OPINION OF THE COMMISSION

pursuant to Article 251 (2) (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL

relating to the reorganisation and the winding-up of credit institutions

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty
1. BACKGROUND

On 19 December 1985 the Commission sent to the Council a proposal for a Directive (COM(1985)788 final) relating to the reorganisation and the winding-up of credit institutions¹.

On 3 July 1986 the Economic and Social Committee delivered its opinion².

On 13 March 1987 Parliament delivered its opinion³, which was confirmed on 2 December⁴, on first reading.

On 30 October 1998 the European Monetary Institute delivered its opinion⁵.

On 17 July 2000 the Council adopted a common position⁶.


2. PURPOSE OF THE PROPOSAL

The purpose of the proposal is to coordinate national legislation on the reorganisation and the winding-up of credit institutions on the basis of the principle of the unity and universality of the procedure throughout the Union by applying the law of the institution's home country. Exceptions to the applicable law are provided for in the case of certain operations in order to take account of the special features of the banking sector.

3. COMMISSION OPINION ON PARLIAMENT'S AMENDMENTS

As empowered by the Commission on 6 December 2000, the Member responsible stated in plenary session that the Commission could accept all the amendments in substance, subject to a check for overall clarity and consistency.

This check has been carried out, the texts have been found to be sufficiently clear and the Commission is now able to accept them as they stand, although it would not be opposed to any drafting improvements should the Council decided by qualified majority that it was in favour of such improvements.

Amendments 1 and 12 retain in the context of the unity and universality of the procedure the exception provided for in the common position from application of the law of the home country to repurchase agreements but replace, when indicating the applicable law, the law of the place of conclusion of the contract by the law of the contract.

Amendments 9 and 11 follow and confirm the same principle for netting agreements.

Amendments 10 and 13 also follow and confirm the same principle for transactions on regulated markets.

Amendments 2 and 8 marginally modify the common position but retain the exception it contains for rights in respect of securities, whether or not dematerialised, recorded in a register, an account or a centralised deposit system in a Member State that remain governed by the law of the Member State where the register, account or centralised deposit system is located.

Amendments 3, 5 and 6 stipulate in a more analytical manner than in the common position that the rights in rem or reservation of title in respect of assets belonging to the insolvent credit institution remain governed by the law applicable to them.

Amendments 4 and 7 stipulate more clearly than in the common position the principle that the right of a creditor to set his claims off against the claims of the credit institution remains governed by the law applicable to the credit institution's claim.

4. Conclusion

Pursuant to Article 250(2) of the EC Treaty, the Commission is modifying its proposal as indicated above.