities or commodities borrowing) are unsettled after their due delivery dates, an institution must calculate the price difference to which it is exposed. This is the difference between the agreed settlement price for the debt instrument, equity or commodity in question and its current market value, where the difference could involve a loss for the institution. It must multiply this difference by the appropriate factor in column A of the table appearing in paragraph 2 in order to calculate its capital requirement'.

(b) Paragraphs 3.1 and. 3.2 are replaced by the following:

'3.1. An institution shall be required to hold capital against counterparty risk if:

(i) it has paid for securities or commodities before receiving them or it has delivered securities or commodities before receiving payment for them;

and

(ii) in the case of cross-border transactions, one day or more has elapsed since it made that payment or delivery.

3.2. The capital requirement shall be 8 % of the value of the securities or commodities or cash owed to the institution multiplied by the risk weighting applicable to the relevant counterparty'.

(c) The heading before paragraph 4.1 and the first subparagraph of paragraph 4.1 are replaced by the following:

'Repurchase and reverse repurchase agreements, securities or commodities lending and borrowing

4.1. In the case of repurchase agreements and securities or commodities lending based on securities or commodities included in the trading book the institution shall calculate the difference between the market value of the securities or commodities and the amount borrowed by the institution or the market value of the collateral, where that difference is positive. In the case of reverse repurchase agreements and securities or commodities borrowing, the institution shall calculate the difference between the amount the institution has lent or the market value of the collateral and the market value of the securities or commodities it has received, where that difference is positive'.

3. Annex III is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. If the sum of an institution's overall net foreign-exchange position and its net gold position, calculated in accordance with the procedure set out below, exceeds 2 % of its total own funds, it shall multiply the sum of its net foreign-exchange position and its net gold position by 8 % in order to calculate its own-funds requirement against foreign-exchange risk.

Until 31 December 2004, the competent authorities may allow institutions to calculate their own-funds requirement by multiplying by 8 % the amount by which the sum of the overall net foreign-exchange position and the net gold position exceeds 2 % of the total own funds'.

(b) Paragraphs 3.1 and 3.2 are replaced by the following:

'3.1. Firstly, the institution's net open position in each currency (including the reporting currency) and in gold shall be calculated. This position shall consist of the sum of the following elements (positive or negative):

— the net spot position (i. e. all asset items less all liability items, including accrued interest, in the currency in question or, for gold, the net spot position in gold),

— the net forward position (i. e. all amounts to be received less all amounts to be paid under forward exchange and gold transactions, including currency and gold futures and the principal on currency swaps not included in the spot position),

— irrevocable guarantees (and similar instruments) that are certain to be called and likely to be irrecoverable,

— net future income/expenses not yet accrued but already fully hedged (at the discretion of the reporting institution and with the prior consent of the competent authorities, net future income/expenses not yet entered in accounting records but already fully hedged by forward foreign-exchange transactions may be included here). Such discretion must be exercised on a consistent basis,

— the net delta (or delta-based) equivalent of the total book of foreign-currency and gold options,

— the market value of other (i. e. non-foreign-currency and non-gold) options,

— any positions which an institution has deliberately taken in order to hedge against the adverse effect of the exchange rate on its capital ratio may be excluded from the calculation of net open currency positions. Such positions should be of a non-trading or structural nature and their exclusion, and any variation of the terms of their exclusion, shall require the consent of the competent authorities. The same treatment subject to the same conditions as above may be applied to positions which an institution has which relate to items that are already deducted in the calculation of own funds.

3.2. The competent authorities shall have the discretion to allow institutions to use the net present value when calculating the net open position in each currency and in gold'.

(c) Paragraph 4, first sentence, is replaced by the following:

'4. Secondly, net short and long positions in each currency other than the reporting currency and the net long or short position in gold shall be converted at spot rates into the reporting currency'.

(d) Paragraph 7 is replaced by the following:

'7. Secondly, until 31 December 2004, the competent authorities may allow institutions to apply an alternative method to those outlined in paragraphs 1 to 6 for the purposes of this Annex. The capital requirement produced by this method must be sufficient to exceed 2 % of the net open position as measured in paragraph 4 and, on the basis of an analysis of exchange-rate movements during all the rolling 10-working-day periods over the preceding three years, to exceed the likely loss 99 % or more of the time.

The alternative method described in the first subparagraph may only be used under the following conditions:

(i) the calculation formula and the correlation coefficients are set by the competent authorities, based on their analysis of exchange-rate movements;

(ii) the competent authorities review the correlation coefficients regularly in the light of developments in foreign-exchange markets'.

4. Annex V is amended as follows:

(a) Paragraph 2, first sentence, is replaced by the following:

'Notwithstanding paragraph 1, the competent authorities may permit those institutions which are obliged to meet the own-funds requirements laid down in Annexes I, II, III, IV, VI, VII and VIII to use an alternative definition when meeting those requirements only'.

(b) Paragraph 4 is replaced by the following:

'4. The subordinated loan capital referred to in paragraph 2(c) may not exceed a maximum of 150 % of the original own funds left to meet the requirements laid down in Annexes I, II, III, IV, VI, VII, and VIII and may approach that maximum only in particular circumstances acceptable to the relevant authorities'.

(c) Paragraphs 6 and 7 are replaced by the following:

'6. The competent authorities may permit investment firms to exceed the ceiling for subordinated loan capital prescribed in paragraph 4 if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 200 % of the original own funds left to meet the requirements imposed in Annexes I, II, III, IV, VI, VII and VIII or 250 % of the same amount where investment firms deduct item 2(d) referred to in paragraph 2 when calculating own funds.

7. The competent authorities may permit the ceiling for subordinated loan capital prescribed in paragraph 4 to be exceeded by a credit institution if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 250 % of the original own funds left to meet the requirements imposed in Annexes I, II, III, VI, VII and VIII'.

5. The following Annexes are added:

'ANNEX VII

COMMODITIES RISK

1. Each position in commodities or commodity derivatives shall be expressed in terms of the standard unit of measurement. The spot price in each commodity shall be expressed in the reporting currency.

2. Positions in gold or gold derivatives shall be considered as being subject to foreign-exchange risk and treated according to Annex III or Annex VIII, as appropriate, for the purpose of calculating market risk.

3. For the purposes of this Annex, positions which are purely stock financing may be excluded from the commodities risk calculation only.

4. The interest-rate and foreign-exchange risks not covered by other provisions of this Annex shall be included in the calculation of general risk for traded debt instruments and in the calculation of foreign-exchange risk.

5. When the short position falls due before the long position, institutions shall also guard against the risk of a shortage of liquidity which may exist in some markets.

6. For the purpose of paragraph 19, the excess of an institution's long (short) positions over its short (long) positions in the same commodity and identical commodity futures, options and warrants shall be its net position in each commodity. The competent authorities shall allow positions in derivative instruments to be treated, as laid down in paragraphs 8, 9 and 10, as positions in the underlying commodity.

7. The competent authorities may regard the following positions as positions in the same commodity:

   — positions in different sub-categories of commodities in cases where the sub-categories are deliverable against each other,

   and

   — positions in similar commodities if they are close substitutes and if a minimum correlation of 0,9 between price movements can be clearly established over a minimum period of one year.

Particular instruments

8. Commodity futures and forward commitments to buy or sell individual commodities shall be incorporated in the measurement system as notional amounts in terms of the standard unit of measurement and assigned a maturity with reference to expiry date. The competent authorities may allow the capital requirement for an exchange-traded future to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the future and that it is at least equal to the capital requirement for a future that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. Until 31 December 2006 the competent authorities may also allow the capital requirement for an OTC commodity derivatives contract of the type referred to in this paragraph cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the derivatives contract and that it is at least equal to the capital requirement for the contract in question that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII.

9. Commodity swaps where one side of the transaction is a fixed price and the other the current market price shall be incorporated into the maturity ladder approach as a series of positions equal to the notional amount of the contract, with one position corresponding with each payment on the swap and slotted into the maturity ladder set out in the table appearing in paragraph 13. The positions would be long positions if the institution is paying a fixed price and receiving a floating price and short positions if the institution is receiving a fixed price and paying a floating price.

   Commodity swaps where the sides of the transaction are in different commodities are to be reported in the relevant reporting ladder for the maturity ladder approach.

10. Options on commodities or on commodity derivatives shall be treated as if they were positions equal in value to the amount of the underlying to which the option refers, multiplied by its delta for the purposes of this Annex. The latter positions may be netted off against any offsetting positions in the identical underlying commodity or commodity derivative. The delta used shall be that of the exchange concerned, that calculated by the competent authorities or, where none of those is available or for OTC options, that calculated by the institution itself, subject to the competent authorities being satisfied that the model used by the institution is reasonable.

However, the competent authorities may also prescribe that institutions calculate their deltas using a methodology specified by the competent authorities.

The competent authorities shall require that the other risks, apart from the delta risk, associated with commodity options are safeguarded against. The competent authorities may allow the requirement for a written exchange-traded commodity option to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement against an option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. Until 31 December 2006 the competent authorities may also allow the capital requirement for an OTC commodity option cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement for an OTC option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. In addition they may allow the requirement on a bought exchange-traded or OTC commodity option to be the same as that for the commodity underlying it, subject to the constraint that the resulting requirement does not exceed the market value of the option. The requirement for a written OTC option shall be set in relation to the commodity underlying it.

11. Warrants relating to commodities shall be treated in the same way as commodity options under paragraph 10.

12. The transferor of commodities or guaranteed rights relating to title to commodities in a repurchase agreement and the lender of commodities in a commodities lending agreement shall include such commodities in the calculation of its capital requirement under this Annex.

(a) *Maturity ladder approach*

13. The institution shall use a separate maturity ladder in line with the following table for each commodity. All positions in that commodity and all positions which are regarded as positions in the same commodity pursuant to paragraph 7 shall be assigned to the appropriate maturity bands. Physical stocks shall be assigned to the first maturity band.

Maurity band (1)	Spread rate (in %) (2)
0 ≤ 1 month	1,50
> 1 ≤ 3 months	1,50
> 3 ≤ 6 months	1,50
> 6 ≤ 12 months	1,50
> 1 ≤ 2 years	1,50
> 2 ≤ 3 years	1,50
> 3 years	1,50

14. Competent authorities may allow positions which are, or are regarded pursuant to paragraph 7 as, positions in the same commodity to be offset and assigned to the appropriate maturity bands on a net basis for:

— positions in contracts maturing on the same date,

and

— positions in contracts maturing within 10 days of each other if the contracts are traded on markets which have daily delivery dates.

15. The institution shall then work out the sum of the long positions and the sum of the short positions in each maturity band. The amount of the former (latter) which are matched by the latter (former) in a given maturity band shall be the matched positions in that band, while the residual long or short position shall be the unmatched position for the same band.

16. That part of the unmatched long (short) position for a given maturity band that is matched by the unmatched short (long) position for a maturity band further out shall be the matched position between two maturity bands. That part of the unmatched long or unmatched short position that cannot be thus matched shall be the unmatched position.

17. The institution's capital requirement for each commodity shall be calculated on the basis of the relevant maturity ladder as the sum of the following:

(i) the sum of the matched long and short positions, multiplied by the appropriate spread rate as indicated in the second column of the table appearing in paragraph 13 for each maturity band and by the spot price for the commodity;

(ii) the matched position between two maturity bands for each maturity band into which an unmatched position is carried forward, multiplied by 0,6 % (carry rate) and by the spot price for the commodity;

(iii) the residual unmatched positions, multiplied by 15 % (outright rate) and by the spot price for the commodity.

18. The institution's overall capital requirement for commodities risk shall be calculated as the sum of the capital requirements calculated for each commodity according to paragraph 17.

(b) *Simplified approach*

19. The institution's capital requirement for each commodity shall be calculated as the sum of:

(i) 15 % of the net position, long or short, multiplied by the spot price for the commodity;

(ii) 3 % of the gross position, long plus short, multiplied by the spot price for the commodity.

20. The institution's overall capital requirement for commodities risk shall be calculated as the sum of the capital requirements calculated for each commodity according to paragraph 19.

ANNEX VIII

INTERNAL MODELS

1. The competent authorities may, subject to the conditions laid down in this Annex, allow institutions to calculate their capital requirements for position risk, foreign-exchange risk and/or commodities risk using their own internal risk-management models instead of or in combination with the methods described in Annexes I, III and VII. Explicit recognition by the competent authorities of the use of models for supervisory capital purposes shall be required in each case.

2. Recognition shall only be given if the competent authority is satisfied that the institution's risk-management system is conceptually sound and implemented with integrity and that, in particular, the following qualitative standards are met:

(i) the internal risk-measurement model is closely integrated into the daily risk-management process of the institution and serves as the basis for reporting risk exposures to senior management of the institution;

(ii) the institution has a risk control unit that is independent from business trading units and reports directly to senior management. The unit must be responsible for designing and implementing the institution's risk-management system. It shall produce and analyse daily reports on the output of the risk-measurement model and on the appropriate measures to be taken in terms of trading limits;

(iii) the institution's board of directors and senior management are actively involved in the risk-control process and the daily reports produced by the risk-control unit are reviewed by a level of management with sufficient authority to enforce both reductions of positions taken by individual traders as well as in the institution's overall risk exposure;

(iv) the institution has sufficient numbers of staff skilled in the use of sophisticated models in the trading, risk-control, audit and back-office areas;

(v) the institution has established procedures for monitoring and ensuring compliance with a documented set of internal policies and controls concerning the overall operation of the risk-measurement system;

(vi) the institution's models have a proven track record of reasonable accuracy in measuring risks;

(vii) the institution frequently conduct a rigorous programme of stress testing and the results of these tests are reviewed by senior management and reflected in the policies and limits it sets;

(viii) the institution must conduct, as part of its regular internal auditing process, an independent review of its risk-measurement system. This review must include both the activities of the business trading units and of the independent risk-control unit. At least once a year, the institution must conduct a review of its overall risk-management process. The review must consider:

— the adequacy of the documentation of the risk-management system and process and the organisation of the risk-control unit,

— the integration of market risk measures into daily risk management and the integrity of the management information system,

— the process the institution employs for approving risk-pricing models and valuation systems that are used by front and back-office personnel,

— the scope of market risks captured by the risk-measurement model and the validation of any significant changes in the risk-measurement process,

— the accuracy and completeness of position data, the accuracy and appropriateness of volatility and correlation assumptions, and the accuracy of valuation and risk sensitivity calculations,

— the verification process the institution employs to evaluate the consistency, timeliness and reliability of data sources used to run internal models, including the independence of such data sources,

and

— the verification process the institution uses to evaluate back-testing that is conducted to assess the model's accuracy.

3. The institution shall monitor the accuracy and performance of its model by conducting a back-testing programme. The back-testing has to provide for each business day a comparison of the one-day value-at-risk measure generated by the institution's value by the end of the subsequent business day. Competent authorities shall examine the institution's capability to perform back-testing on both actual and hypothetical changes in the portfolio's value. Back-testing on hypothetical changes in the portfolio's value is based on a comparison between the portfolio's end-of-day value and, assuming unchanged positions, its value at the end of the subsequent day. Competent authorities shall require institutions to take appropriate measures to improve their back-testing programme if deemed deficient.

4. For the purpose of calculating capital requirements for specific risk associated with traded debt and equity positions, the competent authorities may recognise the use of an institution's internal model if in addition to compliance with the conditions in the remainder of this Annex the model:

— explains the historical price variation in the portfolio,

— captures concentration in terms of magnitude and changes of composition of the portfolio,

— is robust to an adverse environment,

— is validated through back-testing aimed at assessing whether specific risk is being accurately captured. If competent authorities allow this back-testing to be performed on the basis of relevant sub-portfolios, these must be chosen in a consistent manner.

5. Institutions using internal models which are not recognised in accordance with paragraph 4 shall be subject to a separate capital charge for specific risk as calculated according to Annex I.

6. For the purpose of paragraph 10(ii) the results of the institution's own calculation shall be scaled up by a multiplication factor of at least 3.

7. The multiplication factor shall be increased by a plus-factor of between 0 and 1 in accordance with the following table, depending on the number of overshootings for the most recent 250 business days as evidenced by the institution's back-testing. Competent authorities shall require the institutions to calculate overshootings consistently on the basis of back-testing either on actual or on hypothetical changes in the portfolio's value. An overshooting is a one-day change in the portfolio's value that exceeds the related one-day value-at-risk measure generated by the institution's model. For the purpose of determining the plus-factor the number of overshootings shall be assessed at least quarterly.

Number of overshootings	Plus-factor
Fewer than 5	0,00
5	0,40
6	0,50
7	0,65
8	0,75
9	0,85
10 or more	1,00

The competent authorities can, in individual cases and owing to an exceptional situation, waive the requirement to increase the multiplication factor by the plus-factor according to the above table, if the institution has demonstrated to the satisfaction of the competent authorities that such an increase is unjustified and that the model is basically sound.

If numerous overshootings indicate that the model is not sufficiently accurate, the competent authorities shall revoke the model's recognition or impose appropriate measures to ensure that the model is improved promptly.

In order to allow competent authorities to monitor the appropriateness of the plus-factor on an ongoing basis, institutions shall notify promptly, and in any case no later than within five working days, the competent authorities of overshootings that result form their back-testing programme and that would according to the above table imply an increase of a plus-factor.

8. If the institution's model is recognised by the competent authorities in accordance with paragraph 4 for the purpose of calculating capital requirements for specific risk, the institution shall increase its capital requirement calculated pursuant to paragraphs 6, 7 and 10 by a surcharge in the amount of either:

   (i) the specific risk portion of the value-at-risk measure which should be isolated according to supervisory guidelines; or, at the institution's option,

   (ii) the value-at-risk measures of sub-portfolios of debt and equity positions that contain specific risk.

Institutions using option (ii) are required to identify their sub-portfolio structure beforehand and should not change it without the consent of the competent authorities.

9. The competent authorities may waive the requirement pursuant to paragraph 8 for a surcharge if the institution demonstrates that in line with agreed international standards its model accurately captures also the event risk and default risk for its traded debt and equity positions.

10. Each institution must meet a capital requirement expressed as the higher of:

   (i) its previous day's value-at-risk number measured according to the parameters specified in this Annex;

(ii) an average of the daily value-at-risk measures on each of the preceding 60 business days, multiplied by the factor mentioned in paragraph 6, adjusted by the factor mentioned in paragraph 7.

11. The calculation of value-at-risk shall be subject to the following minimum standards:

(i) at least daily calculation of value-at-risk;

(ii) a 99th percentile, one-tailed confidence interval;

(iii) a 10-day equivalent holding period;

(iv) an effective historical observation period of at least one year except where a shorter observation period is justified by a significant upsurge in price volatility;

(v) three-monthly data set updates.

12. The competent authorities shall require that the model captures accurately all the material price risks of options or option-like positions and that any other risks not captured by the model are covered adequately by own funds.

13. The competent authorities shall require that the risk-measurement model captures a sufficient number of risk factors, depending on the level of activity of the institution in the respective markets. As a minimum, the following provisions shall be respected:

(i) for interest rate risk, the risk-measurement system shall incorporate a set of risk factors corresponding to the interest rates in each currency in which the institution has interest rate sensitive on- or off-balance sheet positions. The institution shall model the yield curves using one of the generally accepted approaches. For material exposures to interest-rate risk in the major currencies and markets, the yield curve shall be divided into a minimum of six maturity segments, to capture the variations of volatility of rates along the yield curve. The risk-measurement system must also capture the risk of less than perfectly correlated movements between different yield curves;

(ii) for foreign-exchange risk, the risk-measurement system shall incorporate risk factors corresponding to gold and to the individual foreign currencies in which the institution's positions are denominated;

(iii) for equity risk, the risk-measurement system shall use a separate risk factor at least for each of the equity markets in which the institution holds significant positions;

(iv) for commodity risk, the risk-measurement system shall use a separate risk factor at least for each commodity in which the institution holds significant positions. The risk-measurement system must also capture the risk of less than perfectly correlated movements between similar, but not identical, commodities and the exposure to changes in forward prices arising from maturity mismatches. It shall also take account of market characteristics, notably delivery dates and the scope provided to traders to close out positions.

14. The competent authorities may allow institutions to use empirical correlations within risk categories and across risk categories if they are satisfied that the institution's system for measuring correlations is sound and implemented with integrity'.

CORRIGENDA

Corrigendum to Directive 98/31/EC of the European Parliament and of the Council of 22 June 1998 amending Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions

(Official Journal of the European Communities L 204 of 21 July 1998)

On page 23, Annex VIII, paragraph 3, third line:

for: '... by the institution's value...',

read: '... by the institution's model for the portfolio's end-of-day positions to the one-day change of the portfolio's value...'.

DIRECTIVE 98/32/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 1998

amending, as regards in particular mortgages, Council Directive 89/647/EEC on a solvency ratio for credit institutions

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [3],

(1) Whereas it is appropriate to treat mortgage-backed securities as loans referred to in Article 6(1)(c)(1) and Article 11(4) of Council Directive 89/647/EEC [4] if the competent authorities consider that they are equivalent in the light of the credit risk; whereas the market for securitisation is undergoing rapid development; whereas it is therefore desirable that the Commission should examine with the Member States the prudential treatment of asset-backed securities and put forward, within a year from the adoption of this Directive, proposals aimed at adapting existing legislation in order to define an appropriate prudential treatment for asset-backed securities;

(2) Whereas Article 11(4) of Directive 89/647/EEC provides for a derogation from Article 6(1)(c)(1), on certain conditions, for four Member States as regards the weighting to be applied to assets secured by mortgages on offices or on multi-purpose commercial premises; whereas this derogation expired on 1 January 1996;

(3) Whereas when Directive 89/647/EEC was adopted, the Commission undertook to examine this derogation to determine whether, in the light of its findings and of international developments and in view of the need to avoid distortions of competition, there was a case for amending this provision and, if so, to put forward appropriate proposals; whereas the results of the study relating to this provision, although not absolutely conclusive, show that there is no significant difference between the rates of losses recorded in the Member States covered by the derogation and in those not covered; whereas, therefore, this derogation can be extended to all Member States which so wish until 31 December 2006;

(4) Whereas the property to which the mortgage relates must be subject to rigorous assessment criteria and regular revaluation to take account of the developments in the commercial property market; whereas the property must be either occupied or let by the owner; whereas loans for property development are excluded from this provision;

(5) Whereas this Directive is the most appropriate means for attaining the objectives sought and does not go beyond what is necessary to achieve these objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/647/EEC is amended as follows:

1. In Article 6(1)(c)(1) the following subparagraph shall be added:

[1] OJ C 114, 19.4.1996, p. 9.
[2] OJ C 30, 30.1.1997, p. 99.
[3] Opinion of the European Parliament of 17 September 1996 (OJ C 320, 28.10.1996, p. 26), Council common position of 9 March 1998 (OJ C 135, 30.4.1998, p.1) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Council Decision of 19 May 1998.
[4] OJ L 386, 30.12.1989, p. 14. Directive as last amended by Directive 96/10/EC (OJ L 85, 3.4.1996, p. 17).

'"mortgage-backed securities" which may be treated as loans referred to in the first subparagraph or in Article 11(4), if the competent authorities consider, having regard to the legal framework in force in each Member State, that they are equivalent in the light of the credit risk. Without prejudice to the types of securities which may be included in and are capable of fulfilling the conditions in this point 1, "mortgage-backed securities" may include instruments within the meaning of Section B(1)(a) and (b) of the Annex to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (*). The competent authorities must in particular be satisfied that:

(i) such securities are fully and directly backed by a pool of mortgages which are of the same nature as those defined in the first subparagraph or in Article 11(4) and are fully performing when the mortgage-backed securities are created;

(ii) an acceptable high-priority charge on the underlying mortgage asset items is held either directly by investors in mortgage-backed securities or on their behalf by a trustee or mandated representative in the same proportion to the securities which they hold.

(*) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7)'.

2. Article 11(4) is replaced by the following:

'4. Until 31 December 2006, the competent authorities of the Member States may authorise their credit institutions to apply a 50 % risk weighting to loans fully and completely secured to their satisfaction by mortgages on offices or on multi-purpose commercial premises situated within the territory of those Member States that allow the 50 % risk weighting, subject to the following conditions:

(i) the 50 % risk weighting applies to the part of the loan that does not exceed a limit calculated according to either (a) or (b):

(a) 50 % of the market value of the property in question.

The market value of the property must be calculated by two independent valuers making independent assessments at the time the loan is made. The loan must be based on the lower of the two valuations.

The property shall be revalued at least once a year by one valuer. For loans not exceeding ECU 1 million and 5 % of the own funds of the credit institution, the property shall be revalued at least every three years by one valuer;

(b) 50 % of the market value of the property or 60 % of the mortgage lending value, whichever is lower, in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions.

The mortgage lending value shall mean the value of the property as determined by a valuer making a prudent assessment of the future marketability of the property by taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property. Speculative elements shall not be taken into account in the assessment of the mortgage lending value. The mortgage lending value shall be documented in a transparent and clear manner.

At least every three years or if the market falls by more than 10 %, the mortgage lending value and in particular the underlying assumptions concerning the development of the relevant market, shall be reassessed.

In both (a) and (b) "market value" shall mean the price at which the property could be sold under private contract between a willing seller and an arm's length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale;

(ii) the 100 % risk weighting applies to the part of the loan that exceeds the limits set out in (i);

(iii) the property must be either used or let by the owner.

The first subparagraph shall not prevent the competent authorities of a Member State, which applies a higher risk weighting in its territory, from allowing, under the conditions defined above, the 50 % risk weighting to apply for this type of lending in the territories of those Member States that allow the 50 % risk weighting.

The competent authorities of the Member States may allow their credit institutions to apply a 50 % risk weighting to the loans outstanding on 21 July 2000 provided that the conditions listed in this paragraph are fulfilled. In this case the property shall be valued according to the assessment criteria laid down above not later than 21 July 2003.

For loans granted before 31 December 2006, the 50 % risk weighting remains applicable until their maturity, if the credit institution is bound to observe the contractual terms.

Until 31 December 2006, the competent authorities of the Member State may also authorise their credit institutions to apply a 50 % risk weighting to the part of the loans fully and completely secured to their satisfaction by shares in Finnish housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, provided that the conditions laid down in this paragraph are fulfilled.

Member States shall inform the Commission of the use they make of this paragraph.'

3. Article 11(5) shall be replaced by the following:

'5. Member States may apply a 50 % risk weighting to property leasing transactions concluded before 31 December 2006 and concerning assets for business use situated in the country of the head office and governed by statutory provisions whereby the lessor retains full ownership of the rented asset until the tenant exercises his option to purchase. Member States shall inform the Commission of the use they make of this paragraph'.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 months after its entry into force. They shall forthwith inform the Commission thereof.

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 reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the filed governed by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	J. CUNNINGHAM

DIRECTIVE 98/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 1998

amending Article 12 of Council Directive 77/780/EEC on the taking up and pursuit of the business of credit institutions, Articles 2, 5, 6, 7, 8 of and Annexes II and III to Council Directive 89/647/EEC on a solvency ratio for credit institutions and Article 2 of and Annex II to Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [3],

(1) Whereas the first Council Directive (77/780/EEC) of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions [4] allows the exchange of information between competent authorities and certain other authorities or bodies within a Member State or between Member States; whereas the said Directive also allows the conclusion by Member States of cooperation agreements providing for the exchange of information with the competent authorities of third countries; whereas on grounds of consistency, this authorisation to conclude agreements on the exchange of information with third countries should be extended so as to include the exchange of information with certain other authorities or bodies in those countries provided that the information disclosed is subject to appropriate guarantees of professional secrecy;

(2) Whereas Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [5] weights assets and off-balance-sheet items according to their degree of credit risk;

(3) Whereas churches and religious communities which, constituted in the form of a legal person under public law, raise taxes in accordance with the laws conferring such a right on them represent a credit risk similar to that of regional governments and local authorities; whereas, accordingly, it is consistent to afford the competent authorities the possibility of treating claims on churches and religious communities in the same way as claims on regional governments and local authorities where these churches and religious communities raise taxes; whereas, however, the option to apply a 0 % weighting to claims on regional governments and local authorities shall not extend to claims on churches and religious communities only on the basis of the right to raise taxes;

(4) Whereas Commission Directive 94/7/EC of 15 March 1994 adapting Council Directive 89/647/EEC on a solvency ratio for credit institutions as regards the technical definition of 'multilateral development banks' [6] included the European Investment Fund in that definition; whereas the Fund constitutes a new and unique structure of cooperation in Europe in order to contribute to the strengthening of the internal market, the promotion of economic recovery in Europe and the furthering of economic and social cohesion;

(5) Whereas within the meaning of Article 6(1)(d)(7) of Directive 89/647/EEC, a weighting of 100 % should be applied to the unpaid portion of capital

[1] OJ C 208, 19.7.1996, p. 8, and OJ C 259, 26.8.1997, p. 1.
[2] OJ C 30, 30.1.1997, p. 13.
[3] Opinion of the European Parliament of 10 April 1997 (OJ C 132, 28.4.1997, p. 234), Council common position of 9 March 1998 (OJ C 135, 30.4.1998, p. 32) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Council Decision of 19 May 1998.
[4] OJ L 322, 17.12.1977, p. 30. Directive as last amended by Directive 96/13/EC (OJ L 66, 16.3.1996, p. 15).
[5] OJ L 386, 30.12.1989, p. 14. Directive as last amended by Directive 98/32/EC (see page 29 of this Official Journal).
[6] OJ L 89, 6.4.1994, p. 17.

subscribed to the European Investment Fund by credit institutions;

(6) Whereas the capital of the European Investment Fund reserved for subscription by financial institutions is limited to 30 %, of which 20 % is to be paid up at the outset in four annual payments each of 5 %; whereas, accordingly, 80 % is not to be paid up, remaining a contingent liability on the members of the Fund; whereas, having regard to the European Council's stated objective when creating the Fund of encouraging commercial banks to participate, such participation should not be penalised and whereas, accordingly, it would be more appropriate to apply a 20 % weighting to the unpaid portion of subscribed capital;

(7) Whereas Annex I to Directive 89/647/EEC, which deals with the classification of off-balance-sheet items, classifies certain items as full risk and, accordingly, applies a 100 % weighting; whereas Article 6(4) of that Directive lays down that 'where off-balance-sheet items carry explicit guarantees, they shall be weighted as if they had been incurred on behalf of the guarantor rather than the counterparty. Where the potential exposure arising from off-balance-sheet transactions is fully and completely secured, to the satisfaction of the competent authorities, by any of the asset items recognised as collateral in paragraph 1(a)(7) or 1(b)(11), weightings of 0 % or 20 % shall apply, depending on the collateral in question';

(8) Whereas the clearing of over-the-counter (OTC) derivative instruments provided by clearing houses acting as a central counterparty plays an important role in certain Member States; whereas it is appropriate to recognise the benefits from such a clearing in terms of a reduction of credit risk and related systemic risk in the prudential treatment of credit risk; whereas it is necessary for the current and potential future exposures arising from cleared OTC derivatives contracts to be fully collateralised and for the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral to be eliminated in order for cleared OTC derivatives to be granted for a transitional period the same prudential treatment as exchange-traded derivatives; whereas the competent authorities must be satisfied as to the level of the initial margins and variation margins required and the quality of and the level of protection provided by the posted collateral;

(9) Whereas account should also be taken of the case where the guarantee is secured by real collateral within the meaning of Article 6(1)(c)(1) in respect of off-balance-sheet items which are sureties or guarantees having the character of credit substitutes;

(10) Whereas within the meaning of points 2, 4 and 7 of Article 6(1)(a) of Directive 89/647/EEC, a zero weighting is applied to assets constituting claims on Zone A central governments and central banks or explicitly guaranteed by them and to assets secured by collateral in the form of Zone A central government or central bank securities; whereas, within the meaning of Article 7(1) of that Directive, the Member States may, on certain conditions, apply a zero weighting to assets constituting claims on their own regional governments and local authorities and to claims on third parties and off-balance-sheet items held on behalf of third parties and guaranteed by those regional governments or local authorities;

(11) Whereas Article 8(1) of Directive 89/647/EEC lays down that the Member States may apply a weighting of 20 % to asset items which are secured, to the satisfaction of the competent authorities, by collateral in the form of securities issued by Zone A regional governments or local authorities; whereas collateral in the form of securities issued by regional governments or local authorities of the Member States should be regarded as being guaranteed by those regional governments and local authorities within the meaning of Article 7(1) with a view to allowing the competent authorities to apply a zero weighting to assets and off-balance-sheet items secured by such collateral, again subject to the conditions laid down in that paragraph;

(12) Whereas Annex II to Directive 89/647/EEC lays down the treatment of off-balance-sheet items commonly referred to as OTC-derivative instruments concerning interest and foreign exchange rates in the context of the calculation of credit institutions' capital requirements;

(13) Whereas Articles 2(1)(a), Article 2(2), Article 2(3)(b), and Article 2(6) and Article 3(1) and (2) of this Directive and the Annex thereto are in accordance with the work of an international forum of banking supervisors on a refined and in

some aspects more stringent supervisory treatment of the credit risks inherent in OTC derivative instruments, in particular the extension of compulsory capital cover to OTC derivative instruments concerning underlyings other than interest and foreign exchange rates and the possibility of taking into account the risk-reducing effects of contractual netting agreements recognised by competent authorities when calculating the capital requirements for the potential future credit risks inherent in OTC derivative instruments;

(14) Whereas for internationally active credit institutions and groups of credit institutions in a wide range of third countries, which compete with Community credit institutions, the rules adopted on the wider international level will result in a refined supervisory treatment of OTC derivative instruments; whereas this refinement results in a more appropriate compulsory capital cover taking into account the risk-reducing effects of supervisorily recognised contractual netting agreements on potential future credit risks;

(15) Whereas for Community credit institutions a similar refinement of the supervisory treatment of OTC derivative instruments including the possibility of taking into account the risk reducing effects of supervisorily recognised contractual netting agreements on potential future credit risks can be achieved only by amending Directive 89/647/EEC;

(16) Whereas to ensure a level playing-field between credit institutions and investment firms competing in the Community, consistency in the supervisory treatment of their respective activities in the area of OTC derivative instruments is necessary and can only be achieved by adaptations of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions [1];

(17) Whereas this Directive is the most appropriate means of attaining the objectives sought and does not go beyond what is necessary to achieve those objectives,

[1] OJ L 141, 11.6.1993, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In Directive 77/780/EEC Article 12(3) shall be replaced by the following:

'3. Member States may conclude cooperation agreements, providing for the exchange of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs (5) and (5a) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be for the purpose of performing the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement'.

Article 2

Directive 89/647/EEC is amended as follows:

1. Article 2 shall be amended as follows:

(a) In paragraph (1) the following indent shall be added:

'— "recognised exchanges" shall mean exchanges recognised by the competent authorities which:

(i) function regularly,

(ii) have rules, issued or approved by the appropriate authorities of the home country of the exchange, which define the conditions for the operation of the exchange, the conditions for access to the exchange as well as the conditions that must be satisfied by a contract before it can effectively be dealt on the exchange,

(iii) have a clearing mechanism that provides for contracts listed in Annex III to be subject to daily margin requirements providing an appropriate protection in the opinion of the competent authorities.'

(b) In paragraph (2) the following subparagraph shall be added:

'The competent authorities may also include within the concept of regional governments and local authorities, churches and religious communities constituted in the form of a legal person under public law, in so far as they raise taxes in accordance with legislation conferring on them the right to do so. However, in this case the option set out in Article 7 shall not apply'.

2. In Article 5(3), the first sentence shall be replaced by the following:

'3. In the case of the off-balance-sheet items referred to in Article 6(3), the potential costs of replacing contracts in the event of counterparty default shall be calculated by means of one of the two methods set out in Annex II'.

3. Article 6 shall be amended as follows:

(a) In paragraph (2) the following sentence shall be added:

'The portion of unpaid capital subscribed to the European Investment Fund may be weighted at 20 %'.

(b) Paragraph (3) shall be replaced by the following:

'3. The methods set out in Annex II shall be applied to the off-balance-sheet items listed in Annex III except for:

— contracts traded on recognised exchanges,

— foreign-exchange contracts (except contracts concerning gold) with an original maturity of 14 calendar days or less.

Until 31 December 2006, the competent authorities of Member States may exempt from the application of the methods set out in Annex II over-the-counter (OTC) contracts cleared by a clearing house where the latter acts as the legal counterparty and all participants fully collateralise on a daily basis the exposure they present to the clearing house, thereby providing a protection covering both the current exposure and the potential future exposure. The competent authorities must be satisfied that the posted collateral gives the same level of protection as collateral which complies with paragraph 1(a)(7) and that the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral is eliminated. Member States shall inform the Commission of the use they make of this option'.

(c) In paragraph (4) the following subparagraph shall be added:

'The Member States may apply a 50 % weighting to off-balance-sheet items which are sureties or guarantees having the character of credit substitutes and which are fully guaranteed, to the satisfaction of the competent authorities, by mortgages meeting the conditions set out in paragraph (1)(c)(1), subject to the guarantor having a direct right to such collateral'.

4. Article 7 shall be amended as follows:

(a) in paragraph (1) the following shall be added after the words 'local authorities':

'or secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by those regional governments or local authorities';

(b) in paragraph (2) the following shall be added after the words 'the latter':

', including collateral in the form of securities'.

5. Article 8(1) shall be replaced by the following:

'1. Without prejudice to Article 7(1) the Member States may apply a weighting of 20 % to asset items which are secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by Zone A regional governments or local authorities, by deposits placed with Zone A credit institutions other than the lending institution, or by certificates of deposit or similar instruments issued by such credit institutions'.

6. Annexes II and III shall be amended or replaced in accordance with Parts A and B of the Annex to this Directive.

Article 3

Directive 93/6/EEC is amended as follows:

1. Article 2(10) shall be replaced by the following:

'10. "over-the-counter (OTC) derivative instruments" shall mean the off-balance-sheet items to which according to the first subparagraph of Article 6(3) of Directive 89/647/EEC the methods set out in Annex II to the said Directive shall be applied'.

2. Annex II, point 5, shall be replaced by the following:

'5. In order to calculate the capital requirement on their OTC derivative instruments, institutions shall apply Article II to Directive 89/647/EEC. The risk weightings to be applied to the relevant counterparties shall be determined in accordance with Article 2(9) of this Directive.

Until 31 December 2006, the competent authorities of Member States may exempt from the application of the methods set out in Annex II OTC contracts cleared by a clearing house where the latter acts as the legal counterparty and all participants fully collateralise on a daily basis the exposure they present to the clearing house, thereby providing a protection covering both the current exposure and the potential future exposure. The competent authorities must be satisfied that the posted collateral gives the same level of protection as collateral which complies with Article 6(1)(a)(7) of Directive 89/647/EEC and that the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral is eliminated. Member States shall inform the Commission of the use they make of this option'.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive not later than 24 months after the date of its entry into force. They shall forthwith inform the Commission thereof.

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 reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law, which they adopt in the field governed by this Directive.

Article 5

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 6

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	J. CUNNINGHAM

ANNEX

A. Annex II to Directive 89/647/EEC is amended as follows:

1. The heading is replaced by the following:

'*ANNEX II*

THE TREATMENT OF OFF-BALANCE SHEET ITEMS';

2. Point 1 is replaced by the following:

'1. Choice of the method

To measure the credit risks associated with the contracts listed in points 1 and 2 of Annex III, credit institutions may choose, subject to the consent of the competent authorities, one of the methods set out below. Credit institutions which have to comply with Article 6(1) of Directive 93/6/EEC must use method 1 set out below. To measure the credit risks associated with the contracts listed in point 3 of Annex III all credit institutions must use method 1 set out below';

3. In point 2, Table 1 is replaced by the following:

'TABLE [a] [b]

Residual maturity [c]	Interest-rate contracts	Contracts concerning foreign-exchange rates and gold	Contracts concerning equities	Contracts concerning precious metals except gold	Contracts concerning commodities other than precious metals
One year or less	0 %	1 %	6 %	7 %	10 %
Over one year, less than five years	0,5 %	5 %	8 %	7 %	12 %
Over five years	1,5 %	7,5 %	10 %	8 %	15 %

[a] Contracts which do not fall within one of the five categories indicated in this table shall be treated as contracts concerning commodities other than precious metals.

[b] For contracts with multiple exchanges of principal, the percentages have to be multiplied by the number of remaining payments still to be made according to the contract.

[c] For contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the residual maturity would be equal to the time until the next reset date. In the case of interest-rate contracts that meet these criteria and have a remaining maturity of over one year, the percentage shall be no lower than 0,5 %.

For the purpose of calculating the potential future exposure in accordance with step (b) the competent authorities may allow credit institutions until 31 December 2006 to apply the following percentages instead of those prescribed in Table 1 provided that the institutions make use of the option set out in Article 11a of Directive 93/6/EEC for contracts within the meaning of point 3(b) and (c) of Annex III:

Table 1a

Residual maturity	Precious metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
One year or less	2 %	2,5 %	3 %	4 %
Over one year, less than five years	5 %	4 %	5 %	6 %
Over five years	7,5 %	8 %	9 %	10 %'

4. In Table 2, the heading in the first row of the third column is replaced by:

'Contracts concerning foreign-exchange rates and gold'.

5. In point 2 the following paragraph is added at the end:

'For methods 1 and 2 the competent authorities must ensure that the notional amount to be taken into account is an appropriate yardstick for the risk inherent in the contract. Where, for instance, the contract provides for a multiplication of cash flows, the notional amount must be adjusted in order to take into account the effects of the multiplication on the risk structure of that contract'.

6. In point (3)(b) the following paragraph is added:

'The competent authorities may recognise as risk-reducing contractual-netting agreements covering foreign-exchange contracts with an original maturity of 14 calendar days or less written options or similar off-balance-sheet items to which this Annex does not apply because they bear only a negligible or no credit risk. If, depending on the positive or negative market value of these contracts, their inclusion in another netting agreement can result in an increase or decrease of the capital requirements, competent authorities must oblige their credit institution to use a consistent treatment.'

7. In point (3)(c)(ii), the first paragraph and the introductory wording and the second paragraph, first indent, are replaced by the following:

'(ii) Other netting agreements

In application of method 1:

in step (a) the current replacement cost for the contracts included in a netting agreement may be obtained by taking account of the actual hypothetical net replacement cost which results from the agreement; in the case where netting leads to a net obligation for the credit institution calculating the net replacement cost, the current replacement cost is calculated as "0";

in step (b) the figure for potential future credit exposure for all contracts included in a netting agreement may be reduced according to the following equation:

$$PCE_{red} = 0{,}4 * PCE_{gross} + 0{,}6 * NGR * PCE_{gross}$$

where:

— PCE_{red} = the reduced figure for potential future credit exposure for all contracts with a given counterparty included in a legally valid bilateral netting agreement,

— PCE_{gross} = the sum of the figures for potential future credit exposure for all contracts with a given counterparty which are included in a legally valid bilateral netting agreement and are calculated by multiplying their notional principal amounts by the percentages set out in Table 1,

— NGR = "net-to-gross ratio": at the discretion of the competent authorities either:

(i) separate calculation: the quotient of the net replacement cost for all contracts included in a legally valid bilateral netting agreement with a given counterparty (numerator) and the gross replacement cost for all contracts included in a legally valid bilateral netting agreement with that counterparty (denominator), or

(ii) aggregate calculation: the quotient of the sum of the net replacement cost calculated on a bilateral basis for all counterparties taking into account the contracts included in legally valid netting agreements (numerator) and the gross replacement cost for all contracts included in legally valid netting agreements (denominator).

If Member States permit credit institutions a choice of methods, the method chosen is to be used consistently.

For the calculation of the potential future credit exposure according to the above formula perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts. Perfectly matching contracts are forward foreign exchange contracts or similar contracts in which notional principal is equivalent to cash flows if the cash flows fall due on the same value date and fully or partly in the same currency.

In the application of method 2, in step (a)

— perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts, the notional principal amounts are multiplied by the percentages given in Table 2'.

B. Annex III to Directive 89/647/EEC is replaced by the following:

'*ANNEX III*

TYPES OF OFF-BALANCE-SHEET ITEMS

1. Interest-rate contracts:
   (a) single-currency interest rate swaps,
   (b) basis-swaps,
   (c) forward-rate agreements,
   (d) interest-rate futures,
   (e) interest-rate options purchased,
   (f) other contracts of similar nature.

2. Foreign-exchange contracts and contracts concerning gold:
   (a) cross-currency interest-rate swaps,
   (b) forward foreign-exchange contracts,
   (c) currency futures,
   (d) currency options purchased,
   (e) other contracts of a similar nature,
   (f) contracts concerning gold of a nature similar to (a) to (e).

3. Contracts of a nature similar to those in points 1(a) to (e) and 2(a) to (d) concerning other reference items or indices concerning:
   (a) equities,
   (b) precious metals except gold,
   (c) commodities other than precious metals,
   (d) other contracts of a similar nature'.