COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE COUNCIL

TREATMENT ACCORDED IN THIRD COUNTRIES TO COMMUNITY

CREDIT INSTITUTIONS AND INSURANCE COMPANIES

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CHAPTER I - INTRODUCTION

1. Purpose of the report

The Commission is required by Community law*) to draw up a report for submission to the Council examining the treatment accorded to Community credit institutions and insurance companies in third countries as regards establishment and the carrying-on of banking activities, and the acquisition of holdings in third-country credit institutions and insurance companies. This is the first such report to be drawn up since the adoption of the Community directives concerned.

The report is in effect anticipatory since the Community regimes which it describes in particular in Chapter 2, will not become fully operational until 1 January 1993. This is particularly true in the case of the third life insurance coordination directive which at the time this report was completed was still under examination within the Community; the report is therefore presented subject to adoption of that directive.

Since those directives all incorporate virtually identical provisions, the Commission considers that for ease of reference a combined report covering both credit institutions and insurance companies is appropriate. It should also be noted that the report also covers securities activities, which are included in the list of activities subject to mutual recognition among the Member States of the European Community, which is annexed to the second banking directive, See Annex B.

Background

As progress on the single market programme gained momentum following the presentation of the White Paper for the Completion of the Internal Market, the question of access to the internal market for companies from third countries was an important consideration for Community policy makers.

*) 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 - Directive 89/646/EEC - "Second Banking Directive"

Council Directive of 8 November 1990 amending particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance, (90/618/EEC)

Council Directive of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC, (90/619/EEC)

The provisions concerning relations with third countries in the Community financial services directives followed a major debate in the Community on the question of access to the Single Market for companies from third countries. In the course of that debate the Commission also stated its view that by virtue of Article 52 et seq., in conjunction with Article 58 of the EEC Treaty, the imposition of restrictions against companies meeting the criteria of Article 58 EEC already established in the Community was not envisaged.*

The policy of keeping the Community market open was endorsed by the European Council in Rhodes in December 1988, which emphasized that the Single Market would not be closed and inward looking. At the same time, the Community would aim at strengthening the multilateral trading system on the basis of mutual benefits. Negotiation with third countries was recognized as an essential adjunct to the Single Market programme.

Following a revised proposal from the Commission tabled in April 1989, the Council adopted provisions in the second banking directive governing relations with third countries which fully reflect these policy orientations. Identical provisions were then incorporated in November 1990 in the two insurance directives. A description of these provisions follows in Section 3.

3. Functioning of the provisions on relations with third countries

The directives provide for the following procedure to be followed.

- Any request for authorization by non-EC institutions should be notified by the Member State to which it was addressed to the European Commision (Member States are also required to inform the Commission of any general difficulties encountered by credit institutions and insurance companies in establishing themselves and in carrying on banking activities in a third country).

- The Commission is to examine how EC banks are treated in non-EC countries and report to the Council before the Directives come into effect.

- Where a third country does not grant EC credit institutions and insurance companies effective market access comparable to that which the Community grants to foreign banks, the Commission may propose to the Council the opening of negotiations with the third country concerned. The Directive does not provide for further action (Article 9(3)).

* Press release "Europe 1992: Europe World Partner", of 19.10.88

- Where not even national treatment and effective market access are accorded by another country, the Commission may with prior approval by the qualified majority of a special Committee composed of representatives of Member States, limit or suspend new authorizations from that country for an initial period of three months - in addition to opening negotiations with that country. Any limitation or suspension beyond three months has to be approved by a qualified majority vote of the Council of Ministers. (Article 9(4)). The provision explicitly confirms that any such suspension or limitation cannot apply to subsidiaries already established and that it should be in conformity with the Community's obligations under any international agreements.

Establishment and carrying on of activities

Article 9 of the second banking directive*) relates to establishment of a commercial presence in the form of a subsidiary (including by acquisition) and to the conditions governing the operations of that commercial presence, once it has been established. In other words, the provisions of Article 9 do not apply to branches and provision of cross-border services. The Commission's report to the Council does not therefore cover the treatment which other countries apply to cross-border services.

The Commission's approach also reflects the very important distinction between Article 9(3) and 9(4) of the second banking directive, and the corresponding provisions of the insurance directives. See below.

Denial of national treatment (Article 9(4) of the second banking directive and corresponding provisions of the insurance directives)

Article 9(4) deals with the situation where there is not an effective right of establishment or where there is discrimination against Community financial institutions, compared with their domestic counterparts in a given third country. In order to remedy such a situation the directives provide for the initiation of negotiations by the Commission and, as an additional option, the temporary suspension of decisions on requests for authorizations or the acquisition of holdings by companies of third countries. It will be noted that the authority of the Commission to enter into negotiations with third countries under Article 9(4) does not require a separate mandate from the Council of Ministers.

*) References to Article 9 of the second banking directive should be interpreted as also including the corresponding provisions in Article 4 of the motor vehicle liability insurance directive (90/618/EEC) and Article 9 of the direct life assurance directive.

The procedures established in Article 9.4 may be used only where a third country does not grant Community financial institutions "national treatment offering the same competitive opportunities as are available to domestic institutions" and "effective market access". These terms imply that two crucial conditions are met. Firstly, there must be a right to establish a commercial presence, subject to reasonable prudential requirements and on the same basis as the domestic operator. Secondly, once established, the foreign entrant to the market should have the opportunity to compete effectively in the market on the same basis as its domestic counterpart. This dual condition attached to Article 9(4) - effective market access (including right of establishment) and national treatment formally or in effect offering the same competitive opportunities - is a clear feature of the provision.

Any legislation, primary or secondary, containing provisions which provide for an explicit differential and more unfavourable treatment of foreign institutions as compared with domestic ones, would constitute a denial of national treatment. This is the de jure national treatment definition, and constitutes the most clearly identifiable case of denial of national treatment.

But de jure national treatment standard is not the only criterion to assess whether national treatment is granted in effect. Thus, any other official requirement or instruction, which although formally not discriminatory, distorts competitive opportunities in favour of domestic institutions, or which adversely affect the ability of foreign financial institutions to enter and compete effectively in the market as compared with their domestic counterparts, would also constitute a denial of national treatment, unless the measures providing for such a treatment may be properly justified for prudential reasons. This is the concept of de facto national treatment, which requires that countries, in the exercise of their regulatory activity, should not do so in such a way that disadvantages foreign institutions.

In addition to the concept of "national treatment offering the same competitive opportunities", Article 9.4 establishes an additional criterion : the concept of "effective market access". Such a concept cannot be de-linked in Article 9.4 from the application of a de facto national treatment standard, and gives particular emphasis to the concept of right of establishment: foreign countries should not impose restrictions to the establishment which would deny them in effect access to the market. There are many examples of such restrictive regulations, which even if applied formally in a non-discriminatory manner, imply a denial of "effective market access" : quotas on new entrants or application of economic needs tests, unreasonably and disproportionately high standards for entry, discretionary powers exercised in a manner which results in a denial of right of establishment, restrictive practices conducted by self-regulatory organizations.

In any case, the limitation or suspension procedure of Article 9(4) cannot apply if the only difficulty is the absence of "comparable effective market access", "mirror image" or "home-country reciprocity"*).

Comparable effective market access (Article 9(3) of the second banking directive and the corresponding provisions of the insurance directives)

Application of Article 9(3) is intended to deal with problems outside the scope of Article 9(4) (see above). Article 9(3) represents an objective : that Community credit institutions may establish themselves and carry on their activities in third countries with a comparable degree of facility and freedom as is enjoyed by third country credit institutions in the Community. This is reflected in the different wording of Article 9.3, which refers to comparable effective market access. Therefore, Article 9.3 addresses restrictions arising from non-discriminatory regulations, applying in the same form both to domestic and foreign firms and not disadvantaging foreign firms as compared with domestic ones; in particular, Article 9.3 was designed to deal with restrictions resulting from differences of regulatory regimes between the Community and its trading partners, which may pose problems to Community firms as regards access to these markets.

The legislative history of Article 9 points to two major specific examples : one basic idea of Article 9(3) is that it addresses non-discriminatory obstacles resulting from the differences of regulatory structure between the Community and third countries, such as the limitations imposed on the range of activities which credit institutions (or insurance companies) may carry out, as well as restrictions on the geographical expansion. Thus, for the Community the basis for comparison is the opportunities offered by the "single licence" or "single passport" already adopted for bank and non-life insurance but not yet adopted for life insurance and securities activities not covered in the list of activities covered by the second banking directive (see chapter 2 and Annex B), as well as the ability to engage in a wide range of activities and the free circulation of a wide variety of financial products. Other examples are restrictions to the introduction of new financial products or services, or a rigid regulation of the investment of the assets of financial institutions.

Article 9(3) is a reflection of the Community's liberal policy with regard to market access for third countries, in particular through the single license system which allow an EC credit institution to carry out throughout the whole Community all the activities subject to mutual recognition (see Annex B), among the Member States of the Community, which include securities activities. The advantages of the single market will (subject of course to adoption of the directive on life insurance) also be available in insurance. That "Community regime"**) thus constitutes a standard against which the performance of other countries can be examined.

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*) cf. Press release of 13 April 1989, accompanying the Commission revised proposal on relations with third countries of the second banking directive.

**) The regime is determined by a combination of the legislation of both the Community and the invididual Member States.

(2)

Article 9(3) establishes a procedure for addressing cases where a third country does not provide effective market access comparable to that granted by the Community. That procedure consists of the option for the Commission to submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining such comparable competitive opportunities for Community credit institutions. The Community acknowledges that its own standard of access cannot be imposed on others. The Community thus accepts implicitly that the achievement of "comparable competitive opportunities" should be the subject of negotiations, but Article 9(3) does not provide for sanctions if the objective is not obtained.

The directive itself does not provide a specific guidance on how "comparable competitive opportunities" are to be evaluated, nor on how it should be achieved in the negotiations with the third countries concerned. However, it seems clear that Article 9(3), (as well as 9.4 as regards national treatment and market access) could give the Community a basis for the negotiation with third countries of arrangements or agreements providing for comparability of market access.

Uruguay Round

Coincidentally with the preparation of this first report the Commission, negotiating on behalf of the Community, has been engaged in the Uruguay Round negotiations, which include negotiations designed inter alia to improve market access and operating conditions in the area of financial services. The coincidence concerns not only timing, since there is a close inter-relationship between the substance and objectives of these two exercises. This inter-relationship is discussed further in Chapter 3.

It is clear that a satisfactory outcome to the Uruguay Round involving greater liberalisation of access to and operating conditions in financial services markets is an obvious opportunity, in a multilateral framework, to find negotiated solutions to problems identified as regards access to and conditions of operation in other financial markets. In the light of the Community's conditional offer in the GATS draft agreement and subject to a successful conclusion of the negotiations in the Uruguay Round, the Community would no longer be able to make unilateral use of the powers to limit or suspend decisions regarding requests for authorizations and the acquisitions of holdings that are currently available to it under the three directives, in the absence of a clear reserve to that effect being written in its schedule of commitments on market access and national treatment. The Community therefore attaches great importance to continuing the negotiations in this area of the Uruguay Round.

The Community's commitment to the open multilateral trading and economic system is reflected in the Commission's general approach to this report and that commitment finds its legal expression in Article 9(6) of the second banking directive and the corresponding provisions of the insurance directives. These provisions provide in any event that the implementation of the provisions on relations with third countries must be consistent with the Community's obligations under any international agreements.

Coverage of the report

While the report is selective in terms of the countries covered, inclusion, or indeed, non-inclusion of any particular country should not be interpreted as having implications for the treatment granted in any such country for Community credit institutions and insurance companies. The principal criterion followed by the Commission has been the relative importance of the financial sector of the countries for the European Community's own operators, a situation which will obviously change as markets develop and grow. Account should also be taken of the extent to which an EC presence has been established in a third country market despite the existence of restrictions. The Commission therefore reserves the right to make further reports in the light of new information, as of course it is entitled to do under Community law. In so doing, the Commission will continue to carry out its obligations in a transparent manner, through dialogue and, where appropriate, by negotiation, and in a manner which fully reflects the Community's commitment to pursuing a liberal policy of openess to competition in the financial sector.

Annex A: Texts of Article 9, and corresponding provisions of insurance directives.

CHAPTER 2 - COMMUNITY TREATMENT OF NON-EC FINANCIAL INSTITUTIONS

1. Introduction

The financial services sector is of very considerable importance to the Community economy. In 1989 the sector accounted for 7.4% of Community output[1] compared to 5.7% in 1980 and 5.1% in 1975. Between 1980 and 1989 employment in the sector rose by 33% representing an annual average increase of 3.2%. By 1989 the financial services sector accounted for 11.1% of employment in market services, equivalent to 4.7% of total employment in the Community.

Total assets of credit institutions in the Community reached almost 10,000 bn ecu in 1990 equivalent to 203% of GDP. Total insurance premiums in 1989 were 276.4 bn ecu, or 6.3% of GDP, a real increase of 8% per annum over the previous five years. Turnover in equity shares in the Community stock markets amounted to 18.9% of GDP in 1991 and 43.2% in fixed interest securities. The market value of these equity shares was 1752.3 bn ecu in the same year.

The European common market in financial services is therefore an essential and economically crucial part of the frontier-free single market of 340 million consumers. The single market in financial services is designed to remove barriers to the free and open provision of financial services whether in the form of restrictions on the right of establishment or obstacles to the provision of services across the frontiers of the twelve member states which make up the European Community.

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2. THE EUROPEAN SINGLE MARKET IN FINANCIAL SERVICES

Freedom of establishment and freedom of services

A prerequisite for the Single Market in financial services was the abolition of restrictions on capital movements[2]. Although indispensable, liberalisation of capital movements does not suffice to create full freedom to provide and receive financial services. This required further legislative action, by the adoption of Community directives to facilitate the exercise of the basic freedoms of the EEC Treaty, including the right of establishment and the right to provide services. Those directives are based on the following principles :

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1) Gross value added at market prices, SEC-2 database, Eurostat: EUR 10, B, DK, D, E, F, I, L, NL, P, UK

2) The legal framework for the liberalization of capital movements was completed by the adoption by the Council of a Directive (88/361/EEC) liberalizing those restrictions still subject to restriction.

- the harmonisation of essential standards for prudential supervision of financial institutions and for the protection of investors, depositors and consumers ;

- mutual recognition by the supervisory authorities of financial institutions in each Member State of the way in which they apply those standards ;

- based on the first two elements, "home country control and supervision" (i.e control and supervision by the Member States in which the financial institution is based) of financial institutions which wish to operate in other Member States either by establishment or by offering their services directly across frontiers.

The central concept of the single market in financial services is a single licence, sometimes referred to as the "single passport", to allow a financial institution licensed in one Member State to offer its services or engage in activities in other Member States provided it is permitted to provide those services or engage in such activities in its home country. This can be done either by exercising the freedom to establish a branch or by cross border transactions.

A more detailed description of the development of the legal framework for the single market in financial services is included in the annex to this Chapter.

3. Access to the Community by third country financial institutions

MARKET ACCESS AND THE SINGLE MARKET - A LIBERAL POLICY

In keeping with the declaration of the European Council of Rhodes in December 1988, the Community pursues a liberal policy in its relations with third countries in the financial services sector, as regards access to its markets and as regards the conditions in which financial firms originating in third countries established in the Community may operate. The Community is aware of the importance of open markets for the development and liquidity of its financial markets; it also believes that open competition in its financial markets will lead to better services, from which the whole economy would benefit given the central role financial services play in contributing to the efficient allocation of resources.

Community policy and that of Member States in general is based on two main tenets.

- First, the granting of market access, and in particular the right of establishment in whatever form. Financial institutions from third countries may have access to the Community both in the form of establishment and provision of cross-border services. Third country access by way of provision of cross-border financial services, which is at present not regulated in the Community, is not examined in this report. As regards establishment, third country firms may establish in all the Member States of the Community in the form of subsidiary, branch or agency, or, with very few exceptions, representative office. The Community's

conditional offer of commitments in the context of the Uruguay Round negotiations on services would bind the present open policy of granting the right of establishment in whatever form to third country financial institutions.

- Second, the principle of national treatment, which applies at Community level without exception to the operations of partly or wholly owned subsidiaries, and with limited exceptions as regards the primary establishment of such subsidiaries and the establishment and treatment of direct branches. In some cases these exceptions to the full application of national treatment are being phased out, and, in any event, they have not acted as a significant deterrent to the establishment of a large presence of financial firms of third countries on the EC market.

Total assets of credit institutions including those with securities activities under the second banking directive operating in the EC stood at 9656.3 bn ecus in 1990. Of this, 11.3% (1,092.9) represented the assets of credit institutions whose head office or parent company was situated outside the Community. The non-EC presence is particularly strong in the United Kingdom, where 33.0% of assets were held by branches of non-Community credit institutions and in Luxembourg where the assets share of non-EC subsidiaries was 17.4% in 1990. Non-Community market share is also relatively high in Belgium and Ireland.

Gross insurance premiums amounted to 276.1bn ecu in the Community in 1989 comprising 126.1bn ecu life premiums and 150.0bn ecu non-life premiums. Statistics for all Community countries on foreign penetration of the market are not available but where they are available they suggest that non-Community penetration is lower than in the banking sector. The third country share of the life insurance market is highest in Portugal at 11.5%, with the foreign share in the rather large Germany market standing at 8.0%. The non-life market exhibits a similar pattern where the non-EC share of the market in Denmark is highest, 11.6%, followed by Germany, 9.3%.

a) Establishment of subsidiaries

With very few exceptions mainly limited to certain Member States other than those having the major financial centres in the Community, foreign financial institutions may establish partly or wholly owned subsidiaries in the Community, under national treatment conditions.

Establishment of subsidiaries by third country institutions in the Community is normally subject to the same rules and requirements as those applied to the establishment of Community firms, with only a few exceptions. In addition, after their establishment and by virtue of Article 58 of the EEC treaty, companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community are treated as nationals of Member States; such companies benefit from the right of secondary establishment and free provision of services throughout the Community and are treated as Community nationals regardless of the country of ownership or control.

Thus, for example the subsidiaries of non-EC firms operating in the Community are subject to and benefit from all provisions of Community law. The single licence provided for by EC directives in the financial services sector will be available to such established subsidiaries since they are considered to be Community companies.

Following the agreement reached with the countries of the European Free Trade Area (EFTA)[1] the single licence and other benefits deriving from Community law will extend beyond the Community's external borders and will now apply in a similar way throughout the whole European Economic Area comprising 380 million people.

Thus the subsidiary of a non-EC company duly established in an EC member state will be free to establish branches (and provide cross-border services) not only in all EC Member States, but also in the entire European Economic Area. Similarly, a foreign bank or company established in one of the member countries of the EFTA will be able to establish branches in any Member State of the European Community. This is a very important extension of the liberal regime based on Articles 52 et seq. and 59 et seq., in conjunction with Article 58(1) of the EEC Treaty.

Some Member States apply certain restrictions to the establishment of subsidiaries by third country institutions, whose significance is limited; the most relevant ones are the following[2] :

In the banking and securities sector:

- in Ireland, Portugal and Spain third country establishment in the banking sector may be subject to the application of economic needs criteria; however, this criterion is not invoked in practice;

- non-EC equity participation in domestic banks is limited to 40 % of the capital in Greece, and foreign shareholding in the three "banks of national interest" in Italy is restricted ;

- some Member States (Greece, Ireland and Portugal) have citizenship requirements for bank directors or personnel, and others (Denmark and Greece) for members of the board of directors of insurance companies ;

- In France, foreign bank subsidiaries do not have an immediate access to the lead-management of bond issues denominated in French francs (although they are free to act as co-lead managers or underwriters); a similar restriction applies also in the Netherlands ;

- also in France, foreign investment beyond a certain amount may be scrutinized by the Government, which may refuse it.

In the insurance sector, there are no significant restrictions on establishment or denials of national treatment.

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1) Austria, Finland, Iceland, Norway, Sweden, Switzerland, Lichtenstein

2) A complete list of these restrictions is found in the chapter on financial services of the Community revised offer of initial commitments in the Uruguay Round services negotiations.

b) Establishment of branches or agencies

Third country institutions may establish direct branches or agencies (i.e. directly from the head office or from a non-Community subsidiary) in the banking, insurance and securities sectors. These are regulated by Member States, with few exceptions concerning minimum solvency and authorization requirements for the establishment of third country branches in the insurance sector*).

Unlike foreign subsidiaries, branches established directly in a Member State by a non-Community company are not subject to prudential regulations harmonized at Community level which enable such subsidiaries to benefit from enhanced facilities to set up new establishments and to provide cross-border services throughout the Community. Therefore, such branches receive an authorization to operate in the territory of the Member State concerned under conditions equivalent to those applied to domestic companies of that Member State. These branches may also be required to satisfy a number of prudential requirement such as separate capitalization and other solvency requirements, and reporting and publication of accounts requirements; in the case of insurance, they may be subject to specific guarantee and deposit requirements and to the localization in the Member State concerned of the assets representing the technical reserves and at least one third of the solvency margin.

At present, in the banking sector, all Member States allow the establishment of direct branches, although some of them reserve their right (rarely used) to apply criteria based on economic needs (such as Ireland, Portugal and Spain); other Member States impose limited restrictions on the activities of foreign bank branches (including in some cases Community ones), in particular concerning their ability to lead-manage bond issues denominated in the local currency (France and Germany).

Finally, in accordance with the UCITS Directive (see Annex to this Chapter), only institutions having their registered office within the Community may act as management companies or depositories of the assets of investment funds subject to mutual recognition in the Community ; this requirement was imposed because, in the absence of harmonization of prudential requirements for branches in the Community, no mutual recognition could be granted to institutions falling outside the scope of harmonization and mutual recognition.

In the insurance sector, the only remaining restrictions concern the prior authorization of representative of branches of non-EC insurance companies in France, the discretion left to licensing authorities for the establishment of branches in Ireland and Italy, and the possible application of economic needs criteria in Portugal.

In the securities sector branches are also allowed in a number of countries; however, Belgium, Denmark, France, Greece, Italy, Portugal and Spain at present require separate incorporation in the form of a securities firm for trading in securities. These countries apply this requirement both to Community and third country firms.

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*) See Articles 23-29 of the First Non-Life Insurance Directive and Articles 27-32 of the First Life Insurance Directive.

Similarly, in certain Member States (Italy, Portugal and the United Kingdom) the provision of certain other financial services by foreign firms can be made only through separate subsidiaries.

c) <u>Reciprocity requirements</u>

Concern has been expressed about restrictions to market access from non-Community financial institutions which could arise from the application of reciprocity provisions existing in Member States' legislation*), or from the invocation of the suspension procedure of Article 9.4 of the Second Banking Directive and related provisions in the insurance area. However, reciprocity powers existing in Member States' legislation are conceived as reserve powers aimed not at restricting market access, but at improving market access in third countries for their firms ; they have rarely been used. Article 9.4 conforms to the same pattern. It is designed to provide negotiated remedies to cases of serious discrimination against EC firms and not to impose any particular type of reciprocal treatment on third countries. Moreover, as has been noted, the suspension and limitation procedure of the financial services directives is limited in scope and duration, and is subject to a strict decision-making procedure.

In any event, as part of its negotiating offer in the Uruguay Round, the Community has declared that it is ready not to apply these provisions to signatories of the General Agreement on Trade in Services subject to adequate market access commitments being made by other countries.

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*) A majority of Member States maintain reciprocity provisions which could apply to the establishment of foreign subsidiaries.

Thus, in the banking and securities sectors, in France, Greece, Ireland, Netherlands, Spain and the United Kingdom the establishment of foreign banks and/or other financial companies in the form of subsidiaries or branches may be subject to reciprocity requirements; in Denmark, Germany and Italy the establishment of branches in the banking sector may be subject to a condition of reciprocity; in addition, some Member States such as France, Greece, Netherlands and the United Kingdom, have in their legislation provisions which enable them to impose other restrictions on the operation of foreign banks and financial companies, or to deny them certain benefits, if the country of origin of the firm discriminates against its firms or does not offer them competitive opportunities equivalent to those offered by these Member States to foreign banks and financial institutions.

As regards the insurance sector, in Belgium, France, Germany (only for branches), Greece, Ireland (only for branches), Italy, Spain and the United Kingdom, the establishment of non-EC insurance companies may be subject to a reciprocity requirement.

Conclusion

Although a certain number of measures remain in force at the level of individual member states which qualify the right of primary establishment in the Community the overwhelming tendency of the Community's policy viewed as a whole is liberal and based on the notion of open access to the Community market and national treatment.

The Community's interpretation of the provisions of Article 9 of the second banking directive (and the corresponding provisions in other directives) is designed to maintain and extend that overwhelming policy orientation and to provide a basis for promoting good relations with the Community's trading partners in the area of financial services.

The Community also ensures through the EEC treaty itself, that firms of whatever origin duly incorporated in the Community have the same rights and obligations as Community firms. Thus, for example the advantages of the single licence of the second banking directive and other EEC directives are available irrespective of the country of origin or control of foreign banks, insurance companies or other financial firms. Full and effective national treatment is thus provided for in the EEC Treaty. The Community has already, following conclusion of agreement reached with the EFTA countries, agreed to extend those advantages throughout the whole of the European Economic Area (the area formed by the countries of the European Community and European Free Trade Area). Furthermore, the Community has shown its readiness to underwrite its commitment to a liberal policy based on national treatment by offering to bind its present regime internationally, under the future General Agreement on Trade in Services.

CHAPTER 3

Treatment of EC credit institutions and insurance companies in third countries - findings and conclusions

Overview

The Commission's examination of the treatment of EC credit institutions and insurance companies in third countries provides evidence of a wide variety of regimes. A number of the Community's trading partners already provide national treatment on an autonomous basis. Others, such as the EFTA countries have concluded agreements with the Community under which they have contracted an obligation to apply Community legislation, inter alia, in the area of financial services. When the agreement is implemented, Community firms will receive in the EFTA countries a treatment fully comparable to that granted within the Community. Other countries, such as Hungary, Poland and Czechoslovakia, have also agreed in the context of the Europe Agreements to grant national treatment for establishment after a transitional period. For any Community financial institutions already established in those countries there is an obligation to grant national treatment as regards their conditions of operation.

The two biggest of the Community's partners in financial services, the United States and Japan, do broadly speaking, grant national treatment to Community institutions. However, in both cases a number of non-discriminatory regulatory requirements exist which do result in Community firms not enjoying in those countries opportunities comparable to those which are available in the Community to firms of non-Community as well as Community origin.

A number of countries however fall considerably short of granting national treatment to Community firms. In some countries, whole sectors or sub-sectors may be closed to establishment by Community firms in some cases for reasons of national policy, or because of perceived lack of economic need. In other cases stringent limitations on expansion of branch network, or other discriminatory operating conditions, e.g. additional capital requirements or taxation, apply.

An assessment of the treatment granted to Community institutions is difficult to make in general terms; it is necessary to follow a case by case approach and a summary analysis country by country is given below. An illustrative version of this analysis in tabular form for ease of reference is at Annex C.

The Commission's analysis also indicates the stance which different countries have taken in the Uruguay Round. Such analysis reveals, however, that an important number of countries are offering less than a standstill, i.e. exclude certain financial sectors or sub-sectors from their offers, or do not offer any commitment to refrain from introducing new restrictions or discrimination. The Community is seeking in these negotiations a commitment to a standstill for all the financial services sectors and the elimination of certain restrictions by countries with important financial markets. Where there are still restrictions on effective market access and national treatment, the Community will be loooking for improvements in the further course of negotiations. At this stage of the negotiations, the Community has, however, taken no final decision on what will be a sufficient response by individual trading partners. In so deciding, the Community will need to take account of inter alia, the relative levels of development of the countries concerned.

AUSTRALIA

Australia generally grants national treatment to EC financial institutions, and the right of establishment in the insurance and securities sectors, as well as to important segments of the banking sector. In the banking sector, Australia still maintains a branching prohibition and restrictions to foreign takeovers.

However, the reforms announced by the Australian government in February, following the report of the Martin Committee, inter alia lifted the embargo on the issue of full banking licences, and will permit the establishment of branches of foreign banks and facilitate the authorization of foreign acquisitions; once implemented, they will represent a significant step in the direction of full national treatment for foreign banks established or seeking establishment in Australia.

The precise modalities of implementation of the proposed reforms will need monitoring, in particular as regards the conditions under which merchant banks will be converted into full license banks, and the restrictions on retail activities imposed on branches of foreign banks, especially concerning the definition of retail deposits they may accept. The investment regime still needs to be clarified.

These reforms still need to be reflected in Australia's Uruguay Round offer.

AUSTRIA - see EFTA below.

BRAZIL

The banking and investment services sectors are closed to new foreign entrants by virtue of its Constitution, although the opening of new branches by foreign banks established in Brazil and expansion of their activities is permitted on a discretionary basis. Foreign investment in insurance companies is limited to 50% of the capital and 33% of the voting rights. In the securities market a foreign firm may not hold more than 33% of voting shares and 49% of the capital of a domestic institution.

Brazil's Uruguay Round offer on financial services excludes the banking, reinsurance and investment services sectors. On direct insurance, Brazil offers to allow only the establishment of subsidiaries in which foreign participation is limited to 50% of the capital and one third of voting rights, with no restrictions on national treatment. Insurance intermediation is allowed only for individuals.

No clear indication of willingness to improve the situation of foreign institutions nor to improve its Uruguay Round offer has yet been given by Brazil.

CANADA

EC financial institutions enjoy wide market access opportunities in Canada, with a number of relatively important exceptions. Thus, participation in banks and life insurance companies is restricted to 10% individual ownership and total foreign ownership may not exceed 25% in any one company (the so-called "10/25 rule"). This rule does not apply to US investors under the terms of the US-Canada FTA.

A foreign bank wishing to operate in Canada must establish a Schedule II subsidiary; direct branching from abroad is prohibited. Schedule II banks encounter particular restrictions in order to ensure that the maximum global share of all foreign banks, excluding US banks, is 12% of total domestic assets. For example, limits are placed on borrowing from abroad.

In the Uruguay Round services negotiations, Canada is offering a standstill and has shown readiness to give a commitment not to apply the 12 % market share limit and 10/25 % rule of foreign ownership for life insurance and banks, but all of it is conditional on suitable commitments by other countries. Canadian officials have so far not offered any commitment on the important issue of bank branching.

CZECHOSLOVAKIA (see "Europe Agreements" below)

CHINA

China's financial sector is generally closed to foreign presence, with a number of exceptions.

Foreign bank access is limited to the five special economic zones and is subject to important limitations, such as a requirement for an approval for establishment under criteria not specified, the descrip tion of the activities which foreign banks may carry out leaves discretion to the licensing authorities and in practice excludes inter alia lending and deposit-taking in domestic currency. In securities, establishment is limited to two Special Economic Zones; companies may invest but not trade. The insurance market is closed to foreign insurance companies.

China's Uruguay Round offer excludes insurance and securities, and in banking would only respect the present situation, possibly expanding the offer to cover a new "special economic zone".

EGYPT

Establishment of foreign bank branches is possible within the framework of joint ventures, with a majority shareholding of Egyptian capital. However, the Egyptian authorities are pursuing a policy of not granting licenses for new banks.

Access to the insurance sector is limited to certain special zones in the framework of joint ventures. The reinsurance market is a state monopoly.

In the securities market, foreign brokers may only establish minority owned joint ventures, although Egypt applies no restrictions on establishment and operation for other securities activities.

In the Uruguay Round, Egypt's offer excludes banking. The insurance offer is limited to certain special zones, and reinsurance is excluded. The offer is in addition subject to the Egyptian investment law and to other additional laws whose content is not specified. Egypt has declared they are willing to consider expanding the offer to the banking sector.

EUROPE AGREEMENTS

At the end of 1991 the European Community completed negotiations with Czechoslovakia, Hungary and Poland for the conclusion of "Europe Agreements".

In accordance with their provisions the three Central European countries agreed to grant national treatment for the establishment of Community banks and other firms and nationals providing financial services, subject to normal prudential requirements. This obligation must be put into effect at the latest by the end of the transitional period of ten years from the date of entry into force of the Agreement, i.e. 1993.

In addition, they will grant national treatment for any such firms and nationals already established in their territories immediately on entry into force of the Agreement (in the case of Hungary and Poland, this obligation will apply in full only after five years). They have also agreed to a standstill, i.e. not to adopt any new regulations or measures which introduce discrimination as regards the establishment and operations of Community companies and nationals in their territories in comparison with their own companies and nationals.

They have further accepted an obligation to ensure that their legislation will gradually be made compatible with that of the Community as regards inter alia banking law, and the law relating to other financial services.

EFTA (European Free Trade Area: Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland)

The countries of the European Free Trade Area are all signatories to the agreement with the European Community establishing the European Economic Area which enters into force on I January 1993. In accordance with that agreement, the EFTA countries will apply Community legislation relevant to financial services (banking, insurance, securities) subject in a limited number of cases to a relatively brief transitional period; for instance, Finland, Iceland, Liechtenstein are allowed to maintain restrictions on direct investment until 1 January 1996, and Norway and Sweden until 1st January 1995. Thus EC firms will have in relation to establishment and the carrying on of activities the same rights and obligations as they have within the Community itself. EC and EFTA countries will operate within a single market in financial services.

FINLAND (see "EFTA" above)

HONG KONG

Hong Kong is an important international financial centre and has traditionally welcomed foreign presence. However, a number of restrictions are maintained in the banking sector, concerning in particular expansion of activities. Thus, in banking, only single branch licences are available; a moratorium on new full banking licences remains in force, although there are no restrictions on foreign takeovers. There are no important restrictions in the insurance and securities sectors.

Hong Kong's Uruguay Round offer excludes certain core banking services, including lending, financial leasing, guarantees and money broking. Hong Kong has said that willingness to improve the offer will depend on a substantial improvement of the offers by other countries, and in particular by South East Asian countries. Hong Kong has tabled request for an MFN exemption for reciprocity concerning the granting of banking licenses.

HUNGARY (see "Europe Agreements" above)

INDIA

India applies a number of important restrictions and discriminations as regards establishment and operation in the banking, insurance and securities markets. While foreign banks are occasionally licensed, foreign insurance companies are not permitted to establish themselves in India. Foreign banks cannot acquire shareholdings in Indian banks, and they encounter discriminatory treatment in the pursuit of business activities including discriminatory taxation. All insurance activities are carried out by a state monopoly, and Securities houses face various restrictions of their activities. However, despite these restrictions, EC banks operating in India are exempt from certain burdens imposed on local banks and are doing a relatively important amount of business in India.

India's Uruguay Round offer covers only a very small proportion of the financial sector, commitments offered are of a relatively small scale and are limited to insurance.

INDONESIA

EC banks face a number of relatively important discriminatory restrictions in Indonesia. As regards the establishment of all kinds of foreign financial institutions, capital requirements are higher than for domestic firms. Both banks, insurers and securities houses are required to enter into joint ventures with local institutions. Foreign banks may only acquire minority shareholdings in local banks, and they are geographically restricted in their activities. There is discrimination against the private insurance sector, and 75% of the insurance business has to be placed in the country itself.

Recent reforms have been adopted allowing minority participations in local banks. The Community expects therefore that Indonesia will table a Uruguay Round negotiating offer which covers financial services.

JAPAN

Community financial institutions generally receive national treatment in Japan. In a number of instances, Japan grants better than national treatment, e.g. banks are permitted to own up to 50% of a securities subsidiary or investment management company, and securities firms may also own 50% of a foreign exchange business. While Japan has progressively introduced reforms to liberalize its financial system, a number of problems do, however, remain because of particular non-discriminatory regulatory requirements or the traditional structure of Japan's financial market.

In the Uruguay Round, Japan intends to bind the financial services sector in accordance with the stronger obligation on national treatment and market access of the Understanding on commitments in financial services with very few reservations on establishment and two minor reservations on national treatment. The problems arising from the regulatory or market structure (insurance brokers, combination of activities, better access to pension funds and investment trusts, definition of a security and prior approval of insurance contracts, etc.), are not addressed in Japan's offer. However, regulatory reform is the subject of proposals for new legislation currently under consideration in the Diet. In the light of that, Japan has indicated that if certain subjects are not suitable for multilateral negotiation, she is willing to address the Community's concerns in the bilateral context.

KOREA

Korea started in recent years a process of opening of its financial markets to foreign presence, and in some cases important steps have been taken to grant foreign institutions a fair degree of market access. Thus, foreign banks are allowed to operate through branches in Korea, the insurance market has been progressively opened to foreign newcomers, and some foreign securities firms were first allowed to establish a branch in 1991. In the areas where market access is

granted, national treatment is provided with some exceptions; in certain instances, Korean authorities have introduced measures providing with greater flexibility for foreign institutions which are not granted to Korean firms.

However, a number of restrictions still remain. For example, licensing conditions are based on the application of an economic needs test in all the financial services sector.

In the banking sector, foreign banks cannot establish subsidiaries, and maximum foreign participation in a domestic bank is limited to 10 %. There are certain problems affecting the operations of foreign bank branches, which arise from certain structural or regulatory features rather than from discriminatory treatment.

In the insurance sector, foreign non-life insurers may not establish subsidiaries and maximum shareholding in a domestic non-life undertaking is limited to 20 %. Activities of foreign insurance companies are subject to tight regulations, generally applied in a non-discriminatory manner, which affect the ability of foreign firms to operate in Korea.

In the securities sector, a quota system is applied regarding the establishment of foreign securities firms, which may only be done through a branch or joint venture, and limitations are placed on branch expansion. Restrictions are also imposed on foreigners investing in Korean stocks and bonds.

Korea's Uruguay Round offer excludes certain banking activities and has quite a number of qualifications, concerning in particular authorization procedures. A number of problems of a regulatory nature and other restrictions are in most instances considered by Korean authorities as falling outside the scope of the Uruguay Round, and are not dealt with in the offer.

The Community looks forward to continued liberalization in Korea on the basis of the "blueprint" for financial reform - and to the translation of that liberalization into binding international commitments in the Uruguay Round.

MALAYSIA

Malaysia operates a number of important restrictions on foreign banks. For the time being, no new licences are given to banks, insurance companies and securities houses. As regards establishment by acquisition of shares, all kinds of foreign financial institutions are restricted to minority shareholdings. Important restrictions are maintained on the operation and expansion of foreign firms, including a requirement to convert all bank and insurance branches into subsidiaries (up to 30% owned in the case of insurance).

Although EC financial institutions are at present carrying out a relatively important amount of business in Malaysia, the impact the newly imposed restrictions is likely to affect negatively their operations, in particular in the insurance sector.

Malaysia's Uruguay Round offer excludes certain sectors and does not represent a halt to the obligation to convert foreign banks and insurance branches into subsidiaries.

MEXICO

Foreign access to Mexico's financial markets is very limited. Under present legislation, foreign presence is not allowed and only minority shareholdings up to 49% in existing firms may be authorized - in certain areas limited just to 30% -. Mexico's Uruguay Round offer is less than a standstill of the present situation, since Mexico it offers to authorize foreign shareholding at a lower level than the existing regime, respectively of 30% and 20% of foreign participation.

Considerable improvement in Mexico's offer will be necessary, which clearly reflects tactical considerations arising from their involvement in the NAFTA (North America Free Trade Area) negotiations. As regards the NAFTA, the Commission expects that any financial services subsidiary of Community financial institutions will fully benefit from NAFTA treatment in the US, Canada and Mexico.

NORWAY (see EFTA above)

PHILIPPINES

The banking and insurance market is closed to new foreign investment. However, foreign banks are at present doing a relatively important amount of business.

Foreign shareholding in the banking sector is restricted to 30% of voting stock and the insurance sector is subject to a maximum of 40%, and foreign financial institutions already established are subject to restrictions as regards branching and expanding activities.

The Philippines Uruguay Round offer does not imply an improvement of the present situation; in fact, it excludes most banking activities, with the exception of advisory services and credit card companies. In insurance, it excludes life insurance. In investment services, the Philippines offers to allow establishment and to grant national treatment to foreign firms, though this commitment is subject to the application of the foreign investment law and present licensing requirements under conditions not specified in the offer. National treatment is unbound for the banking and insurance services covered, and qualified by existing regulations for securities services.

POLAND (see "Europe Agreements" above)

SINGAPORE

An obvious distinction must be made between the off-shore financial services market (which is characterised by a very considerable foreign presence), and the domestic market; foreign presence is very important on both markets. However, there has been a moratorium since 1974 on the issue of full banking licences - to either local or foreign applicants, and foreign-owned licensed banks cannot branch in Singapore.

In the insurance area, for the time being no new companies (foreign or local) are being registered. The Monetary Authority of Singapore has said that the small domestic market does not justify new registrations, and no discriminatory restriction on activity has been notified.

In the area of securities, foreign interests may initially acquire up to 49% of a local stockbroker - this may be increased to 70%. In 1990 special "international membership" of the Stock Exchange of Singapore was introduced for trading on behalf of non-residents.

Singapore does not offer in the Uruguay Round to respect the present market access enjoyed by foreign firms in Singapore, nor to give a commitment not to introduce new restrictions.

SWEDEN (see "EFTA" above)

SWITZERLAND (see "EFTA" above)

TAIWAN

Foreign institutions enjoy in Taiwan a limited degree of market access. In banking, access is restricted to branches and representative offices, and licensing conditions are very restrictive; in addition, carrying-on of activities is restricted by multiple requirements.

Foreign access to securities business is very limited; foreign securities firms are allowed to establish only minority-owned joint ventures and, under very restrictive conditions, can open branches; and foreign securities cannot list on the Stock Exchange. The insurance market is currently closed to EC insurance companies.

Considerable liberalisation will be necessary if EC credit institutions and insurance companies are to be granted national treatment and effective market access. Taiwan's expected accession to the GATT and acceptance of the GATS will provide an occasion for securing multilateral commitments to such liberalisation.

THAILAND

Thailand imposes important restrictions on the establishment and operation of EC financial institutions. The commercial banking market at present is closed to new entrants, both foreign and domestic, and EC banks can only operate one branch with the exception of some grandfathered banks. Foreign ownership in Thai banks is limited to 25 % of the capital.

In the insurance sector, no new licenses are granted, and foreign participation in insurance companies is limited to 25 %. Similar restrictions exist in the securities area, where the only form of establishment by foreign firms is in the form of minority-owned joint ventures.

Thailand's Uruguay Round offer not only does not improve the present situation, but also excludes the securities sector and most of the banking sector. Reinsurance and insurance brokerage are excluded from the offer, as well as commercial presence in non-life insurance. In addition, Thailand has presented an MFN exemption concerning market access for new foreign financial institutions and for a bilateral agreement with the US.

TURKEY

Although EC banks are active in Turkey, a number of restrictions are still maintained. Thus, establishment and acquisition of shareholdings over 10 % in domestic banks and insurance companies is subject to discretionary authorization; foreign bank branches are limited to five, and there are discriminatory capital requirements for foreign banks.

Turkey offers in the Uruguay Round not to introduce new restrictions on foreign financial institutions for most of the financial sector, with the exception of certain activities including pension fund management. Further improvement towards the granting of national treatment would be needed.

UNITED STATES

In the financial services sector, the United States has traditionally welcomed foreign investment and pursued a policy based on the application of national treatment to foreign firms. National treatment is normally provided at the Federal level with only a few exceptions, mostly not significant. A national treatment policy is also normally pursued at the state level, although a number of states maintain restrictions on foreign firms, especially in the banking and insurance area. In a number of instances, some grandfathered foreign banks have been exempted from certain restrictions applied to US banks, such as their ability to maintain securities subsidiaries and inter-state branches under the International Banking Act of 1978.

The most important restrictions faced by Community financial institutions stem from non-discriminatory regulations which limit the scope of permissible activities to banks or which prevent the combination of banking and securities activities within the same banking organization, or which limit the ability of banks to expand across state borders. Although these restrictions have been progressively relaxed in a number of ways, they may still prevent Community banks affiliated in the Community with insurance companies or securities firms to set up respectively banking and insurance or securities operations in the US. In cases where an EC insurance company having operations in the US becomes affiliated outside the US with a bank also having operations in the US, the resulting banking organization would be obliged to divest either its banking or insurance operations.

In February 1992 the Administration again tabled a bill which would remove all these restrictions.

A second area of concern to EC firms relates to the possible revision of the status of foreign bank branches in the US. Legislation adopted last year requires foreign bank branches entering the retail deposit market to establish as an insured subsidiary. Existing branches are grandfathered. The Treasury and the Federal Reserve Board have also been mandated by the same legislation to produce by the end of this year a report on whether foreign banks generally should be required to conduct banking operations in the US through subsidiaries rather than through branches. If this study were to lead to further restrictions on the activities of foreign bank branches in the US, this could constitute an important departure of the policy of granting foreign banks equal competitive opportunities, formally endorsed by Congress when it passed the International Banking Act.

The US has offered in the Uruguay Round financial services negotiations not to introduce new restrictions incompatible with a set of specific national treatment and market access obligations for financial services. However, the US has also conditionally proposed to be exempted from the obligation not to discriminate among parties to the services agreement; if this exemption is granted, the US would also be exempted from an obligation not to introduce new restrictions.

Action under Article 9(3) or 9(4) of the second banking directive (and corresponding provisions of the insurance directives)

The Commission has examined the possibility of action under the directives. Its conclusions are the following.

Article 9(3)

Even in countries where Community credit institutions and insurance companies have acquired a significant market share in either absolute terms or relative to the market share acquired by other countries, Community institutions do not necessarily enjoy effective market access comparable to that granted by the Community to third countries. Subject of course to the adoption of the directive still before the Council, very few countries allow such flexibility for both banking and insurance in the terms of access to its market, and the form which establishment may take (branch, subsidiary, representative office or acquisition of holding) the same degree of freedom to expand geographically and the same range of activities or variety of financial product.

Thus, several countries apply non discriminatory regulations which restrict the operations and freedom to compete of financial institutions; these may include limitations on geographical expansion, restrictions on the financial activities which may be carried out or segmentation of activities, in particular between banking, securities and insurance; other examples are cases where the type of financial products which are permitted may be limited or the introduction of new products may be subject to restriction or a lengthy approval process, non-discriminatory restrictions to the investment of assets, etc.

The Commission would therefore be in a position to submit a proposal to the Council for a mandate to negotiate with a view to obtaining effective market access comparable to that granted by the Community to credit institutions from that third country. The Commission has however concluded that such a proposal for a mandate would at present be redundant. The Commission has in effect, in the context of the Uruguay Round negotiations on financial services, been engaged in multilateral negotiations which aim, at least in part, at achieving greater competitive opportunities for Community financial firms. Those negotiations are not yet concluded. In the Commission's view no useful purpose would be served by seeking at this moment a separate mandate to negotiate to the same end under the financial services directives. The Commission will continue its informal contacts at both political and official level with the authorities of the relevant countries to reinforce its efforts in the GATS context.

Article 9(4)

Similar considerations apply with regard to action under Article 9(4) .

Article 9(4) (and the corresponding provisions of the insurance directives) provides that where Community credit institutions do not receive national treatment and the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In virtually every case*), the countries examined by the Commission in drawing up this report are participating in the Uruguay Round, offering the prospect of improvements in their treatment of Community financial firms in the medium term. The Uruguay Round negotiations are still proceeding, though unfortunately more slowly than might have been hoped. The Community has committed itself to achieving a satisfactory conclusion to the Uruguay Round covering the financial services sector. It will continue to work towards this end.

The current situation of the negotiations is however not at this stage satisfactory, given the limited extent of offers or initial commitments in financial services by a number of negotiating partners, in combination with requests for exemptions from MFN by some of them. Further improvements are therefore required to ensure a satisfactory outcome both for the Community and the multilateral trading system as a whole.

The possible use of the limitation or suspension powers of Article 9(4) has to be considered against that background. The Commission is of the view that such recourse to Article 9(4) would be inappropriate at this time. It would hinder rather than help the Community to achieve its market opening objectives. It would be criticised as inconsistent with our GATT negotiating position and it would inevitably give rise to questions as to whether the Community was negotiating in good faith. It could have a domino effect and lead to possible retaliation or additional restrictions by the Community negotiating partners. It would also be seen as a unilateral action inconsistent with the Community's commitment to the multilateral system and declared opposition to unilateralist action or threats thereof, by others.

The Commission therefore concludes that the most effective market opening policy and that of most benefit to the Community's financial services sector is to continue to use the opportunity provided by the Uruguay Round negotiations on financial services in order to remedy problems arising for Community credit institutions and insurance companies. The Commission will continue to monitor progress and will bring forward further reports to the Council as necessary. In particular, the Commission will present a global report on the result of the Uruguay Round and will also pay due attention to the implementation of the commitments entered into by third countries parties to the agreement. The Commission naturally reserves the right to consider in the light of the outcome of the Uruguay Round negotiations whether further action under the third country provisions of the relevant directives would be appropriate or necessary.

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*) Taiwan has not participated in the Uruguay Round. However Taiwan has applied to become a Contracting Party to GATT and may be expected also to become signatory of the GATS in the same process.

EXTRACT: Articles 8 and 9 of the "Second Banking Directive"

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.

EXTRACT: Directive EEC/90/618 on motor vehicle liability insurance

Article 4

The following Articles 29a and 29b shall be added to Title III B of Directive 73/239/EEC.

'Article 29a

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 Insurance Committee to be established by the Council on proposal by the Commission ;

(b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Insurance Committee to be established by the Council on proposal by the Commission 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.

Article 29b

1. Member States shall inform the Commission of any general difficulties encountered by their insurance undertakings in establishing themselves or carrying on their activities in a third country.

2. Initially not 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 insurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying on of insurance activities, and the acquisition of holdings in third-country insurance undertakings. 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 insurance undertakings effective market access comparable to that granted by the Community to insurance undertakings 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 insurance undertakings. 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 insurance undertakings in a third country are not receiving national treatment offering the same competitive opportunities as are available to domestic insurance undertakings and that the conditions of effective market access are not being 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 the Act establishing the Insurance Committee referred to in Article 29a, 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

— regarding 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 that the measures shall be continued.

Such limitations or suspension may not apply to the setting up of subsidiaries by insurance undertakings or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community insurance undertakings by such undertakings or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 has arisen, 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) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former

This obligation to provide information shall lapse once an agreement is concluded 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 under 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 insurance undertakings'

EXTRACT : Directive EEC/90/619 on direct life assurance

Article 9

The following Articles are added to Title III B of the First Directive :

'Article 32a

The competent authorities of the Member States shall inform the Commission :

(a) of any authorization of a direct of indirect subsidiary one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Committee referred to in Article 32b (6) accordingly ;

(b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary. The Commission shall inform the Committee referred to in Article 32b (6) 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 groupe shall be specified in the notification which the competent authorities shall address to the Commission.

Article 32b

1. The Member States shall inform the Commission of any general difficulties encountered by their insurance undertakings in establishing themselves or carrying on their activities in a third country.

2. Initially no later than six months before the date referred to in the second paragraph of Article 30 of Directive 90/619/EEC (¹), and thereafter periodically, the Commission shall draw up a report examining the treatment accorded to Community insurance undertakings in third countries, in the terms referred to in paragraphs 3 and 4, as regards establishment and the carrying on of insurance activities, and the acquisition of holdings in third-country insurance undertakings. 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 insurance undertakings effective market access comparable to that granting Community to insurance undertakings effective market access comparable to that granted by the Community to insurance undertakings 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 insurance undertakings. 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 insurance undertakings in a third country are not receiving national treatment offering the same competitive opportunities as are available to domestic insurance undertakings and that the conditions of effective market access are not being 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 negociations, in accordance with the procedure laid down in Article 32b (6), 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

— regarding 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 insurance undertakings or their subsidiaries duly authorized in the Community, or to the acquisition of holdings in Community insurance undertakings by such undertakings or subsidiaries.

5. Whenever it appears to the Commission that one of the situations described in paragraphs 3 and 4 has arisen, 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) of any plans for such an undertaking to acquire a holding in a Community insurance undertaking such that the latter would become the subsidiary of the former.

This obligation to provide information shall lapse whenever an agreement is reached with the third country referred to in paragraph 3 or 4 when the measures referred to in the second and third subparagraphs of paragraph 4 cease to apply.

6. The Commission shall be assisted by a committee composed of the representatives of the

Member States and chaired by the representative of the Commission.

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

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

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

If, on the expiry of a period to be laid down in each act to be adopted by the Council under this paragraph but which may in no case exceed three months from the 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.

7. Measures taken under 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 insurance undertakings.

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(1) OJ No L 330, 29. 11. 1990, p. 50.'

A N N E X B

Development of the legal framework for the single market in financial services

EEC Treaty

Establishment of a financial common market in the European Community is a complex operation encompassing numerous individual sectors and subsectors. Different Articles of the EEC Treaty are therefore involved. These include the provisons on right of establishment (Article 52 et seg.), the freedom to provide services (Article 59 et seg.) and capital movements (Article 67 et seg.).

Under the terms of the Treaty, freedom of establishment and the freedom to provide services should in fact already have been achieved by the end of the 12 year transitional period in 1969, and the Commission did indeed submit for both areas the required general programmes, which were adopted by the Council in December 1961. On the other hand, the Treaty's provisions on freedom of establishment and the freedom to provide services made clear reference to capital movements, which, as the Treaty in turn stipulated, were only to be deregulated "to the extent necessary to ensure the proper functioning of the common market" (Artilce 67).
The Treaty states that freedom of establishment encompasses the taking up and carrying out of own-account gainful activities such as the founding and management of undertakings, in particular companies, "subject to the chapter on capital movements" (Article 52). The link with capital movements is made even clearer in respect of services. Here the Treaty stipulates that the freedom of banks and insurance companies to provide the services linked with capital movements is to be "established in step with the gradual liberalization of capital movements" (Article 61).

In mid-1985 the Commission presented its White Paper on completing the internal market, which contained concrete plans for the removal of all remaining physical, technical and fiscal barriers between the EC countries by the end of 1992, as well as related proposals for approximately 300 individual decisions.

The White Paper also outlined what remained to be done in the field of capital movements and financial services in order to bring about a European financial common market and called for new and stricter criteria for application of the EEC Treaty's safeguard clauses and closer monitoring of exchange controls. It also announced an extension of the hitherto scarcely amended 1960 and 1962 Directives on the liberalization of capital movements.

The legal and procedural bases to enable timely achievement of the single European Market by 1992 were provided by a revision of the EEC Treaty, which entered into force on 1 July 1987 as the Single European Act. Where not already provided for in the Treaty, qualified majority decisions were introduced for numerous decisions facing the Council of Ministers, in particular those affecting establishment of the single European Market and the European financial common market. The role of the European Parliament was also strengthened. The objective of economic and monetary union was endorsed, although institutional decisions in this area remained subject to unanimity and ratification in the Member States. The Heads of Government also declared their continued support for the objective of European political union.

The completion of the single European financial market will be strengthened by the creation, in accordance with the Treaty on European Union, of a common monetary policy capable of providing a stable framework, secure against external disruption, within which the benefits of such a financial common market may unfold. Member States are now, in accordance with greements reac hed in the Intergfovernmental Conference in Maastricht in December 1991, committed to the development of the Community in this way.

Banking

A first banking coordination Directive of 1977 (Directive 77/780/EEC) achieved two main goals:

- it cleared away most of the obstacles to freedom of establishment of banks and other credit institutions;

- it laid down common standards for the granting of banking licences;

It is however the second Banking Coordination Directive (Directive 89/646/EEC) which is the cornerstone of the single market in financial services.

It provides for a single banking licence valid throughout the Community which will authorise a bank or credit institution established in one Member State to supply its services throughout Europe either by establishing branches in other Member States or by provision of cross-frontier banking services to customers in other Member States. This licence will be mutually recognized by other Community banking supervisors in all the other Member States.

The second banking directive requires that the following broad range of banking activities be permitted and mutually recognized by the authorities of all Member States. This will involve recognizing and permitting not only traditional services but also some banking services or activities which have not traditionally been associated in some member states with banking per se. This includes, for example, trading in securities.

<u>List of activities subject to mutual recognition under the Second banking Directive</u>

1. Acceptance of deposits and other repayable funds from the public.

2. Lending (including, inter alia, consumer and mortgage credit; factoring with or without recourse; financing of commercial transactions including forfaiting)

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 share 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. Portfolio management and advice.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.

Three other directives were prerequisites for the completion of the single market in the banking sector, namely the previously adopted Directive on Annual Accounts and Consolidated Accounts (Directive 86/635/EEC) and the Directive on the Own Funds of credit institutions (Directive 89/299/EEC), and the Solvency Ratio Directive (Directive 89/647/EEC).

The Accounts Directive sets out special rules applying the general provisions on the annual accounts of joint-stock companies (fourth and seventh company-law Directives) to the banking sector. Under the Directive, credit and financial institutions are required at the end of each financial year to publish harmonized statements of their economic and

financial situation and results in the form of a balance sheet, profit and loss account, financial report and corresponding annex. In order to ensure the comparability of annual accounts - and hence of the information provided to creditors, debtors and shareholders - the Directive provides for harmonization of the layout and content of balance sheet and profit and loss account items, nomenclature, terminology and valuation rules.

The Directive on own funds adopted in 1989 provided for a minimum degree of harmonization of Member States' rules on own funds.

The Directive sets out the items attributable to own funds, distinguishing between original own funds and additional own funds of lesser status. Thus, subject to a number of conditions set out in the Directive, own funds comprise paid-up capital reserves, revaluation reserves, funds for general banking risks, value adjustments, the commitments of the members of credit cooperatives, cumulative preferential shares and subordinated loan capital. Additional own funds must not exceed the amount of original own funds. The Directive specifies sample criteria for particular items of own funds, leaving the Member States free to apply stricter criteria if they see fit.

The Directive on own funds is central to the Directive on solvency ratios which establishes common definitions and methods for their calculation based on a provisional 8% minimum for capital and reserves.

Both these directives have taken account of the work of the Committee on Banking Regulations and Supervisory Practices of the Bank for International Settlements, Basle.

INSURANCE

In 1961 an ambitious programme to realize the freedom of establishment and the freedom to provide service was adopted in the field of insurance.

In 1964 a directive was adopted removing the barriers to establishment and provisions of services in reinsurance. Reinsurance was subject to little control in the then six Member States and the directive did little more than confirm the existing situation in the Member States entailing no harmonisation of national rules.

1st Generation Directives

The next generation of directives (the so called 1st generation directives) i.e. the first Non-Life (73/239/EEC) and the first Life (79/267/EEC) concerns the freedom of establishment in direct insurance.

In order to implement this freedom, Member States had to agree to a number of basic principles, which were laid down in the directives.

Thus, an insurance company seeking to start business needs a prior authorisation from the national authorities for each particular class of business. This authorisation is only granted subject to a series of precise conditions laid down in the directives.

As regards technical reserves and assets, these directives do not contain any detailed rules of harmonisation. Harmonisation only takes place as regards the goal to be achieved, i.e. member states are only required to ensure that the undertaking will establish sufficient technical reserves, to be covered by equivalent and matching assets localised in each country where the business is carried out. Here - and the same goes for general and special policy conditions - the Member States were allowed to maintain their national rules. Thus, the establishment directives maintained a regime of host country control.

The effect of the establishment directives was largely to confirm the existing situation of twelve separate, compartmentalized markets allowing countries to maintain their prudential regulatory framework.

2nd Generation Directives

The approach taken in the so-called 2nd generation of directives the 1988 non-life services directive (88/357/EEC) and the 1990 life directive (90/619/EEC) combined elements of both home country and host country control.

Following a judgement by the European Court of Justice in 1986, both directives make a distinction between policyholders who do not need special protection when dealing with an insurance company from another Member State and those policyholders who do. In non-life insurance the first category can be summed up as large industrial, commercial or professional clients who can look after themselves (large risks). In life insurance it concerns policyholders who take the initiative to enter into contact with an insurance undertaking. For these two types of policyholder Member States agreed that they would mutually recognise each others systems without any further harmonisation of, in particular, financial control regulations. For other policyholders, however, in line with the Court's ruling, existing host country rules continued to be applied pending further coordination as to technical provisions, assets covering these technical provisions and general and special policy conditions. A limited harmonisation was realized as regards, for instance, the choice of the applicable contract law and a cooling-off period.

Third Generation Directives

A true single market in the EC implies a market where insurance companies and intermediaries are free to operate throughout the Community either by means of establishment or freedom to provide services across national frontiers. Competition should be based on price, the nature of the product and the service offered. The public should be able to choose freely from a wide range of competing products and suppliers. Insurance companies should be subject to the same key supervisory rules ensuring adequate prudential control and thus consumer protection. Control should be exercised by the country of location of the head office, which also would issue the authorization valid for the whole Community. That is : full home country control and a single licence.

Two directives (3rd Non-Life and 3rd Life Directives) will give access to all 12 markets on the basis of a single licence (instead of 12 separate licenses) for establishment and free provision of services business. Financial control will be the sole responsibility of the State of the head office. As regards control of products Member States will be able to maintain their provisions of contract law, but these will remain subject to general principles of Community law as developed by the Court of Justice in Luxembourg in the above-mentioned co-insurance cases. These will act as a filter against national regulations unduly restricting competition on different types of product.

The proposed directives contain rules as to the responsibilities of home and host states and the way they have to cooperate. These concern both the process of authorization of a new undertaking and the prudential monitoring of firms in operation. They reflect the increased responsibilities of the home state, but do allow the host state to initiate procedures or, in urgent cases, intervene directly, if a company acts against its justified legal provisions.

The proposals no longer seek full harmonisation of Member States' prudential systems and rules, but through a minimum of harmonisation, which is at the same time necessary and sufficient will enable mutual recognition of what each Member State does to protect its consumers. For certain aspects of control a Member State will be allowed to impose stricter rules on the undertakings with a head office within its territory, that is within its jurisdiction.

This mutual recognition will essentially be enabled by a common body of rules concerning the calculation of technical provisions and assets covering these technical provisions and by allowing Member States to maintain their national contract law, subject to the jurisprudence by the Court of Justice. Another key element of the EEC approach is the strengthened cooperation between supervisory authorities.

The Commission proposes to abolish prior approval and systematic notification of policy conditions for all consumer risks just as this is already the case for large risks and in life assurance when the policyholder acts on his own initiative. A company will thus be able to market its product without needing authorisation for each market it enters. Given the sensitive nature of compulsory insurance, systematic notification of these types of risks is, however, maintained.

By non-systematic notification the possibility is not excluded for the competent authorities to ask information of a number of companies or even the whole market at the same time, if they see prudential reasons for doing so. What will be excluded is a legal obligation for companies to inform the authorities any time they market a new product.

Securities markets

The foundations were laid for a European securities market by a series of directives adopted mainly during the 1980s which provide for common requirements on the financial information required for stock exchange listing (Directive 79/279/EEC), and on the information to be published regularly by listed companies (Directive 82/121/EEC). Common rules have also been adopted on the prospectus for admission to listing, (Directive 80/390/EEC) with mutual recognition of that listing prospectus, (Directive 87/345) so that multiple listings will be greatly facilitated. These measures are designed to help companies treat the Community as a single market to obtain a stock exchange listing after equities and bonds have been issued.

Complementing these proposals the Commission secured the adoption of a directive (89/298/EEC) which sets common standards for the prospectus required on the issue of securities to the public.

Increased transparency of securities markets and improved investor confidence in the fairness of their operations, (particularly with respect to takeovers and other price sensitive information) were also the objectives of directives on the publication of information when major holdings of a listed company are acquired or disposed of (Directive 88/627/EEC) and on the curbing of insider trading across the Community (Directive 89/592/EEC).

The "UCITS" directive (Directive 85/611/EEC, as amended) came into effect in October 1989. This directive allows units of undertakings for collective investment in transferable securities to be marketed throughout the Community, subject of course to their compliance with the minimum standards set in that instrument.

The outstanding priority at the moment in terms of the Single Market programme is to secure adoption of the Investment Services Directive , to ensure that non-bank financial institutions have the same possibilities, the same freedoms, to avail themselves of the Single Market as the banking sector will have as a result of the Second Banking Directive adopted at the end of 1989 and the other banking legislation.

Alongside the Investment Services Directive, the proposal for a Capital Adequacy Directive is also under active negotiation in the Council of Ministers and the European Parliament. The Capital Adequacy Directive will lay down capital requirements for investment firms as well as the criteria to be used for measuring ongoing risk-adjusted capital requirements including for measurement of price or market ; it also applies to the risks arising out of the trading portfolio of credit institutions.

Treatment of Community credit institutions by third countries according to Article 9 of the Second Banking Directive
Synoptic Table

COUNTRY	ESTABLISHMENT	ACQUISITION	ACTIVITIES
AUSTRALIA	The no. of "trading" (i.e. full) licences is restricted. Branching is not permitted; establishment as a merchant bank is allowed; liberalization proposals have been announced;	Present restrictions on individual holdings of 10%, or 15% in some circumstances; to be liberalized;	Difficulties with access to cheque clearing system; financing of merchant banks is more costly; no access by merchant banks to central bank rediscounting;
BRAZIL	Closed to new foreign entrants;	Maximum 50% participation;	Opening of new branches and expansion is subject to regulators' discretion; prohibition on investment in stocks and debentures;
CANADA	Only as a Schedule II subsidiary;	"10/25%" rule applies i.e. maximum 25% total foreign ownership;	Total assets of foreign Schedule II banks cannot exceed 12% of total domestic assets; lending is based on local capital and limits are placed on borrowing from abroad;
CHINA	Can only establish in 5 restricted economic zones; lack of transparency in regulations;		No lending or deposit taking in local currency;
EGYPT	Establishment of branches via joint ventures with minority foreign ownership;		
INDIA	Only occasionally allowed; very restrictive reciprocity policy;	Generally not allowed but up to 40% investment in a finance company is permitted;	Discriminatory tax treatment; ATMs only allowed in existing branches; lending restrictions; foreign companies not allowed to operate on stock markets;

Treatment of Community credit institutions by third countries according to Article 9 of the Second Banking Directive
Synoptic table (contd.)

COUNTRY	ESTABLISHMENT	ACQUISITION	ACTIVITIES
INDONESIA	Only via joint ventures, maximum 85% ownership, with an extremely high capital requirement; reciprocity is also a consideration;		Geographical restrictions on expansion; higher capital requirements;
JAPAN	Generally receive national treatment;	No formal barriers but in practice difficult;	Segmentation of activities; funding problems in the inter-bank market and competition for deposits; difficult to market new financial products; links between Japanese firms and banks; banks may own up to 50% of a securities firm (reforms announced); difficult access to investment trust business; restrictions on foreign access to pension fund management; very strict definition of securities; transparency of licensing procedures;
KOREA	Economic needs test; subsidiaries not allowed but branching is;	Maximum 10% foreign participation;	Funding difficulties; competition in lending to domestic enterprises and for deposits in terms of interest rates; access to ATM and clearing house networks is restricted;
MALAYSIA	No new licences at present; existing branches must incorporate locally by October 1994;	Maximum 20% shareholding by a foreign bank and overall limit of 30% foreign shareholding;	No approval given for additional branches for 15 years; controls on lending; discrimination regarding capital requirements; unable to participate in the ATM network; no new stock brokerage licences to be issued;
MEXICO	Closed	Maximum 30% of voting shares;	Maximum foreign ownership of a securities firm is 30%;

Treatment of Community credit institutions by third countries according to Article 9 of the Second Banking Directive
Synoptic Table (contd.)

COUNTRY	ESTABLISHMENT	ACQUISITION	ACTIVITIES
PHILIPPINES	Closed	Maximum 30% of voting shares;	Restrictions on branching and expansion; foreign firms cannot trade in government securities;
SINGAPORE	87 banks hold off-shore licences - they have limited operations in the domestic market; ther has been a moratorium since 1974 on all new, full banking licences - domestic and foreign; branching is not allowed;	Maximum foreign shareholding of 40% of capital; 5% limit on any one group of foreign shareholders;	Restrictions on deposit-taking and lending; difficulties with providing ATMs; restrictions on engaging in the securities industry;
TAIWAN	Branching and representative offices only - with restrictive criteria;		Limited to 3 branches; limits on local currency deposits and funding; problems with ATMs; restrictions on investment on the stock exchange;
THAILAND	New licences are not granted; branching is not permitted;	Maximum 25% foreign share ownership;	Existing banks can open only one branch; restrictions on the operation of ATMs; maximum 25% ownership of a securities company in order to participate in stock brokerage activities;
TURKEY	Subject to reciprocity;	Acquisition of more than 10% is subject to unspecified authorization conditions;	Limit of 5 branches per foreign bank; high capital requirements on branches; lending restrictions based on branch capital;
UNITED STATES	National treatment generally granted;		Limits on activities permissible to banks including insurance and securities business; restrictions on geographical expansion across state boundaries; some restrictions on branching by particular states;

Treatment of Community insurance undertakings by third countries according to the Insurance Directives
Synoptic Table

COUNTRY	ESTABLISHMENT	ACQUISITION	ACTIVITIES
AUSTRALIA	Life insurance by corporate bodies only; special requirements on Lloyds underwriters;		Solvency reserves; Govt. monopolies in some states;
BRAZIL	Closed;	Maximum 50% of share capital and 1/3 of voting capital;	Discrimination regarding state insurance contracts; reinsurance is a state monopoly;
CANADA	By branch or subsidiary;	"10/25%" rule applies i.e. maximum 25% foreign ownership;	Additional assets required; limitations on investment;
CHINA			
EGYPT	Closed except for Free Zone Area;		Reinsurance is a state monopoly; compulsory cession of 30% to this company;
INDIA	State monopoly;		
INDONESIA	Only as joint venture;	Maximum 85% ownership;	Additional capital requirements; 75% of reinsurance must be placed in Indonesia; investment restrictions;
KOREA	Life insurance branches, joint ventures and subsidiaries allowed; economic needs test; non-life insurance cannot establish subsidiaries;	20% maximum in non-life companies;	Tight regulation of policies and tariffs; absence of brokerage system; difficulties in motor insurance; reinsurance must effectively be placed with the KRIC;
MALAYSIA	No new licences;	Maximum 49% participation;	Lloyds underwriters limited to reinsurance;

Treatment of Community insurance undertakings by third countries according to the Insurance Directives
Synoptic table (contd.)

COUNTRY	ESTABLISHMENT	ACQUISITION	ACTIVITIES
MEXICO	Closed;	Maximum 30%;	State owned enterprises must use state owned insurance companies;
PHILIPPINES	New firms not allowed;	Maximum 40% foreign shareholding;	Foreign firms cannot insure government property; priority cession of reinsurance to domestic companies;
SINGAPORE	No new companies at present;		
TAIWAN	Closed to foreign insurance companies, except US;		
THAILAND	No new licences;	Maximum 15% foreign participation;	Cannot conduct the business of an insurance broker or agent;
TURKEY	In principle, national treatment is granted;		Compulsory cession of reinsurance to a government reinsurance company;
UNITED STATES	In principle, national treatment is granted, but difficulties if insurance co. is associated with a bank; a majority of states prohibit the operation of state-owned insurance undertakings;		