



COMMISSION OF THE EUROPEAN COMMUNITIES

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2000/0014 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and  
93/22/EEC as regards exchange of information with third countries**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

The proposal aims at amending several directives in order to align them with texts already adopted for the banking sector.

*The exchange of information with third countries.* Directive 98/33/EC of 22 June 1998 amends, inter alia, Article 12(3) of directive 77/780/EEC on the co-ordination of laws, regulations and administrative provisions relating to taking up and pursuit of the business of credit institutions.

The aim of such an amendment is to modify the rules on the exchange of confidential information, within the framework of a co-operation agreement, with competent authorities or bodies of third countries.

In fact, the capability of exchanging confidential information only with the corresponding competent authorities of third countries has proved to be too restrictive. It is important to provide the possibility of exchanging information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system.

Competent authorities within the European Union, in the performance of their tasks, may exchange confidential information directly with supervisory authorities of other financial sectors, with authorities in charge of overseeing liquidation and bankruptcy procedures and with other relevant persons such as auditors and receivers. The need for exchanging confidential information with the said entities may also occur in cases where they are located in third countries.

Article 12(3) of directive 77/780/ECC as replaced by Article 1 of directive 98/33/EC eliminates some differences between regulations on the exchange of information within the European Union with third countries.

According to the above-mentioned Article “Member States may conclude co-operation agreements providing for the exchange of information with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraph 5 and paragraph 5a” of Article 12 of directive 77/780/EEC.

This means that the exchange of confidential information may take place, within the framework of a co-operation agreement, between competent authorities of Member States and the following entities:

- authorities with public responsibility for the supervision of financial institutions other than credit institutions;
- bodies involved in the liquidation or bankruptcy of financial institutions;
- persons responsible for carrying out statutory audits of the accounts of financial institutions;
- authorities responsible for supervising the bodies involved in liquidation and bankruptcy of financial institutions;

- authorities responsible for supervising persons charged with carrying out statutory audits of financial institutions.

The exchange of information may occur only where several conditions are met:

- professional secrecy regulations similar to those provided for in the relevant directives are applicable to the recipient authority;
- information is requested for supervisory purposes.

In addition where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have communicated it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Provisions similar to those amended by Article 1 of Directive 98/33/EC exist in other Directives relevant to the financial system: Investment Services Directive (93/22/EEC); UCITS Directive (85/611/EEC), Third Non-life Insurance Directive (92/49/EEC) and Third Life Assurance Directive (92/96/EEC). In fact, the so-called post BCCI directive (95/26/EC) amended sectoral directives with the aim, inter alia, of introducing across-the-board regulations in the field of the exchange of confidential information.

Therefore, the Council, in the context of the negotiation of the above-mentioned directive (95/26/EC), has invited the Commission to take all necessary actions in order to establish a uniform regulation of all financial sectors avoiding contradictions in the rules concerning the exchange of confidential information with entities belonging to third countries.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>2</sup>,

Acting in accordance with the procedure referred to in Article 251 of the Treaty<sup>3</sup>,

- (1) Whereas Council Directives 85/611/EEC<sup>4</sup>, 92/49/EEC<sup>5</sup>, 92/96/EEC<sup>6</sup> and 93/22/EEC<sup>7</sup> allow the exchange of information between competent authorities and certain other authorities or bodies within a Member State or between Member States. The said Directives also allow the conclusion by Member States of co-operation agreements providing for the exchange of information with the competent authorities of third countries.
- (2) Whereas on grounds of consistency with Directive 98/33/EC<sup>8</sup>, this authorisation to conclude agreements on the exchange of information with third countries should be extended so as to include the exchange of information with certain other authorities or bodies in those countries provided that such information disclosed is subject to appropriate guarantees of professional secrecy.
- (3) Whereas Directive 85/611/EEC Directive 92/49/EEC Directive 92/96/EEC and Directive 93/22/EEC should be amended accordingly.

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<sup>1</sup> OJ C ...

<sup>2</sup> OJ C ...

<sup>3</sup> OJ C ...

<sup>4</sup> OJ L 375, 31.12.1985, p. 3. Directive as last amended by European Parliament and Council Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

<sup>5</sup> OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 95/26/EC.

<sup>6</sup> OJ L 360, 9.12.1992, p. 1. Directive as last amended by Directive 95/26/EC.

<sup>7</sup> OJ L 141, 11.6.1993, p. 27. Directive as last amended by European Parliament and Council Directive 97/9/EC (OJ L 84, 26.3.1997, p. 22)

<sup>8</sup> OJ L 204, 21.7.98, p. 29.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Article 50(4) of Directive 85/611/EEC shall be replaced by the following:

- “4. Member States may conclude co-operation agreements, providing for exchange of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 6 and 7 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be for the purpose of performing the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.”

*Article 2*

Article 16(3) of Directive 92/49/EEC, Article 15(3) of Directive 92/96/EEC and Article 25(3) of Directive 93/22/EEC, shall be replaced by the following:

- “3. Member States may conclude co-operation agreements, providing for exchange of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 5 and 5a only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be for the purpose of performing the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.”

*Article 3*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this directive not later than 24 months after the publication of this Directive in the Official Journal of the European Communities. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law, which they adopt in the field governed by this Directive.

*Article 4*

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

*Article 5*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*