II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 17 November 1986

amending the First Directive of 11 May 1960 for the implementation of Article 67 of the Treaty

(86/566/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 69 thereof,

Having regard to the proposal from the Commission, submitted after consultation of the Monetary Committee (1),

Having regard to the opinion of the European Parliament (2),

Whereas the Directive of 11 May 1960 (3), as last amended by Directive 85/583/EEC (4), laid down the Member States' obligations in respect of the liberalization of capital movements; whereas the degree of liberalization differs according to the categories of capital movements in question;

Whereas if the objectives of the Treaty and, in particular, completion of the internal market and the Community's greater financial integration are to be attained, gradual progress must be made towards the liberalization of capital movements; whereas it is important that such progress be made jointly with that made towards the increased convergence of the economic policies of the Member States, greater monetary stability and the development of the European Monetary System (EMS);

Whereas the reclassification of the operations on List B of Annex I to the Directive of 11 May 1960 so that the liberalization rules applying to operations on List A of the same Annex apply to them also must not make the procedures for granting the requisite authorizations more difficult for such operations;

Whereas the Kingdom of Spain and the Portuguese Republic may, under the terms of Articles 61 to 66 and 222 to 232 respectively of the 1985 Act of Accession, postpone the liberalization of certain capital movements in derogation from the obligations of the Directive of 11 May 1960; whereas those two Member States should be able to postpone the application of the new liberalization obligations resulting from this Directive for periods similar to those laid down in the Act of Accession and for the same economic reasons,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Directive of 11 May 1960 is hereby amended as follows:

1. Article 2 is hereby repealed.

2. In Article 3 (1), 'List C of Annex I' is replaced by 'List B of Annex I'.

3. Article 5 (2) is replaced by the following:

'2. The Member States shall undertake not to render more difficult the autorization procedures required on the date of entry into force of this Directive. They shall simplify as far as possible the authorization and control formalities applicable to the conclusion and performance of transactions and transfers and shall where necessary consult one another with a view to such simplification.'

(1) OJ No C 229, 10. 11. 1986, p. 3.
(2) OJ No C 297, 24. 11. 1986.
(3) OJ No 43, 12. 7. 1960, p. 921/60.
(4) OJ No L 372, 31. 12. 1985, p. 39.

4. In The second subparagraph of Article 7, 'List D of Annex I' is replaced by 'List C of Annex I'.

5. In Article 10, 'Lists A, B, C and D contained in Annex I' is replaced by 'Lists A, B and C of Annex I'.

6. Annex I is replaced by the Annex to this Directive.

7. Annex II is hereby amended as follows:

'— The Nomenclature of Capital Movements is hereby amended as follows:

(a) The following heading is added to items III A 1, III A 2, III B 1 and III B 2:

units of collective investment undertakings';

(b) The following two headings are added to items IV A and IV C:

'5. Acquisition of units of collective investment undertakings,

6. Repatriation of the proceeds of the liquidation of units of collective investment undertakings';

(c) The following two headings are added to items IV B and IV D:

'5. Acquisition of units of collective investment undertakings,

6. Use of the proceeds of the liquidation of units of collective investment undertakings';

(d) The titles of items IV B and IV D are hereby amended as follows:

'B. *Acquisition by residents of foreign securities dealt in on a stock exchange, or of domestic securities issued on a foreign market and dealt in on a stock exchange, and use of the proceeds of the liquidation thereof,*

'D. *Acquisition by residents of foreign securities not dealt in on a stock exchange, or of domestic securities issued on a foreign market but not dealt in on a stock exchange, and use of the proceeds of the liquidation thereof';*

— The Explanatory Notes are hereby amended as follows:

(a) The definition of undertakings for collective investment in transferable securities (UCITS) is replaced by the following:

'— *Collective investment undertakings*

Undertakings:

— the object of which is the collective investment in transferable securities or other assets of the capital they raise and which operate on the principle of risk-spreading, and

— the units of which are, at the request of holders, under the legal, contractual or statutory conditions governing them, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a collective investment undertaking to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

Such undertakings may be constituted according to law either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of this Directive "common funds" shall also include unit trusts.';

(b) The definition of the term 'bonds' is replaced by the following:

'— *Bonds*

Negotiable securities with a maturity of two years or more from issue for which the interest rate and the terms for the repayment of the principal and the payment of interest are determined at the time of issue. The bonds referred to in category IV of the Nomenclature are those issued by both public and private bodies.'

Article 2

1. The Member States shall take the measures necessary for them to comply with this Directive no later than 28 February 1987. They shall forthwith inform the Commission thereof.

2. Without prejudice to Articles 61 to 66 and 222 to 232 of the 1985 Act of Accession, the Kingdom of Spain and the Portuguese Republic may continue to apply Article 3 of the Directive of 11 May 1960 to the following operations referred to in the Nomenclature of Capital Movements:

A. until 1 October 1989 for the Kingdom of Spain and until 31 December 1990 for the Portuguese Republic:

— operations under headings IV B 5 and IV B 6 relating to the acquisition by residents of units in foreign undertakings for collective investment subject to Directive 85/611/EEC [1] and taking the form of common funds,

— operations under headings IV D 5 and IV D 6 relating to the acquisition by residents of units in foreign undertakings for collective investment subject to Directive 85/611/EEC,

and use of the proceeds of the liquidation thereof;

[1] OJ No L 375, 31. 12. 1985, p. 3.

B. until 31 December 1990 for the Kingdom of Spain and until 31 December 1992 for the Portuguese Republic :

— operations under headings III A 1, III A 2, III B 1 and III B 2, (a) and (b), in List A annexed to this Directive,

— operations under heading IV B relating to the acquisition by residents of the following securities dealt in on a stock exchange, and to use of the proceeds of the liquidation thereof :

(a) units in foreign collective investment undertakings not subject to Directive 85/611/EEC and taking the form of common funds ;

(b) foreign bonds issued on a foreign market and denominated in national currency ;

(c) domestic securities issued on a foreign market,

— operations under heading IV C and IV D, other than those relating to units in collective investment undertakings subject to Directive 85/611/EEC, and

— operations under headings VII A 1 and VII B 1 (iii).

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 17 November 1986.

For the Council

The President

N. LAWSON