



NEWS from DG XV

March 1993, no. 1/93

FINANCIAL INSTITUTIONS

1 CAPITAL ADEQUACY DIRECTIVE AND INVESTMENT SERVICES DIRECTIVE

The Council has adopted the Directive 93/6/EEC on Capital Adequacy of Investment Firms and Credit Institutions (CAD) on 15 March 1993. This Directive is required in order to provide the necessary coordination of the capital framework for the Investment Services Directive (ISD) in the same way as the Solvency Ratio Directive together with the Own Funds Directive provided the framework for the Second Banking Directive. The ISD has not yet been adopted, but the European Parliament adopted its opinion on it in its second reading on 10 March 1993, and its final adoption is expected within a few months.

The adoption of the two directives will be the basis for the creation of the internal market for investment services which means that all institutions, whether they are credit institutions or investment firms, can offer investment services freely throughout the Community.

The two directives will have to be implemented by 31 December 1995. By choosing this implementing date

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The main objective of the CAD can be summed up as follows :

- a) to protect investors and the markets against failure of investment firms;
- b) to maintain the competitiveness of the Community's financial centres compared to foreign financial centres;
- c) to avoid regulatory arbitrage between different categories of institutions, especially between credit institutions and securities houses and;
- d) to avoid creating high barriers for new entrants to the market.

To achieve that, the Directive :

- a) establishes minimum amounts of initial capital for investment firms (second banking directive has established it for credit institutions);
- b) provides a definition of own funds for investment firms, which is based on the definition used by banks, but including a new type of short term capital which can be used to cover market risk requirements;
- c) defines what shall be understood by the "trading book" of an institution;
- d) establishes minimum amounts of own funds to be held by investment firms and credit institutions on a continuing basis to cover position risks, counterparty/settlement risks, interest rate risks and foreign exchange risks;
- e) establishes how institutions shall monitor and control large exposures, and;
- f) provides for the necessary rules for supervision on a consolidated basis.

The CAD and the ISD will be published together when the ISD is finally adopted.

SECURITIES COMMITTEE

The Commission's amended proposals for directives on the Capital Adequacy of Investment Firms and Credit Institutions (CAD) and Investment Services in the Securities Field (ISD) each included an article on the technical amendments to be made to each directive and provided for a committee and a comitology procedure.

When the Council adopted its Common Position on the CAD on 27 July 1992 it decided to retain implementing powers for itself at that stage. At the same time it recorded its intention to take action within six months on the setting up of a committee. Work has been proceeding at the Council on the terms to apply to this committee.

There will ultimately be three directives - the ISD, the CAD and a separate directive, incorporating part of one article each from the ISD and the CAD proposals, setting up the Securities Committee.

After long discussions on a number of issues the dossier is now nearly ripe for the Council to adopt its Common Position.

In particular :

- the Commission will chair the Committee at all times (assisted by a bureau from the Member States);
- relations with the Banking Advisory and Insurance Committees will be dealt with in a whereas clause and minutes statement;
- the Commission has avoided any appearance of being "obliged" to consult the new committee in advance on its legislative initiatives.

Once a Common Position is agreed the proposal will return to Parliament for a second reading. The Commission hopes that the first meeting of the new Securities Committee will be held in the autumn. It will replace the ad hoc High Level Securities Markets Supervisors Committee.

1 PAYMENT SYSTEMS

Following its Working Document of 25 March 1992 entitled "Easier crossborder payments: breaking down the barriers", the Commission has launched, at the beginning of 1993, a number of studies which focus on some specific aspects relating to the transparency of remote crossborder payments, the structure of charges and double charging, the procedures for reporting payments with a view to establishing Balance of Payments statistics as well as the legal issues specific to credit transfers.

The Commission has also set up a working group of national experts to look into questions pertaining to the legal framework for credit transfers. The group held its first meeting on February 1st 1993 and defined its working area which will include items related to the avoidance of risks in payment systems (e.g. revocability of payment orders, effects of failures of systems participants) and will also cover questions of responsibilities of parties in payment transactions.

The European Parliament has expressed great interest in the work on payment systems and, in the course of its plenary session of the 12 February 1993, adopted two resolutions supporting the Commission's initiatives for improvements in this area. The Parliament expressed the

view, however, that transparency of remote cross-border payments might best be achieved by the adoption of directives, rather than through the issuing on a voluntary basis by the European banking industry of guidelines on consumer information. The Commission, while maintaining its approach, confirmed that it would review the situation as to the need for binding instruments, should the self-regulatory may not lead to early and tangible results.

! **PROPOSAL TO AMEND THE UCITS DIRECTIVE**
(OJEC C 59 of 2 March 1993, p.14)

The main aim of this proposal for a directive is to extend the scope of directive 85/611/EEC on undertakings for collective investment in transferable securities(UCITS). It is intended to:

1. include within the scope of the UCITS Directive two new categories of investments funds, (including cash funds) and certain funds of funds (funds of UCITS). Their inclusion constitutes a further important step towards a wider coordination of investment funds at Community level, which was already envisaged in the 1985 Directive. The proposal seeks to remove some of the barriers to the free circulation on a cross-border basis of the units of the funds in question and will therefore help to bring about a fully integrated European market;

2. facilitate the harmonized implementation of the Directive by removing interpretative uncertainties relating to certain provisions which, representing as they do a compromise between divergent opinions, were drafted in a somewhat imprecise manner. This particularly applies to the proposed amendment to Article 21 which deals with the use of derivative instruments by UCITS;

3. update certain provisions of the 1985 Directive in the light of later Community legislation in the financial field; for this realignment particular reference has been made to the Second Banking Coordination Directive and the Investment Services Directive. Apart from the introduction of some new definitions, the proposal mainly deals with the role of the depositary and the comitology procedure. In the former case, it is intended to remove existing restrictions on the freedom of UCITS to use a depositary established in the Community by allowing EC Institutions, which are duly authorized, to act as a depositary on a cross-border basis. In respect of the depositary function, the single market is also made accessible to institutions set up in third countries. The comitology procedure is considered necessary to enable technical adaptations to be made without having to resort to the timeconsuming procedure of formally amending the Directive.

1 PROPOSAL TO AMEND THE DIRECTIVE 80/390/EEC
(LISTING PARTICULARS TO BE PUBLISHED FOR THE
ADMISSION OF SECURITIES TO OFFICIAL STOCK EXCHANGE
LISTING)
(OJEC C 23 of 27 January 1993, p.6)

This proposal for a Directive consists basically of an extension of the scope of Article 6 of Directive 80/390/EEC. This article already includes a number of instances where the publication of listing particulars may be partially or fully waived by the competent authorities in each Member State, based on the merits of each case. The two main aims of the proposal are as follows :

1. to simplify the cross-border listing requirements of the securities of those companies of high quality, large size and international standing, listed in the Community for at least three years and showing a good record of compliance with EC listing directives. These companies would be able to be listed in other Member States without publishing a new listing prospectus. In its place a simplified set of documents would be made available to investors in the host Member States;

2. to facilitate the official listing of companies already being traded on junior markets when such companies are imposed disclosure requirements equivalent in substance to that imposed to officially listed companies; the junior and the official markets being in the same Member State.

The proposed extension of Article 6 is based on the assumption, widely accepted in the securities industry, that part or all of the information needed by investors for the correct assessment of the assets and liabilities, financial position, profit and losses and prospects of the above-mentioned issuers is already in the market and therefore its mandatory re-dissemination requested for reasons of investor protection by Directive 80/390/EEC, when official listing is sought, is no longer justifiable.

Finally, the proposed measures are expected to bring about a more efficient single market in the securities field resulting from the adaptation of existing Community legislation to the new market needs and realities. At the same time, the measures related to cross-border listing would facilitate the implementation of the EUROLIST project to be launched by the Federation of Stock Exchanges in the EC in the near future.

! COUNCIL DIRECTIVE 92/121/EEC of 21 DECEMBER 1992
ON MONITORING AND CONTROLLING LARGE EXPOSURES OF
CREDIT INSTITUTIONS
(OJEC L 29, 5.2.1993, p.1)

Last December the Council has adopted a "Large Exposures Directive". This Directive is a part of the legislation necessary to create the single market in the banking sector. Member States will have until 1 January 1994 to implement its provisions. There are, however, several transitional provisions which guarantee the flexibility necessary for smooth adoption.

The Directive deals with the prudential treatment of those exposures of credit institutions to a single client or a group of connected clients which are defined as a "large exposure". The yardstick used to measure a large exposure is the credit institution's own funds as defined in the Own Funds Directive (89/299/EEC). An exposure is considered to be a large exposure if it equals or exceeds 10% of the credit institution's own funds.

The supervisory tools of the Directive are duties to notify large exposures and limitations for both the individual large exposures and the aggregate sum of all large exposures incurred by a credit institution. Thus, an individual large exposure must not exceed 25% of the credit institution's own funds, the aggregate sum of all large exposures must not exceed 800% of the credit institution's own funds.

! PROPOSITION DE DIRECTIVE DU CONSEIL RELATIVE AUX SYSTEMES DE GARANTIE DES DEPOTS

Première lecture au Parlement Européen: 8 mars 1993
La Présidence danoise a l'intention de chercher une position commune avant la fin de leur présidence.
(cf. également "News from DG XV" no. 3/92, p. 9)

! BANKING ADVISORY COMMITTEE

The 35th meeting of the Banking Advisory Committee took place on 18 and 19 March 1993 in Brussels.

The principal themes of the discussion were :

- Consultation on the draft proposal of the Commission (draft with text of articles) concerning a Directive amending Council Directives on the strengthening of the supervisory of the credit institutions - ("Lessons arising from the BCCI case")
- Financial conglomerates - oral progress report by the Commission
- Ideas on the broad outline of, and questions on the amended proposal of the Commission concerning a Council Directive on the reorganization and the winding-up of credit institutions

- *Codification of European banking legislation - information note of the Commission*
- *State of progress of the implementation and of the transposition into national law of Community legislation in banking matters. Note of the Commission and exchange of views on the practical problems encountered in the implementation of the banking Directives and in the cooperation between supervisory authorities - oral report of the delegations. EC*
- *Questions of interpretation - results from the technical interpretation group meetings on the implementation of Directives*
- *Implementation of the banking Directives in EFTA countries and prudential authorities' cooperation in the matter - oral report of the Commission on the current state of play*

INSURANCE COMMITTEE

The Insurance Committee met for its 4th meeting in Brussels on 11 and 12 March 1993.

The most important items on its agenda were :

- *A continued discussion on the prudential supervision of insurance groups and of 'financial conglomerate' groups containing banks and insurance companies.*
- *The support for a new programme by EUROSTAT on insurance statistics in the internal market.*
- *Supervisory arrangements with EFTA insurance supervisors under the EEA Treaty*
- *A prudential approach to off-shore centres in the Community*

The next meeting of the Committee has been scheduled for 24-25 May.

█ **CROSS-BORDER MEMBERSHIP OF OCCUPATIONAL
PENSION SCHEMES FOR MIGRANT WORKERS**

Towards the end of last year, the Commission has issued a working document to develop possibilities for cross-border membership of occupational pension schemes for workers who are posted into different Member States within one company or group of companies. The document, "Cross-border membership of Occupational Pension Schemes for Migrant Workers" (XV/2040/92) is available from the Insurance Section of DG XV (tel.295.89.46/fax 295.65.00). Interested parties are invited to make their views known to the Commission. Consultative discussions with Member States' experts are planned for April.

Background

The Commission's 1990 working paper, "Completing the internal market for private retirement provision" (XV/224/90), established three principal objectives for occupational pension schemes in a European context :

- 1. Freedom of cross-border services for pension fund management ;*
- 2. Freedom of cross-border investment for pension funds ;*
- 3. Freedom of cross-border membership of pension funds, allowing the creation of European pension funds.*

Subsequent discussion revealed widespread agreement in principle on all three objectives, but also uncovered some formidable practical problems related to the third. The Commission decided to press ahead as a priority with only the first two objectives. A draft Directive on the investment and management of pension funds was put to the Council in October 1991 (JOCE C 312 of 3.12.91). After the European Parliament has given its opinion in first reading in November 1992, discussion on this proposal is continuing in the Council. In the course of this discussion, both institutions have underlined the importance of continuing parallel work on the third objective above, to encourage greater freedom of cross-border membership of pension schemes within the Community.

The consultative document does not relate to the wider notion of the freedom of cross-border membership as defined in Working Paper XV/90/224, (i.e. to give occupational pension schemes a right to offer their services across national borders, or to give transnational companies and their workers the freedom to organize their retirement provision on a single, EC-wide basis). Such a possibility would open the way for genuine European pension funds, covering workers in several Member States, and that is potentially of interest to a large number of multinational employers. It would seem a natural counterpart to the development of the single market and of European companies. That, however, is an ambitious goal, and probably still some way off in view of the wide differences between pension systems, prudential controls, tax systems, and rules relating to consultation of pensioners in different Member States. The document therefore restricts itself to the more limited case of migrant workers within a single company or group of companies, who wish to remain in their home country pension scheme.

Although the number of workers in this situation may be relatively small as a proportion of the total workforce in the Community, current difficulties relating to their pension rights are a source of major confusion and frustration, and represent a real obstacle both to the free movement of workers within the Community, and to companies seeking fully to exploit the opportunities of the single market.

The paper identifies the various legal and fiscal restrictions which exist, and suggests how they might be overcome.

Since occupational pension schemes in Member States are often supplementary to statutory social security pensions, the working paper also examines the possibility of extending the option for a migrant worker to remain in the social security scheme of his or her home State. This may be desirable to avoid either a shortfall in total pension provision, or over-provision.

PLANNED SCHEDULE FOR PRESENTATION OF PROPOSALS
DURING 1993 :

(cf. "Legislative Programme of the Commission for
1993" - COM/93/43final)

- *Supervision of credit institutions:
measures to strengthen and clarify the
role of auditors in the light of the
analysis of the implications of the
BCCI affair*
 - * *possibility for supervisory authority to refuse or cancel authorization when structure of a group becomes opaque* *Second quarter 93*
 - * *correspondence in one country between real place of business and registered office* *Second quarter 93*
 - * *strengthening of intra-Community cooperation between regulatory authorities and other bodies* *Second quarter 93*
 - * *obligation for auditors to report to supervisory authorities any facts casting doubt on the solvency of the institution* *Second quarter 93*

- *Prudential supervision of financial groups (credit, insurance, stock exchange institutions): measures to supplement the Directive in force relating to supervision on a consolidated basis (92/30/EEC) in order to establish the conditions for adequate supervision* *Third quarter 93*

- *System for indemnifying investors in transferable securities: minimum protection against bankruptcy, winding-up, fraud, etc. of the issuing companies* *Third quarter 93*

DROIT DES SOCIÉTÉS
ET
FISCALITÉ DES ENTREPRISES

REUNION DU COMITE DES DIRIGEANTS DES ADMINISTRATIONS FISCALES NATIONALES

Le 29 janvier 1993, le Comité des Dirigeants des Administrations fiscales nationales s'est réuni à Bruxelles sous la présidence de M. FITCHEW, directeur général de la DG XV, qui a présenté à cette occasion le nouveau directeur chargé du droit des sociétés, de l'imposition des entreprises et des mouvements de capitaux, M. STOLL, ainsi que le nouveau chef de la division de l'imposition des sociétés et autres impositions directes, du droit d'apport et des taxes sur les transactions sur titres, M. WIEDOW.

Mme le Commissaire SCRIVENER a rehaussé les débats de sa présence. Dans son allocution, elle a souligné le rôle crucial d'une fiscalité des entreprises qui ne pénalise pas par des doubles impositions les entreprises qui souhaitent profiter du grand marché et a insisté sur l'importance d'une adoption rapide des deux propositions qui sont toujours sur la table du Conseil ("pertes" et "intérêts et redevances"). Elle a également rappelé les conclusions que la Commission a tirées du rapport du Groupe d'experts indépendants présidé par M. RUDING, qui ont été confirmées, dans leurs grandes lignes, par les conclusions du Conseil en novembre 1992.

Les débats du Comité des Dirigeants ont tourné autour de quatre grands axes :

- le programme de travail pour les réunions futures du Comité;
- les problèmes actuels entre les Etats-Unis et les Etats membres en matière de fiscalité directe;
- les relations bilatérales avec les pays de l'Europe centrale et orientale en matière de fiscalité directe;
- les développements essentiels en matière de fiscalité directe intervenus ou envisagés dans les Etats membres.

En ce qui concerne le développement du programme futur des travaux (qui se veut toutefois flexible), on retiendra en particulier et par ordre de priorité l'étude des procédures des retenues à la source (vu la complexité actuelle des différents systèmes en place), le problème des travailleurs frontaliers (soulevé notamment par l'arrêt Werner de la Cour de Justice des Communautés), la question du "transfer pricing", l'application de la directive 77/799/CEE relative à l'assistance mutuelle, le problème de l'échange d'informations, la dégradation en matière de concurrence fiscale, la prise en considération des frais de siège, les traités bilatéraux en matière de double imposition conclus avec les Etats-Unis, le leasing transfrontalier, les conséquences de l'arrêt Bachmann de la Cour de Justice des Communautés.

! COMITE DE CONTACT DES DIRECTIVES COMPTABLES

Le Comité de contact s'est réuni les 11 et 12 février 1993 à Bruxelles.

Thèmes de discussions étaient, e.a. :

- *Ventilation du montant net du chiffre d'affaires par catégorie d'activité (article 43 (1) point 8 de la 4ème directive)*
- *Présentation du document "Le traitement comptable des subventions publiques" préparé par le Forum consultatif de comptabilité.*
- *Examen des montants exprimés en ECU en fonction de l'évolution économique et monétaire dans la Communauté (article 53 (2) de la 4ème directive).*
- *Informations financières à fournir par les groupes mixtes comprenant des banques et des entreprises d'assurance*

**PLANNED SCHEDULE FOR PRESENTATION OF PROPOSALS
DURING 1993 :**

(cf. "Legislative Programme of the Commission for
1993" - COM/93/43final)

- *Cross-border cooperation between companies of different Member States: extension of scope of Directives 90/434/EEC ("Mergers") and 90/435/EEC ("Parent companies/Subsidiaries") to cover all forms of company subject to corporation tax* *Second quarter 93*

- *Annual and consolidated accounts: amendment of Fourth and Seventh Directives 78/660/EEC and 83/349/EEC to extend their scope to financial conglomerates* *Third quarter 93*

- *European company: taxation arrangements applicable to transfers of places of business* *Fourth quarter 93*

TEXT COMPLETED 22.3.1993