II

*(Acts whose publication is not obligatory)*

# COUNCIL

## COUNCIL DIRECTIVE 92/16/EEC
## of 16 March 1992
## amending Directive 89/299/EEC on the credit institution's own funds

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 Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions (1), in which the eligible elements of the said own funds and the way they are calculated are defined,

Having regard to the proposal from the Commission (2),

In cooperation with the European Parliament (3),

Having regard to the opinion of the Economic and Social Committee (4),

Whereas Article 4 (1) of Directive 89/299/EEC permits joint and several commitments of borrowers in the case of credit institutions organized as cooperative societies or funds to be treated as own funds items under Article 2 (1), point 7, of the said Directive ; whereas no provision of the said Directive deals with the treatment of such commitments in cases where a credit institution organized as a cooperative society or a fund is converted into a public limited liability company ;

Whereas the Danish Government has expressed a strong interest in having its few mortgage credit institutions organized as cooperative societies or funds converted into public limited liability companies ; whereas, in order to facilitate the conversion or to make it possible, a temporary derogation allowing them to include part of their joint and several commitments as own funds is required ; whereas this temporary derogation should not adversely affect competition between credit institutions ;

Whereas, in adopting Directive 89/299/EEC, the Council reserved for itself the implementing powers to make technical adjustments ; whereas the Commission undertook to make a proposal for a definitive solution to this problem 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 the said Directive ;

Whereas implementing powers of the same nature as those the Council reserved for itself in Directive 89/299/EEC were conferred on the Commission in 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 and amending Directive 77/780/EEC (5) ;

Whereas, taking into account the specific characteristics of the banking sector, it is appropriate to give the Committee provided for in Article 22 of the Second Banking Directive the role of assisting the Commission in exercising the powers conferred on it in accordance with the procedural rules laid down in Article 2, procedure III (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 (6),

(1) OJ No L 124, 5. 5. 1989, p. 16.
(2) OJ No C 172, 3. 7. 1991, p. 3.
(3) OJ No C 13, 20. 1. 1992 (Decision of 12 February 1992 not yet published in the Official Journal).
(4) OJ No C 339, 31. 12. 1991, p. 2.
(5) OJ No L 386, 30. 12. 1989, p. 1.
(6) OJ No L 197, 18. 7. 1987, p. 33.