II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on monitoring and controlling large exposures of credit institutions

(91/C 123/09)

COM(91) 68 final — SYN 333

(Submitted by the Commission on 27 March 1991)

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,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas this Directive is consistent with the aims set out in the Commission's White Paper on completing the internal market (1);

Whereas the suitable approach is to achieve harmonization of essential supervisory rules; whereas Member States should have the option of adopting more stringent provisions than those provided for by this Directive;

Whereas this Directive has been the subject of consultation with the Banking Advisory Committee, which is responsible, 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 (2), as last amended by Directive 89/646/EEC (3), for making suggestions to the Commission with a view to coordinating the coefficients applicable in the Member States;

Whereas monitoring and controlling the exposures of a credit institution is an integral part of prudential supervision; whereas excessive concentration of exposures to a single client or group of connected clients may result in an unacceptable risk; whereas such a situation may be deemed to be prejudicial to the solvency of a credit institution;

Whereas common guidelines for monitoring and controlling exposures of credit institutions were introduced initially by Commission Recommendation 87/62/EEC (4); whereas that instrument was chosen since it permitted existing systems to be adjusted gradually and new systems to be established without causing dislocation to the banking system of the Community; whereas, with that first phase now over, it is necessary for a binding instrument to be adopted, applicable to all Community credit institutions;

Whereas credit institutions in a unified banking market engage in direct competition with each other and the prudential supervision requirements throughout the Community should, therefore, be equivalent; whereas, to that end, the criteria applied for determining the concentration of exposures should 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 interests of the Community, since it will prevent differences in competitive conditions, while at the same time strengthening the Community's banking system;

Whereas as regards the precise accounting technique to be used for assessing exposures, reference is made to 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 (5);

(1) COM DOC (85) 310.
(2) OJ No L 322, 17. 12. 1977, p. 30.
(3) OJ No L 386, 30. 12. 1989, p. 1.
(4) OJ No L 33, 4. 2. 1987, p. 10.
(5) 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] contains a list of credit risks which may be incurred by credit institutions; whereas it is therefore justified to refer to that list in the definition of exposure for the purpose of this Directive; whereas it is not, however, appropriate to refer to the weightings or degrees of risk set out by Directive 89/647/EEC; whereas these weightings and degrees of risk have been devised in order to set up a general solvency requirement to cover the credit risk of credit institutions; whereas in the framework of regulating large exposures, the purpose is to limit the maximum potential loss that a credit institution may incur through a single client or a group of related clients; whereas it is therefore appropriate to adopt a prudent approach consisting of taking account of the nominal value of exposures, without application of any weightings or degree of risk;

Whereas when a credit institution has an exposure to its own parent undertaking, or to other subsidiaries of its parent undertaking, particular prudence is justified; whereas the management of exposures incurred by credit institutions must be carried out in a fully autonomous manner, with respect to the principles of sound banking management, without regard to any other considerations beyond these principles; whereas the provisions of 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, require that where the influence exercised by persons holding a qualifying participation in a credit institution directly or indirectly is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation; whereas in the large exposures field, it is justified to insert specific rules with respect to an exposure held by a credit institution on its own group, and in such cases more stringent limitations are justified for such exposures than for other exposures; whereas this more stringent limitation must however not be applied when the parent undertaking is a financial holding company or a credit institution, and the other subsidiaries which are either credit or financial institutions, or undertakings offering ancillary banking services, to the extent that all these undertakings are included in the supervision on a consolidated basis of the credit institution; whereas in that case, the supervision on a consolidated basis of the group allows sufficiently efficient supervision, without the imposition of more stringent limits on exposure being needed; whereas under this approach, banking groups will also be encouraged to organize their structure in such a way as to make consolidated supervision possible, which is a desirable result because it allows more comprehensive supervision to be carried out;

Whereas it is necessary to provide for a two-stage application of the limit of 25 % of own funds in the case of the particular categories of credit institution referred to in Article 4 (2) of Directive 89/646/EEC; whereas, the own funds of such institutions being limited, a single-stage application of the 25 % rule would reduce their lending activity too abruptly;

Whereas implementing powers of the same nature as those which the Council reserved for itself in Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions [2] 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 provided for in Article 22 of Directive 89/646/EEC the role of assisting the Commission in carrying out the responsibilities granted to it according to the rules of procedure laid down in Article 2, Procedure III, Variant (a) of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission [3],

HAS ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purpose of this Directive:

(a) 'credit institution' means a credit institution as defined in the first indent of Article 1 of Directive 77/780/EEC and includes branches of such institutions in third countries and all private or public undertakings, including their branches, which satisfy the definition given in the first indent of Article 1 of Directive 77/780/EEC and which have been authorized in a third country;

(b) 'competent authorities' means the competent authorities as defined in the ninth indent of Article 1 of Directive 00/000/00 (supervision on a consolidated basis);

(c) 'parent undertaking' means a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC [4];

(d) 'subsidiary undertaking' means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary undertaking of a subsidiary undertaking shall be deemed to be a subsidiary of the parent undertaking which is at the head of those undertakings;

[1] OJ No L 386, 30. 12. 1989, p. 14.

[2] OJ No L 124, 5. 5. 1989, p. 16.

[3] OJ No L 197, 18. 7. 1987, p. 33.

[4] OJ No L 193, 18. 7. 1983, p. 1.

(e) 'financial holding company' means a financial holding company as defined in the third indent of Article 1 of Directive 00/000/00 (supervision on a consolidated basis);

(f) 'financial institution' means a financial institution as defined in the sixth indent of Article 1 of Directive 89/646/EEC;

(g) 'ancillary banking services undertaking' means an undertaking as defined in Article 1, fifth indent, of Directive 00/000/00 (supervision on a consolidated basis);

(h) 'exposures' means the assets and off-balance-sheet items listed in Article 6 of Directive 89/647/EEC and in Annexes I and III thereto, without application of the weightings or degrees of risk set out in those provisions; the risks mentioned in Annex III must be calculated in accordance with the method set out in Annex II to that Directive, without application of the weightings for counter-party risk; the underwriting commitments for the issue of securities are included, subject to deduction of the shares transferred to other credit or financial institutions;

(i) 'Zone A' means the zone defined in the second indent of Article 2 of Directive 89/647/EEC;

(j) 'Zone B' means the zone defined in the third indent of Article 2 of Directive 89/647/EEC;

(k) 'own funds' means the own funds of a credit institution within the meaning of Directive 89/299/EEC;

(l) 'power of control' means the relationship between a parent undertaking and a subsidiary, as defined in Articles 1 and 2 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

(m) 'group of connected clients' means two or more persons, whether natural or legal, who, until proven otherwise, constitute a single risk because:

(i) either one of them holds, directly or indirectly, power of control over the other or others, or

(ii) they are so interconnected that, if one of them were to experience financial problems, the other or all of them would be likely to encounter repayment difficulties. Such interconnections to be taken into consideration include in particular:

— common ownership,

— common directors,

— cross guarantees,

— direct commercial interdependence which cannot be substituted in the short term.

Article 2

Scope

Subject to paragraph 2, this Directive shall apply to credit institutions which have obtained the authorization referred to in Article 3 of Directive 77/780/EEC.

However, Member States need not apply this Directive to:

(a) credit institutions listed in Article 2 (2) of Directive 77/780/EEC;

b) 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 in that Member State. In that case, without prejudice to the application of this Directive to the central body, the whole — constituted by the central body and its affiliated institutions — must be the subject of global supervision with regard to large exposures.

Article 3

Reporting of large exposures

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

— notification of all large exposures at least once a year, backed up by communication during the year of any modifications to the annual notification,

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

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

Article 4

Limits on large exposures

1. Credit institutions may not incur an exposure to a client or group of connected clients where its value exceeds 25 % of own funds.

2. Where that client or group of connected clients is the parent undertaking of the credit institution and/or one or more subsidiaries of that parent undertaking, the percentage provided for in paragraph 1 shall be reduced to 20 %.

3. Credit institutions may not incur large exposures which, in the aggregate, exceed 800 % of own funds.

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

5. The limits referred to in paragraphs 1, 2 and 3 shall be observed at all times by the credit institution. They may be exceeded only in exceptional circumstances and, in such cases, the competent authorities shall fix a deadline within which the credit institution must regularize its situation.

6. Member States may fully or partially exempt from the application of paragraph 2 exposures incurred by the credit institution to a financial holding company which is its parent undertaking and to other subsidiaries of that financial holding company, provided that:

(a) the financial holding company is included in the supervision on a consolidated basis of the credit institution exercised in accordance with Directive 00/000/00 (supervision on a consolidated basis);

(b) those other subsidiaries are credit institutions, financial institutions or undertakings providing ancillary banking services and are included in the consolidated supervision of the credit institution exercised in accordance with Directive 00/000/00 (supervision on a consolidated basis).

7. Member States may fully or partially exempt from the application of paragraphs 1, 2 and 3 exposures incurred by the credit institution to:

(a) its parent undertaking, provided that the parent undertaking is a credit institution subject to supervision on a consolidated basis exercised in accordance with Directive 00/000/00 (supervision on a consolidated basis) or to equivalent standards in force in a third country;

(b) subsidiaries, provided that those subsidiaries are credit institutions, financial institutions or undertakings providing ancillary banking services and are included in the consolidated supervision of the credit institution exercised in accordance with Directive 00/000/00 (supervision on a consolidated basis).

8. 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 and 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 and central banks or of the European Communities;

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

(e) asset items which constitute claims on Zone B central governments and central banks, and which are denominated and funded in the national currencies of the borrowers;

(f) asset items 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;

(g) asset items 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 of the lending institution;

(h) asset items secured, to the satisfaction of the competent authorities, by collateral in the form of certificates of deposits issued by and lodged with the lending institution;

(i) asset items constituting claims and other exposures on credit institutions, with a maturity of one year or less, but not constituting such institutions' own funds as defined in Directive 89/299/EEC;

(j) bills of trade and other bills, with a maturity of one year or less, bearing the signature of another credit institution and accepted for refinancing by a central bank;

(k) bonds defined in Article 22 (4) of Council Directive 85/611/EEC [1];

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

(l) asset items constituting claims on regional or central credit institutions with which the lending institution is associated as part of a network by virtue of legal or statutory provisions and which are responsible, in accordance with those provisions, for cash clearing operations within the network.

9. Member States may, for the purposes of paragraphs 1, 2 and 3, apply a weighting of 20 % to asset items constituting claims on regional and local authorities in the Member States and to other exposures to such authorities or guaranteed by them; however, subject to the conditions laid down in Article 7 of Directive 89/647/EEC, Member States may reduce this rate to 0 %.

10. Where an exposure to a client is guaranteed, to the satisfaction of the competent authorities, by a third party, Member States may deem the exposure to have been incurred to that third party and not to the client.

Article 5

Supervision on a consolidated or unconsolidated basis

1. If the credit institution is neither a parent undertaking nor a subsidiary, compliance with the obligations set out in Articles 3 and 4 shall be supervised on an unconsolidated basis.

2. If the credit institution is a parent undertaking, compliance with the obligations set out in Articles 3 and 4 shall be supervised on a consolidated basis in accordance with Directive 00/000/00 (supervision on an consolidated basis).

3. The competent authorities responsible for authorizing and supervising a credit institution which is a parent undertaking may also require the credit institution, together with any of its subsidiaries subject to authorization and supervision by them, to comply with the obligations set out in Articles 3 and 4 on a subconsolidated or unconsolidated basis. Where such monitoring of the satisfactory allocation of risks within a banking group is not carried out, other measures shall be taken to that end.

4. Where the subsidiary of a parent undertaking which is a credit institution has been authorized in another Member State, the competent authorities which granted that authorization shall require compliance with the obligations set out in Articles 3 and 4 on an unconsolidated basis or, if appropriate, subconsolidated.

5. Notwithstanding paragraph 4, the competent authorities responsible for authorizing the subsidiary of a parent undertaking situated in another Member State may, by way of a bilateral agreement, delegate responsibility for supervising compliance with the obligations set out in Articles 3 and 4 to the competent authorities which have authorized and which supervise the parent undertaking. The Commission and the Banking Advisory Committee shall be kept informed of the content of such agreements.

Article 6

Transitional provisions relating to exposures in excess of the limits

1. Where, at the time of the publication of this Directive in the *Official Journal of the European Communities*, a credit institution has already incurred an exposure or exposures exceeding either the large exposure limit or the aggregate large exposure limits, as referred to in Article 4, the competent authorities shall require the credit institution to take steps to have the exposure or exposures of the credit institutions concerned brought into line with the provisions of this Directive.

2. The process of having the exposure or exposures brought into line shall be devised, adopted, implemented and completed within the period deemed by the competent authorities to be consistent with the principle of sound administration and fair competition. The competent authorities shall inform the Commission and the Banking Advisory Committee of the schedule for the general process adopted.

3. Credit institutions may only take advantage of the period specified in paragraph 2 to the extent that it does not take any measure which would cause the exposures to exceed the level existing at the date of the publication of the Directive in the *Official Journal of the European Communities.*

4. The period applicable under paragraph 2 may not exceed five years as from 1 January 1993. However, loans with a longer maturity for which the lending credit institution is bound to respect the contractual terms, may be continued until their maturity.

5. For a period not exceeding five years starting from 1 January 1993, Member States may increase the limit laid down in Article 4 (1) to 40 % in the case of credit institutions belonging to the particular categories referred to in Article 4 (2) of Directive 89/646/EEC. In such cases, the period referred to in paragraph 4 shall be reduced to three years and shall commence on expiry of the period referred to in this paragraph. The Member States concerned shall notify the Commission and the

Banking Advisory Committee of the reasons which have led them to make use of this option and of the steps they have taken to bring the excess exposures into line with the limits laid down.

Article 7

Subsequent amendments

1. Technical amendments to the following points shall be adopted in accordance with the procedure set out in paragraph 2:

— adaptation of definitions to take account of developments on financial markets,

— clarification of definitions to ensure uniform application of this Directive,

— alignment of the terminology and of the wording of the definitions on those contained in subsequent instruments concerning credit institutions and related matters,

— the frequency referred to in Article 3 (1),

— clarification or extension of the exemptions provided for in Article 4 (5) to (9),

— the period referred to in Article 6 (4).

2. The Commission shall be assisted by the committee provided for in the first subparagraph of Article 22 (2) of Directive 89/646/EEC.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 8

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the provisions of this Directive on 1 January 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

Article 9

This Directive is addressed to the Member States.