

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (89) 208 final - SYN 53

Brussels, 18 April 1989

REEXAMINED PROPOSAL FOR
A COUNCIL DIRECTIVE
ON THE OWN FUNDS OF CREDIT INSTITUTIONS

(presented by the Commission pursuant to
Article 149(2)(d) of the EEC Treaty)

REEXAMINED PROPOSAL
FOR A COUNCIL DIRECTIVE
ON THE OWN FUNDS OF CREDIT INSTITUTIONS

Explanatory Memorandum

1. The original proposal for a Council Directive on the Own Funds of Credit Institutions was submitted by the Commission to the Council on 18 September 1986¹.
2. The Economic and Social Committee delivered its opinion² on 14 May 1987 and the European Parliament delivered its opinion³ on 9 July 1987.
3. Pursuant to Article 149(3) of the Treaty, the Commission submitted an amended proposal⁴ which largely took account of the proposed amendments.
4. On 21 December 1988 the Council unanimously agreed on a common position⁵ on which the Council has delivered its reasons⁶ and the Commission its observations⁷.
5. The European Parliament had its second reading on 15 March 1989 under the cooperation procedure and voted in favour of two amendments⁸.

1 OJ N° C 243, 27.9.1986, p.4

2 OJ N° C 180, 8.7.1987, p. 51

3 OJ N° C 246, 14.9.1987, p. 72

4 OJ N° C 32, 5.2.1988, p. 2

5 The Council Doc. 4020/89 of 6.1.1989

6 The Council Doc. 4020/89 Add. 1 of 6.1.1989 and Cor. 1(f) of 13.1.1989 and Cor. 2 of 17.1.1989

7 Sec(88) 2046 SYN 53 of 3.1.1989

8 EP 130.923

6. The two amendments adopted by the European Parliament concern the question of comitology and they propose to use the management committee, 2B procedure of the Council's decision of 13 July 1987⁹. The Parliament vigorously rejected Art. 8 of the Council's common position which reserved to the Council, on a provisional basis, the implementing powers.
7. The Commission thought it appropriate to propose in all the banking directives (own funds, second banking directive, solvency ratio) the procedure of regulatory committee, procedure 3A₂ of the Council's decision of 13 July 1987. This procedure gives the Commission all the powers it needs and it is the only adequate procedure taking into account the nature of the measures which will have to be taken. In the banking field, the implementing powers will not be used for a day-to-day management, as it is the case in other sectors (e.g. agriculture) where the management committee procedure is appropriate.
8. This is the reason why the Commission, although it welcomes the decision of the European Parliament to reject the position of the Council on Comitology, prefers to persist in its reexamined proposal and vigorously defend the regulatory committee version 3A.

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Common position of the Council

Reexamined proposal of the Commission

Recitals 1 to 16 unchanged

17th Recital

Whereas it will probably be necessary to make certain technical and terminological adjustments to the Directive to take account of the rapid development of financial markets; whereas pending submission by the Commission of a proposal which takes account of the special characteristics of the banking sector and which permits the introduction of a more suitable procedure for the implementation of this Directive, the Council reserves the right to take such measures,

17th Recital

Whereas it will probably be necessary to make certain technical and terminological adjustments to the Directive to take account of the rapid development of financial markets; whereas the Commission will make such adjustments, where necessary, being assisted in this task by a committee of representatives of the Member States chaired by the representative of the Commission; the appropriate measures will be adopted in accordance with procedure III, Variant (a), as laid down in Article 2 of Council Decision 87/373/EEC of 13 July 1987¹.

Remaining Recitals unchanged

Articles 1 to 7 unchanged

Article 8

Without prejudice to the report referred to in Article 2(2), second subparagraph, technical adaptations deemed to be necessary to this directive to:

Article 8

1. Without prejudice to the report referred to in Article 2(2), second subparagraph, technical adaptations deemed to be necessary to this directive to:

1 OJ N° L 197, 18.7.1987, p. 33

Common position of the Council

- clarify the definitions to ensure uniform application of the said directive throughout the Community;
- clarify the definitions to take account, in implementing the said directive, of developments on the financial markets;
- bring the terminology and wording of the definitions into line with that of subsequent acts concerning credit institutions and related areas;

shall be adopted by the Council acting by a qualified majority on a Commission proposal.

Reexamined proposal of the Commission

- clarify the definitions to ensure uniform application of the said directive throughout the Community;
- clarify the definitions to take account, in implementing the said directive, of developments on the financial markets;
- bring the terminology and wording of the definitions into line with that of subsequent acts concerning credit institutions and related areas;

shall be adopted by the Commission in accordance with the procedure laid down in paragraph 2.

2. 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

Common position of the Council

Reexamined proposal of the Commission

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.

Commission of the European Communities

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COUNCIL DIRECTIVE

on the own funds of credit institutions

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