COUNCIL DIRECTIVE

of 17 April 1989

on the own funds of credit institutions

(89/299/EEC)

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 common basic standards for the own funds of credit institutions are a key factor in the creation of an internal market in the banking sector since own funds serve to ensure the continuity of credit institutions and to protect savings; whereas such harmonization will strengthen the supervision of credit institutions and contribute to further coordination in the banking sector, in particular the supervision of major risks and solvency ratios;

Whereas such standards must apply to all credit institutions authorized in the Community;

Whereas the own funds of a credit institution can serve to absorb losses which are not matched by a sufficient volume of profits; whereas the own funds also serve as an important yardstick for the competent authorities, in particular for the assessment of the solvency of credit institutions and for other prudential purposes;

Whereas credit institutions in a common banking market engage in direct competition with each other, and the definitions and standards pertaining to own funds must therefore be equivalent; whereas, to that end, the criteria for determining the composition of own funds must not be left solely to Member States; whereas the adoption of common basic standards will be in the best interests of the Community in that it will prevent distortions of competition and will strengthen the Community banking system;

Whereas the definition laid down in this Directive provides for a maximum of items and qualifying amounts, leaving it to the discretion of each Member State to use all or some of such items or to adopt lower ceilings for the qualifying amounts;

Whereas this Directive specifies the qualifying criteria for certain own funds items, and the Member States remain free to apply more stringent provisions;

Whereas at the initial stage common basic standards are defined in broad terms in order to encompass all the items making up own funds in the different Member States;

Whereas, according to the nature of the items making up own funds, this Directive distinguishes between on the one hand, items constituting original own funds and, on the other, those constituting additional own funds;

Whereas it is recognized that due to the special nature of the fund for general banking risks, this item is to be included provisionally in own funds without limit; whereas, however, a decision on its final treatment will have to be taken as soon as possible after the implementation of the Directive; whereas that decision will have to take into account the results of discussions in international fora;

Whereas, to reflect the fact that items constituting additional own funds are not of the same nature as those constituting original own funds, the amount of the former included in own funds must not exceed the original own funds; whereas, moreover, the amount of certain items of additional own funds included must not exceed one-half of the original own funds;

Whereas, in order to avoud distortions of competition, public credit institutions must not include in their own funds guarantees granted them by the Member States or local authorities; whereas, however, the Kingdom of Belgium should be granted a transitional period up to 31 December 1994 in order to permit the institutions concerned to adjust to the new conditions by reforming their statutes;

Whereas whenever in the course of supervision it is necessary to determine the amount of the consolidated own funds of a group of credit institutions, that calculation shall be effected in accordance with Council Directive 83/350/EEC of 13 June 1983 on the supervision of credit institutions on a consolidated basis (4); whereas that Directive leaves the Member States scope to interpret the technical details of its application, and that scope should be in keeping with the spirit of this Directive; whereas the former Directive is currently being revised to achieve greater harmonization;

(1) OJ No C 243, 27. 9. 1986, p. 4 and OJ No C 32, 5. 2. 1988, p. 2.
(2) OJ No C 246, 14. 9. 1987, p. 72 and OJ No C 96, 17. 4. 1989.
(3) OJ No C 180, 8. 7. 1987, p. 51.
(4) OJ No L 193, 18. 7. 1983, p. 18.

Whereas the precise accounting technique to be used for the calculation of own funds must take account of the provisions of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (1), which incorporates certain adaptations of the provisions of Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts (2); whereas pending transposition of the provisions of the abovementioned Directives into the national laws of the Member States, the use of a specific accounting technique for the calculation of own funds should be left to the discretion of the Member States;

Whereas this Directive forms part of the wider international effort to bring about approximation of the rules in force in major countries regarding the adequacy of own funds;

Whereas measures to comply with the definitions in this Directive must be adopted no later than the date of entry into force of the measures implementing the future directive harmonizing solvency ratios;

Whereas the Commission will draw up a report and periodically examine this Directive with the aim of tightening its provisions and thus achieving greater convergence on a common definition of own funds; whereas such convergence will allow the alignment of Community credit institutions' own funds;

Whereas it will probably be necessary to make certain technical and terminological adjustments to the directive to take account of the rapid development of financial markets; whereas pending submission by the Commission of a proposal 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 this Directive, the Council reserves the right to take such measures.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. Wherever a Member State lays down by law, regulation or administrative action a provision in implementation of Community legislation concerning the prudential supervision of an operative credit institution which uses the term or refers to the concept of own funds, it shall bring this term or concept into line with the definition given in the following Articles.

2. For the purposes of this Directive, 'credit institutions' shall mean the institutions to which Directive 77/780/EEC (3), as last amended by Directive 86/524/EEC (4), applies.

Article 2

General principles

1. Subject to the limits imposed in Article 6, the unconsolidated own funds of credit institutions shall consist of the following items:

(1) capital within the meaning of Article 22 of Directive 86/635/EEC, in so far as it has been paid up, plus share premium accounts but excluding cumulative preferential shares;

(2) reserves within the meaning of Article 23 of Directive 86/635/EEC and profits and losses brought forward as a result of the application of the final profit or loss. The Member States may permit inclusion of interim profits before a formal decision has been taken only if these profits have been verified by persons responsible for the auditing of the accounts and if it is proved to the satisfaction of the competent authorities that the amount thereof has been evaluated in accordance with the principles set out in Directive 86/635/EEC and is net of any foreseeable charge or dividend;

(3) revaluation reserves within the meaning of Article 33 of Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (5), as last amended by Directive 84/569/EEC (6);

(4) funds for general banking risks within the meaning of Article 38 of Directive 86/635/EEC;

(5) value adjustments within the meaning of Article 37 (2) of Directive 86/635/EEC;

(6) other items within the meaning of Article 3;

(7) the commitments of the members of credit institutions set up as cooperative societies and the joint and several commitments of the borrowers of certain institutions organized as funds, as referred to in Article 4 (1);

(8) fixed-term cumulative preferential shares and subordinated loan capital as referred to in Article 4 (3).

(1) OJ No L 372, 31. 12. 1986, p. 1.
(2) OJ No L 193, 18. 7. 1983, p. 1.
(3) OJ No L 322, 17. 12. 1977, p. 30.
(4) OJ No L 309, 4. 11. 1986, p. 15.
(5) OJ No L 222, 14. 8. 1978, p. 11.
(6) OJ No L 314, 4. 12. 1984, p. 28.