# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 284 final

Brussels, 26 July 1991

Proposal for a

COUNCIL DIRECTIVE

implementing Directive 89/299/EEC on the
Own Funds of credit institutions

(presented by the Commission)

# EXPLANATORY MEMORANDUM

## I. General

1. On 17 April 1989 the Council adopted the Own Funds Directive (89/299/EEC) and established the definition of the own funds of credit institutions including the way by which total own funds are to be calculated. With regard to the "Fund for General Banking Risks" (FGBR) there was no final allocation. Article 6(2) states:

   "The item referred to in Article 2(1)(4) [which is the FGBR] shall constitute a separate category. Provisionally, it shall be included in own funds without limit, but shall not be included when the basis of the limit for the items referred to in points 3 and 5 to 8 is fixed. Within six months of the implementation of this Directive the Commission shall, in accordance with the procedure provided for in Article 8, propose the final treatment for this item either in original own funds or in additional own funds."

2. There are several reasons arguing in favour of deciding the final allocation of the "Fund for General Banking Risks":

- the Basle Committee on Banking Regulations decided at its meeting of 13 December 1990 to include the FGBR as "Tier One Capital" and this decision has been endorsed by the Committee of Central Bank Governors of the G-10 countries. Therefore the "discussions in international fora" have produced the expected result and a Community decision can be taken having regard and in conformity with the recommended treatment of such amounts at international level. The Commission participated fully in these discussions and is in complete agreement with the conclusions; the Banking Advisory Committee has also conveyed its unanimous approval;

- Member States are at present transposing the Own Funds Directive into national legislation and the banking community is becoming familiar with the new rules. Therefore it is expedient to reach a final solution as early as possible in order to give the right and definitive information to market players;

- the calculation of the Solvency Ratio as well as other prudential yardsticks (participations, large exposures) should be done on an as stable basis as possible and changes should be kept to those really necessary, etc.

3. For all these reasons the FGBR is included within the category of "original own funds" together with the other two elements "capital" and "disclosed reserves" ("core capital"). The FGBR should henceforth be included when the basis of the limit for the "additional own funds" is fixed according to Article 6(1) of the Own Funds Directive.

4. Although the Commission has proposed, by way of a Directive amending the Own Funds Directive the introduction of the "Comitology Procedure" in Article 8 of the said Directive it is, for reason given under point 2, expedient to come to the final allocation of the FGBR and not to hold up that decision until the proposed amending Directive has been adopted. The Parliament will be fully informed on this matter.

## II. Examination of the articles

### Article 1.1.

This article definitively includes in article 6(1) of the Own Funds Directive the "Fund for General Banking Risks" together with the other two elements, capital and disclosed reserves, within the category of original own funds.

### Article 1.2

This article deletes article 6(2) of the Directive as a result of article 1.1 before commented.

### Article 2

This article asks the Member States first to take the measures necessary to comply with the Directive before the 1st January 1993, second to make express reference to this Directive in the provisions adopted and third to communicate such provisions to the Commission.

### Article 3

This article makes the general reference that the Directive is addressed to the Member States.

# Proposal for a Council Directive implementing Directive 89/299/EEC on the Own Funds of credit institutions

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions(1) and in particular Articles 6(2) and 8 thereof;

Having regard to the proposal from the Commission;

Whereas on 17 April 1989 the Council adopted the Own Funds Directive (89/299/EEC) and established the definition of the own funds of credit institutions including the way by which total own funds are to be calculated;

Whereas, with regard to the Fund for General Banking Risk in the sense of Article 38 of the Council Directive (86/635/EEC) of 8 December 1986 on the annual accounts of other financial institutions(2) there was no final allocation, it states in Article 6(2) of the above mentioned Directive that within six months of the date of implementation the Commission shall propose the final treatment of the Fund for General Banking Risk either in original own funds or in additional own funds, in accordance with the procedure provided for in Article 8;

Whereas having regard to the opinion of the Banking Advisory Committee and taking into account the results of discussions in international fora and in conformity with th- treatment of the Fund for General Banking risks at international level, these are included within the category of original own funds.

HAS ADOPTED THIS DIRECTIVE:

(1) OJ No L 124, 5.5.1989, p. 16
(2) OJ No L 372, 31.12.1989, p. 1

## <u>Article 1</u>

1. Article 6(1) of Directive 89/299/EEC is hereby replaced by the following:

   "1. The items referred to in Article 2(1), points 3 and 5 to 8 shall be subject to the following limits:

   (a) the total of items 3 and 5 to 8 may not exceed a maximum of 100% of items 1 plus 2 <u>and 4</u> minus 9, 10 and 11;

   (b) the total of items 7 and 8 may not exceed a maximum of 50% of items 1 plus 2 <u>and 4</u> minus 9, 10 and 11;

   (c) the total of items 12 and 13 shall be deducted from the total of the items.

2. Article 6(2) of Directive 89/299/EEC is deleted.

## Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1993.

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

3. Member States shall communicate to the Commission the text of provisions of national law which they adopt in the field governed by this Directive.

## Article 3

This Directive is addressed to the Member States.

## FINANCIAL STATEMENT

This proposal will not entail any cost to the budget of the European Communities

## IMPACT ON COMPETITIVENESS AND EMPLOYMENT

### I. What is the main justification for the measure?

There are two reasons to implement the Own Funds Directive at this stage:

(a) according to this Directive within six months of its date of implementation, the Commission shall propose the final treatment of the "Fund for General Banking Risks";

(b) the treatment of the "Fund for General Banking Risks" at international level permits its final allocation according to the criteria adopted in international fora.

### II. Characteristics of the enterprises concerned

The enterprises concerned under this Directive are all credit institutions autorized in the Community.

### III. What are the obligations imposed directly on enterprises?

According to the proposal, Member States may include the "Fund for General Banking Risks" within the category of original own funds of credit institutions.

IV. <u>What obligations are likely to be imposed indirectly on enterprises through local authorities</u>?

None

V. <u>Are there special measures for SMEs? If so, of what kind?</u>

None

VI. <u>What is the anticipated effect on:</u>

(a) <u>the competitiveness of enterprises</u>?

(b) <u>employment</u>?

(a) By granting the same definition pertaining the original own funds it is ensured that credit institutions can engage in direct competition in a common banking market.

(b) An adequate treatment of the own funds of credit institutions serves to ensure the continuity and therefore to protect savings and employment.

VII. <u>Have the social partners been consulted? What are their views?</u>

NO. The measure proposed has no impact on the industrial relationships and the level of employment.

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# DOCUMENTS

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