II

*(Acts whose publication is not obligatory)*

# COUNCIL

## COUNCIL DIRECTIVE 92/121/EEC

**of 21 December 1992**

**on the monitoring and control of large exposures of credit institutions**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first and third sentences of Article 57 (2) thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas this Directive comes within the framework of the aims set out in the Commission's White Paper on completing the internal market;

Whereas the essential rules for monitoring large exposures of credit institutions should be harmonized; whereas Member States should still be able to adopt provisions more stringent than those provided for by this Directive;

Whereas this Directive has been the subject of consultation with the Banking Advisory Committee, which, under Article 6 (4) of Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of credit institutions (4), is responsible for making suggestions to the Commission with a view to coordinating the coefficients applicable in the Member States;

Whereas the monitoring and control of a credit institution's exposures is an integral part of its supervision; whereas an excessive concentration of exposures to a single client or group of connected clients may result in an unacceptable risk of loss; whereas such a situation may be considered prejudicial to the solvency of a credit institution;

Whereas common guidelines for monitoring and controlling credit institutions' large exposures were initially introduced by Commission recommendation 87/62/EEC (5); whereas that instrument was chosen because it permitted the gradual adjustment of existing systems and the establishment of new systems without dislocating the Community's banking system; whereas, now that that first phase is over, a binding instrument applicable to all Community credit institutions should be adopted;

Whereas in a unified banking market credit institutions are engaged in direct competition with one another and monitoring requirements throughout the Community should therefore be equivalent; whereas, to that end, the criteria applied to determining the concentration of exposures must be the subject of legally binding rules at Community level and cannot be left entirely to the discretion of the Member States; whereas the adoption of common rules will therefore best serve the Communtiy's interests, since it will prevent differences in the conditions of competition, while strengthening the Community's banking system;

Whereas, for the precise accounting technique to be used for the assessment of exposures reference is made to Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (6);

(1) OJ No C 123, 9. 5. 1991, p. 18 and OJ No C 175, 11. 7. 1992, p 4.
(2) OJ No C 150, 15. 6. 1992, p. 74 and OJ No C 337, 21. 12. 1992.
(3) OJ No C 339, 31. 12. 1991, p 35.
(4) OJ No L 322, 17. 12. 1977, p. 30. Directive last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).
(5) OJ No L 33, 4. 2. 1987, p. 10.
(6) OJ No L 372, 31. 12. 1986, p 1.

Whereas Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [1] includes a list of credit risks which may be incurred by credit institutions; whereas that list should therefore be used for the definition of exposures for the purposes of this Directive; whereas it is not, however, appropriate to refer on principle to the weightings or degrees of risk laid down in that Directive; whereas those weightings and degrees of risk were devised for the purpose of establishing a general solvency requirement to cover the credit risk of credit institutions; whereas, in the context of the regulation of large exposures, the aim is to limit the maximum loss that a credit institution may incur through any single client or group of connected clients; whereas it is therefore appropriate to adopt a prudent approach in which, as a general rule, account is taken of the nominal value of exposures, but no weightings or degrees of risk are applied;

Whereas, when a credit institution incurs an exposure to its own parent undertaking or to other subsidiaries of tis parent undertaking, particular prudence is necessary; whereas the management of exposures incurred by credit institutions must by carried out in a fully autonomous manner, in accordance with the principles of sound banking management, without regard to any considerations other than those principles; whereas the Second Council Directive 89/646/EEC 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 [2] requires that where the influence exercised by persons directly or indirectly holding a qualifying participation in a credit institution is likely to operate to the detriment of the sound and prudent management of that institution, the competent authorities shall take appropriate measures to put an end to that situation; whereas, in the field of large exposures, specific standards should also be laid down for exposures incurred by a credit institution to its own group and in such cases more stringent restrictions are justified than for other exposures; whereas more stringent restrictions need not, however, be applied where the parent undertaking is a financial holding company or a credit institution or where the other subsidiaries are either credit or financial institutions or undertakings offering ancillary banking services, provided that all such undertakings are covered by the supervision of the credit institution on a consolidated basis; whereas in such cases the consolidated monitoring of the group of undertakings allows for an adequate level of supervision, and does not require the imposition of more stringent limits on exposure; whereas under this approach banking groups will also be encouraged to organize their structures in such a way as to allow consolidated monitoring, which is desirable because a more comprehensive level of monitoring is possible;

Whereas, in order to ensure harmonious application of this Directive, Member States should be allowed to provide for the two-stage application of the new limits; whereas, for smaller credit institutions, a longer transitional period may be warranted inasmuch as too rapid an application of the 25 % rule could reduce their lending activity too abruptly;

Whereas implementing powers of the same type as those which the Council reserved for itself in Directive 89/299/EEC on the own funds of credit institutions [3] were granted to the Commission in Directive 89/646/EEC;

Whereas, taking account of the specific characteristics of the sector in question, it is appropriate to give the Committee set up by Article 22 of Directive 89/646/EEC the role of assisting the Commission in exercising the powers conferred on it under the procedure laid down in Article 2 (Procedure III, Variant (b)) of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission [4];

Whereas, with regard to the monitoring of large exposures concerning activities which are principally exposed to market risks, the necessary coordination of monitoring methods can be ensured under a Community act on the capital adequacy of investment firms and credit institutions; whereas that implies that until Community legislation on the aforementioned large exposures is adopted the monitoring of large exposures relating to activities which are principally exposed to market risks, such as the trading portfolio, underwriting commitments for the issue of securities and claims related to the settlement of securities transactions may be left to the competent authorities of each Member State,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

**Definitions**

For the purposes of this Directive:

(a) *credit institution* shall mean a credit institution as defined in the first indent of Article 1 of Directive 77/780/EEC, including such a credit institution's branches in third countries, and any private or public undertaking, including its branches, which satisfies the definition in the first indent of Article 1 of Directive 77/780/EEC and which has been authorized in a third country;

(1) OJ No L 386, 30. 12. 1989, p. 14.

(2) OJ No L 386, 30. 12. 1989, p. 1. Directive amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

(3) OJ No L 124, 5. 5. 1989, p. 16.

(4) OJ No L 197, 18. 7. 1987, p. 33.

(b) *competent authorities* shall mean the competent authorities as defined in the ninth indent of Article 1 of Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis (1);

(c) *parent undertaking* shall mean a parent undertaking as defined in the seventh indent of Article 1 of Directive 92/30/EEC;

(d) *subsidiary undertaking* shall mean a subsidiary undertaking as defined in the eighth indent of Article 1 of Directive 92/30/EEC;

(e) *financial holding company* shall mean a financial holding company as defined in the third indent of Article 1 of Directive 92/30/EEC;

(f) *financial institution* shall mean a financial institution as defined in the second indent of Article 1 of Directive 92/30/EEC;

(g) *ancillary banking-services undertaking* shall mean an undertaking as defined in the fifth indent of Article 1 of Directive 92/30/EEC;

(h) *exposures* shall mean the assets and off-balance-sheet items referred to in Article 6 of Directive 89/647/EEC and in Annexes I and III thereto, without application of the weightings or degrees of risk there provided for; the risks referred to in the aforementioned Annex III must be calculated in accordance with one of the methods set out in Annex II to that Directive, without application of the weightings for counter-party risk; all elements entirely covered by own funds may, with the agreement of the competent authorities, be excluded from the definition of exposures provided that such own funds are not included in the calculation of the solvency ratio or of other monitoring ratios provided for in Community acts; exposures shall not include:

— in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the 48 hours following payment, or

— in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the five working days following payment or delivery of the securities, whichever is the earlier;

(i) *Zone A* shall mean the zone referred to in the second indent of Article 2 (1) of Directive 89/647/EEC;

(j) *Zone B* shall mean the zone referred to in the third indent of Article 2 (1) of Directive 89/647/EEC;

(k) *own funds* shall mean the own funds of a credit institution as defined in Directive 89/299/EEC;

(l) *control* shall mean the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

(m) *group of connected clients* shall mean:

— two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others, or

— two or more natural or legal persons between whom there is no relationship of control as defined in the first indent but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties.

*Article 2*

**Scope**

This Directive shall apply to credit institutions which have obtained the authorization referred to in Article 3 of Directive 77/780/EEC.

Member States need not, however, apply this Directive to:

(a) the institutions listed in Article 2 (2) of Directive 77/780/EEC, or

(b) the institutions in the same Member State which, as defined in Article 2 (4) (a) of Directive 77/780/EEC, are affiliated to a central body established in that Member State, provided that, without prejudice to the application of this Directive to the central body, the whole as constituted by the central body and its affiliated institutions is subject to global monitoring.

*Article 3*

**Reporting of large exposures**

1. A credit institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10 % of its own funds.

(1) OJ No L 110, 28. 4. 1992, p. 52.

2. A credit institution shall report every large exposure within the meaning of paragraph 1 to the competent authorities. Member States shall provide that that reporting is to be carried out, at their discretion, in accordance with one of the following two methods:

— reporting of all large exposures at least once a year, combined with reporting during the year of all new large exposures and any increases in existing large exposures of at least 20 % with respect to the previous communication,

— reporting of all large exposures at least four times a year.

3. Exposures exempted under Article 4 (7) (a), (b), (c), (d), (f), (g) and (h) need not, however, be reported as laid down in paragraph 2. The reporting frequency laid down in the second indent of paragraph 2 may be reduced to twice a year for the exposures referred to in Article 4 (7) (e) and (i) to (s), (8), (9) and (10).

4. The competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms for the purpose of identifying and recording all large exposures and subsequent changes to them, as defined and required by this Directive, and for that of monitoring those exposures in the light of each credit institution's own exposure policies.

Where a credit institution invokes paragraph 3, it shall keep a record of the grounds advanced for at least one year after the event giving rise to the dispensation, so that the competent authorities may establish whether it is justified.

*Article 4*

**Limits on large exposures**

1. A credit institution may not incur an exposure to a client or group of connected clients the value of which exceeds 25 % of its own funds.

2. Where that client or group of connected clients is the parent undertaking or subsidiary of the credit institution and/or one or more subsidiaries of that parent undertaking, the percentage laid down in paragraph 1 shall be reduced to 20 %. Member States may, however, exempt the exposures incurred to such clients from the 20 % limit if they provide for specific monitoring of such exposures by other measures or procedures. They shall inform the Commission and the Banking Advisory Committee of the content of such measures or procedures.

3. A credit institution may not incur large exposures which in total exceed 800 % of its own funds.

4. Member States may impose limits more stringent than those laid down in paragraphs 1, 2 and 3.

5. A credit institution shall at all times comply with the limits laid down in paragraphs 1, 2 and 3 in respect of its exposures. If in an exceptional case exposures exceed those limits, that fact must be reported without delay to the competent authorities which may, where the circumstances warrant it, allow the credit institution a limited period of time in which to comply with the limits.

6. Member States may fully or partially exempt from the application of paragraphs 1, 2 and 3 exposures incurred by a credit institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the credit institution itself is subject, in accordance with Directive 92/30/EEC or with equivalent standards in force in a third country.

7. Member States may fully or partially exempt the following exposures from the application of paragraphs 1, 2 and 3:

(a) asset items constituting claims on Zone A central governments or central banks;

(b) asset items constituting claims on the European Communities;

(c) asset items constituting claims carrying the explicit guarantees of Zone A central governments or central banks or of the European Communities;

(d) other exposures attributable to, or guaranteed by, Zone A central governments or central banks or the European Communities;

(e) asset items constituting claims on and other exposures to Zone B central governments or central banks which are denominated and, where applicable, funded in the national currencies of the borrowers;

(f) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of Zone A central government or central bank securities, or securities issued by the European Communities or by Member State regional or local authorities for which Article 7 of Directive 89/647/EEC lays down a zero weighting for solvency purposes;

(g) asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of cash deposits placed with the lending institution or with a credit institution which is the parent undertaking or a subsidiary of the lending institution;