

SECOND COUNCIL DIRECTIVE

of 18 December 1962

adding to and amending the First Directive for the implementation of Article 67 of the Treaty¹

(63/21/EEC)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 5, 67 (1), 69, 105 (2) and 106 (2), thereof;

Having regard to the Decision of 11 May 1960 on the application to Algeria and to the French overseas departments of the provisions of the Treaty concerning the movement of capital;

Having regard to the First Directive of 11 May 1960 for the implementation of Article 67 of the Treaty;

Having regard to the proposal from the Commission, which, for that purpose, consulted the Monetary Committee;

Whereas it is appropriate to consolidate within the European Economic Community the liberalisation of capital movements to which Member States have

already committed themselves within the framework of the Organisation for Economic Co-operation and Development;

Whereas the abolition of certain restrictions on the free movement of capital, closely connected with the movement of goods, persons and services, is necessary to ensure the satisfactory establishment and functioning of a common market in these fields;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 2 (3) of the First Directive of 11 May 1960 for the implementation of Article 67 of the Treaty (hereinafter called 'First Directive') is hereby repealed.

Article 2

Annexes I and II to the First Directive shall be amended as follows:

¹ OJ No 43, 12.7.1960, pp. 919 to 932.

ANNEX I

LIST A

1. After the words 'Transfers of capital belonging to residents who emigrate' delete the words:

'amounts required for establishment with a view to carrying on a gainful activity'.

2. After the words 'Transfers of capital belonging to emigrants returning to their country of origin':

(a) delete the words:

'amounts imported and sums earned in carrying on a gainful activity';

(b) add the following items:

	Items of nomenclature
'Transfers of workers' savings during their period of stay';	X H
'Transfers by instalment of blocked funds belonging to non-residents by the holders of such funds in case of special hardship';	X I
'Annual transfers of blocked funds to another Member State by a non-resident account-holder, up to an amount or a percentage of the total assets, fixed uniformly by the Member State concerned for all applicants';	X L
'Transfer of minor amounts abroad'.	X M

3. Each time the words 'commercial transactions' appear in the list, they should be followed by the words 'or provision of services'.

4. The following items shall be added after Item XI.

	Items of nomenclature
'Death duties';	XIV A
'Damages (where these can be considered as capital)';	XIV B
'Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)';	XIV C
'Authors' royalties. Patents, designs, trade marks and inventions (assignments and transfers arising out of such assignments)';	XIV D
'Transfers of the moneys required for the provision of services'.	XIV E

LIST C

5. Each time the words 'commercial transactions' appear in the list, they should be followed by the words 'or provision of services'.

LIST D

6. Each time the words 'commercial transactions' appear in the list, they should be followed by the words 'or provision of services'.

7. For Item XIV 'Other capital movements', there shall be substituted the following item:

	Items of nomenclature
'Other capital movements: Miscellaneous'.	XIV F

ANNEX II

8. For the heading of Category VII 'Granting and repayment of credits related to commercial transactions', there shall be substituted the following heading:

'Granting and repayment of credits related to commercial transactions or to provision of services'.

9. For the heading of Category VIII 'Granting and repayment of loans and credits not related to commercial transactions' there shall be substituted the following heading:

'Granting and repayment of loans and credits not related to commercial transactions or to provision of services'.

10. Under 'Personal capital movements', in Category X, the following items shall be inserted:

	Items of nomenclature
'Transfers of workers' savings during their period of stay';	H
'Transfers by instalment of blocked funds belonging to non-residents by the holders of such funds in the case of special hardship';	I
'Annual transfers of blocked funds to another Member State by a non-resident account-holder, up to an amount or a percentage of the total assets, fixed uniformly by the Member State concerned for all applicants';	L
'Transfers of minor amounts abroad'.	M

11. Under 'Personal capital movements', in Category XIV, the following items shall be inserted:

	Items of nomenclature
'Death duties';	A
'Damages (where these can be considered as capital)';	B
'Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)';	C
'Authors' royalties. Patents, designs, trade marks and inventions (assignments and transfers arising out of such assignments)';	D
'Transfers of the moneys required for the provision of services (not included in Category IX)';	E
'Miscellaneous'.	F

Article 3

Member States shall within three months of notification of this Directive take the necessary measures to comply with it and shall forthwith inform the Commission thereof.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 18 December 1962.

For the Council

The President

E. COLOMBO

At its 90th Session on 17 December 1962, the Council of the European Economic Community approved the Second Directive for the implementation of Article 67 of the Treaty concerning the free movement of capital adding to and amending the First Directive of 11 May 1960.¹

As this instrument led to the alteration of the lists and nomenclature annexed to the First Directive, it seemed appropriate to publish the text of the lists and nomenclature as it stands with additions and revisions, following the Council's approval of the Second Directive. The text appears below.

¹ Published in the *Official Journal of the European Communities*, 12 July 1960, pp. 919-932.

ANNEX I

LIST A

Capital movements referred to in Article 1 of the Directive

	Items of nomenclature
Direct investments excluding purely financial investments made with a view only to giving the persons providing the capital indirect access to the money or capital market of another country, through the creation of an undertaking or participation in an existing undertaking in that country	I
Liquidation of direct investments	II
Investments in real estate	V
Personal capital movements	
Gifts and endowments	X B
Dowries	X C
Inheritances	X D
Settlement of debts in their country of origin by immigrants	X E
Transfers of capital belonging to residents who emigrate	X F
Transfers of capital belonging to emigrants returning to their country of origin	X G
Transfers of workers' savings during their period of stay	X H
Transfers by instalment of blocked funds belonging to non-residents by the holders of such funds in case of special hardship	X I
Annual transfers of blocked funds to another Member State by a non-resident account holder, up to an amount or a percentage of the total assets, fixed uniformly by the Member State concerned for all applicants	X L
Transfers of minor amounts abroad	X M
Granting and repayment of short- and medium-term credits related to commercial transactions or to provision of services in which a resident is participating	VII I A (i) and (ii) B (i) and (ii)
Sureties, other guarantees and rights of pledge and transfers connected with them	
related to short- and medium-term credits in respect of commercial transactions or provision of services in which a resident is participating	XII A and B in conjunction with VII I A (i) and (ii) B (i) and (ii)
related to long-term loans with a view to establishing or maintaining lasting economic links	XII A and B in conjunction with I A 3 B 3

	Items of nomenclature
Transfers in performance of insurance contracts as and when freedom of movement in respect of services is extended to those contracts in implementation of Article 59 <i>et seq.</i> of the Treaty	XI
Death duties	XIV A
Damages (where these can be considered as capital)	XIV B
Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)	XIV C
Authors' royalties. Patents, designs, trade marks and inventions (assignments and transfers arising out of such assignments)	XIV D
Transfers of the moneys required for the provision of services	XIV E

The use of the proceeds of liquidation of assets abroad belonging to residents must be permitted at least within the limits of the obligations as regards liberalisation accepted by Member States.

LIST B

Capital movements referred to in Article 2 of the Directive

	Items of nomenclature
Operations in securities	
Acquisition by non-residents of domestic securities dealt in on a stock exchange (excluding units of unit trusts) and repatriation of the proceeds of liquidation thereof	IV A
Acquisition by residents of foreign securities dealt in on a stock exchange and use of the proceeds of liquidation thereof	IV B
— excluding the acquisition of bonds issued on a foreign market and denominated in national currency	
— excluding units of unit trusts	
Physical movements of the securities mentioned above	IV E in conjunction with IV A IV B

The use of the proceeds of liquidation of assets abroad belonging to residents must be permitted at least within the limits of the obligations as regards liberalisation accepted by Member States.

LIST C

Capital movements referred to in Article 3 of the Directive

	Items of nomenclature
Issue and placing of securities of a domestic undertaking on a foreign capital market	III A 2
Issue and placing of securities of a foreign undertaking on the domestic capital market	III B 2
Operation in securities	
Acquisition by non-residents of domestic securities not dealt in on a stock exchange and repatriation of the proceeds of liquidation thereof	IV C
Acquisition by residents of foreign securities not dealt in on a stock exchange and use of the proceeds of liquidation thereof	IV D
Acquisition by non-residents of units in domestic unit trusts dealt in on a stock exchange and repatriation of the proceeds of liquidation thereof	IV A
Acquisition by residents of units in foreign unit trusts dealt in on a stock exchange and use of the proceeds of liquidation thereof	IV B
Acquisition by residents of foreign bonds dealt in on a stock exchange, issued on a foreign market and denominated in national currency	IV B 3 (i)
Physical movements of the securities mentioned above	IV E in conjunction with IV C, D and IV B 3 (i)
Granting and repayment of long-term credits related to commercial transactions or to the provision of services in which a resident is participating	VII I A (iii) and B (iii)
Granting and repayment of medium- and long-term credits related to commercial transactions or to the provision of services in which no resident is participating	VII 2 A (ii) and (iii) B (ii) and (iii)
Granting and repayment of medium- and long-term loans and credits not related to commercial transactions or to the provision of services	VIII A (ii) and (iii) B (ii) and (iii)
Sureties, other guarantees and rights of pledge and transfers connected with them and relating to:	
long-term credits in respect of commercial transactions or provision of services in which a resident is participating	XII A and B in conjunction with VII I A (iii) B (iii)
medium- and long-term credits in respect of commercial transactions or provision of services in which no resident is participating	XII A and B in conjunction with VII 2 A (ii) and (iii) B (ii) and (iii)
medium- and long-term loans and credits not related to commercial transactions or to provision of services	XII A and B in conjunction with VIII A (ii) and (iii) B (ii) and (iii)

The use of the proceeds of liquidation of assets abroad belonging to residents must be permitted at least within the limits of the obligations as regards liberalisation accepted by Member States.

LIST D

Capital movements referred to in Article 4 of the Directive

	Items of nomenclature
Short-term investments in Treasury bills and other securities normally dealt in on the money market	VI
Opening and placing of funds on current or deposit accounts, repatriation or use of balances on current or deposit accounts with credit institutions	IX
Granting and repayment of short-term credits related to commercial transactions or to provision of services in which no resident is participating	VII 2 A (i) B (i)
Granting and repayment of short-term loans and credits not related to commercial transactions or to provision of services	VIII A (i) B (i)
Personal capital movements	X A
loans	
Sureties, other guarantees and rights of pledge and transfers connected with them	
related to short-term credits in respect of commercial transactions or to provision of services in which no resident is participating	XII A and B in conjunction with VII 2 A (i) B (i)
related to short-term loans and credits not connected with commercial transactions or to provision of services	XII A and B in conjunction with VIII A (i) B (i)
related to private loans	XII A and B in conjunction with X A
Physical import and export of financial assets	XIII
Other capital movements: Miscellaneous	XIV F

ANNEX II

NOMENCLATURE OF CAPITAL MOVEMENTS

I. Direct investments*

A. *Direct investments on national territory by non-residents**

1. Establishment and extension of branches of new undertakings belonging solely to the person providing the capital, and the acquisition in full of existing undertakings
2. Participation in new or existing undertakings with a view to establishing or maintaining lasting economic links
3. Long-term loans with a view to establishing or maintaining lasting economic links
4. Reinvestment of profits with a view to maintaining lasting economic links

B. *Direct investments abroad by residents**

1. Establishment and extension of branches or new undertakings belonging solely to the person providing the capital, and the acquisition in full of existing undertakings
2. Participation in new or existing undertakings with a view to establishing or maintaining lasting economic links
3. Long-term loans with a view to establishing or maintaining lasting economic links
4. Reinvestment of profits with a view to maintaining lasting economic links

II. Liquidation of direct investments

A. *Repatriation of the proceeds of the liquidation* of direct investments on national territory by non-residents*

1. Principal
2. Capital appreciation

B. *Use of the proceeds of liquidation of direct investments abroad by residents*

1. Principal
2. Capital appreciation

III. Admission of securities to the capital market

A. *Admission of securities of a domestic undertaking to a foreign capital market*

1. Introduction* on a foreign stock exchange
 - (a) of shares and other securities of a participating nature

(b) of bonds

- (i) denominated in national currency
- (ii) denominated in foreign currency

2. Issue and placing* on a foreign capital market

- (a) of shares and other securities of a participating nature
- (b) of bonds
 - (i) denominated in national currency
 - (ii) denominated in foreign currency

B. *Admission of securities of a foreign undertaking to a domestic capital market*

1. Introduction on a domestic stock exchange

- (a) of shares and other securities of a participating nature
- (b) of bonds
 - (i) denominated in national currency
 - (ii) denominated in foreign currency

2. Issue and placing on a domestic capital market

- (a) of shares and other securities of a participating nature
- (b) of bonds
 - (i) denominated in national currency
 - (ii) denominated in foreign currency

C. *Admission of domestic securities of the public sector to a foreign capital market pursuant to Article 68 (3) of the Treaty*

1. Introduction of securities on a foreign stock exchange

- (a) denominated in national currency
- (b) denominated in foreign currency

2. Issue and placing of securities on a foreign capital market

- (a) denominated in national currency
- (b) denominated in foreign currency

* See Explanatory Notes, p. 16.

D. *Admission of foreign securities of the public sector to a domestic capital market pursuant to Article 68 (3) of the Treaty*

1. Introduction of securities on a domestic stock exchange
 - (a) denominated in national currency
 - (b) denominated in foreign currency
2. Issue and placing of securities on a domestic capital market
 - (a) denominated in national currency
 - (b) denominated in foreign currency

IV. *Operations in securities**
(not included under I, II and III)

A. *Acquisition by non-residents of domestic securities* dealt in on a stock exchange* and repatriation of the proceeds of liquidation thereof*

- (a) quoted*
- (b) unquoted*
1. Acquisition of shares* and other securities of a participating nature
2. Repatriation of the proceeds of liquidation of shares and other securities of a participating nature
3. Acquisition of bonds*
 - (i) denominated in national currency
 - (ii) denominated in foreign currency
4. Repatriation of the proceeds of liquidation of bonds.

B. *Acquisition by residents of foreign securities* dealt in on a stock exchange and use of the proceeds of liquidation thereof*

- (a) quoted
- (b) unquoted
1. Acquisition of shares and other securities of a participating nature
2. Use of the proceeds of liquidation of shares and other securities of a participating nature
3. Acquisition of bonds
 - (i) denominated in national currency
 - (ii) denominated in foreign currency
4. Use of the proceeds of liquidation of bonds

C. *Acquisition by non-residents of domestic securities not dealt in on a stock exchange and repatriation of the proceeds of liquidation thereof*

1. Acquisition of shares and other securities of a participating nature
2. Repatriation of the proceeds of liquidation of shares and other securities of a participating nature
3. Acquisition of bonds
 - (i) denominated in national currency
 - (ii) denominated in foreign currency
4. Repatriation of the proceeds of liquidation of bonds

D. *Acquisition by residents of foreign securities not dealt in on a stock exchange and use of the proceeds of liquidation thereof*

1. Acquisition of shares and other securities of a participating nature
2. Use of the proceeds of liquidation of shares and other securities of a participating nature
3. Acquisition of bonds
 - (i) denominated in national currency
 - (ii) denominated in foreign currency
4. Use of the proceeds of liquidation of bonds

E. *Physical movements of securities*

1. Belonging to non-residents
 - (a) import
 - (b) export
2. Belonging to residents
 - (a) import
 - (b) export

V. *Investments in real estate**
(not included under I and II)

A. *Investments in real estate on national territory by non-residents and repatriation of the proceeds of liquidation thereof*

1. Acquisition of real estate
2. Repatriation of the proceeds of liquidation of real estate

* See Explanatory Notes, p. 16.

B. *Investments in real estate abroad by residents and use of the proceeds of liquidation thereof*

1. Acquisition of real estate
2. Use of the proceeds of liquidation of real estate

VI. *Short-term investments in Treasury bills and other securities normally dealt in on the money market*

1. Denominated in national currency
2. Denominated in foreign currency

A. *Short-term investments by non-residents on a domestic money market and repatriation of the proceeds of liquidation thereof*

- | | | |
|--------------------------------|---|-----------------------------------|
| (a) by natural persons* | } | other than financial institutions |
| (b) by legal persons* | | |
| (c) by financial institutions* | | |

B. *Short-term investments by residents on a foreign money market and use of the proceeds of liquidation thereof*

- | | | |
|--------------------------------|---|-----------------------------------|
| (a) by natural persons* | } | other than financial institutions |
| (b) by legal persons* | | |
| (c) by financial institutions* | | |

VII. *Granting and repayment of credits related to commercial transactions or to provision of services*

1. In which a resident is participating
2. In which no resident is participating

A. *Credits granted by non-residents to residents:*

- (i) short-term (less than one year)
- (ii) medium-term (from one to five years)
- (iii) long-term (five years or more)

- | | | |
|-------------------------------|---|-----------------------------------|
| (a) by natural persons | } | other than financial institutions |
| (b) by legal persons | | |
| (c) by financial institutions | | |

B. *Credits granted by residents to non-residents:*

- (i) short-term (less than one year)
- (ii) medium-term (from one to five years)
- (iii) long-term (five years or more)

- | | | |
|-------------------------------|---|-----------------------------------|
| (a) by natural persons | } | other than financial institutions |
| (b) by legal persons | | |
| (c) by financial institutions | | |

VIII. *Granting and repayment of loans and credits not related to commercial transactions or to provision of services*

(not included under I and X)

A. *Loans and credits granted by non-residents to residents:*

- (i) short-term (less than one year)
- (ii) medium-term (from one to five years)
- (iii) long-term (five years or more)

- | | | |
|-------------------------------|---|-----------------------------------|
| (a) by natural persons | } | other than financial institutions |
| (b) by legal persons | | |
| (c) by financial institutions | | |

B. *Loans and credits granted by residents to non-residents:*

- (i) short-term (less than one year)
- (ii) medium-term (from one to five years)
- (iii) long-term (five years or more)

- | | | |
|-------------------------------|---|-----------------------------------|
| (a) by natural persons | } | other than financial institutions |
| (b) by legal persons | | |
| (c) by financial institutions | | |

IX. *Opening and placing of funds on current and deposit accounts, repatriation or use of balances on current or deposit accounts with credit institutions**

A. *By non-residents with domestic credit institutions*

1. Accounts and balances in national currency
2. Accounts and balances in foreign currency

- | | | |
|-------------------------------|---|-----------------------------------|
| (a) by natural persons | } | other than financial institutions |
| (b) by legal persons | | |
| (c) by financial institutions | | |

B. *By residents with foreign credit institutions*

1. Accounts and balances in national currency
2. Accounts and balances in foreign currency

- | | | |
|-------------------------------|---|-----------------------------------|
| (a) by natural persons | } | other than financial institutions |
| (b) by legal persons | | |
| (c) by financial institutions | | |

* See Explanatory Notes, p. 16.

X. Personal capital movements
(not covered by the other sections)

- A. *Loans*
1. Loans granted by non-residents to residents
 2. Loans granted by residents to non-residents
- B. *Gifts and endowments*
- C. *Dowries*
- D. *Inheritances*
- E. *Settlement of debts in their country of origin by immigrants*
- F. *Transfers of capital belonging to residents who emigrate and are:*
1. Nationals of the country in question
 2. Nationals of other countries
- G. *Transfers of capital belonging to emigrants returning to their country of origin*
- H. *Transfers of workers' savings during their period of stay*
- I. *Transfers by instalment of blocked funds belonging to non-residents by the holders of such funds in case of special hardship*
- L. *Annual transfers of blocked funds to another Member State by a non-resident account-holder, up to an amount or a percentage of the total assets, fixed uniformly by the Member State concerned for all applicants*
- M. *Transfers of minor amounts abroad*

XI. Transfers in performance of insurance contracts

- A. *Premiums and payments in respect of life assurance*
1. Contracts concluded between domestic life assurance companies and non-residents
 2. Contracts concluded between foreign life assurance companies and residents
- B. *Premiums and payments in respect of credit insurance*
1. Contracts concluded between domestic credit insurance companies and non-residents
 2. Contracts concluded between foreign credit insurance companies and residents
- C. *Other transfers of capital in respect of insurance contracts*

XII. Sureties, other guarantees and rights of pledge and transfers relating to them

- A. *Granted by non-residents to residents*
- B. *Granted by residents to non-residents*

XIII. Import and export of financial assets

- A. *Securities (not included under IV) and means of payment of every kind*
- B. *Gold*

XIV. Other capital movements

- A. *Death duties*
- B. *Damages (where these can be considered as capital)*
- C. *Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)*
- D. *Authors' royalties*
- Patents, designs, trade marks and inventions
(assignments and transfers arising out of such assignments)
- E. *Transfers of the moneys required for the provision of services (not included under IX)*
- F. *Miscellaneous*

Explanatory notes

For the purposes of this Nomenclature, the following expressions have the meanings assigned to them respectively:

Direct investments

Investments of all kinds by natural persons or commercial, industrial or financial undertakings, and which serve to establish or to maintain lasting and direct links between the person providing the capital and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity. This concept must therefore be understood in its widest sense.

The undertakings mentioned under 1 include legally independent undertakings (wholly-owned subsidiaries) and branches.

As regards those undertakings mentioned under 2 which have the status of companies limited by shares, there is participation in the nature of direct investment where the block of shares held by a natural person or another undertaking or any other holder enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control.

Long-term loans of a participating nature, mentioned under 3, means loans for a period of more than five years which are made for the purpose of establishing or maintaining lasting economic links. The main examples which may be cited are loans granted by a company to its subsidiaries or to companies in which it has a share, and loans linked with a profit-sharing arrangement. Loans granted by financial institutions with a view to establishing or maintaining lasting economic links are also included under this heading.

Residents or non-residents

Natural and legal persons according to the definitions laid down in the exchange control regulations in force in each Member State.

Proceeds of liquidation (of investments, securities, etc.)

Proceeds of sale, amount of repayments, proceeds of execution of judgments, etc.

Introduction on a stock exchange

The admission of securities—in accordance with a specified procedure—to dealings on a stock exchange, whether controlled officially or unofficially, and their admission to public sale.

Securities dealt in on a stock exchange (quoted or unquoted)

Securities the dealings in which are controlled by regulations, the prices for which are regularly published, either by official stock exchanges (quoted securities) or by other bodies attached to a stock exchange—e.g. committees of banks (unquoted securities).

Placing of securities

The direct sale of securities by the issuer, or sale thereof by the consortium which the issuer has instructed to sell them.

Operations in securities

Any dealings in securities, including the initial sale of units by unit trusts.

Domestic or foreign securities

Securities according to the country in which the issuer has his principal place of business.

Shares

Include rights to subscribe for new issues of shares.

Bonds (under IV of the Nomenclature)

Bonds issued by public or private bodies.

Investments in real estate

Purchases of buildings and land and the construction of buildings by private persons for gain or personal use. This category does not include loans secured by mortgages but it does include rights of usufruct, easements and building rights.

Natural or legal persons

As defined by the national rules.

Financial institutions

Banks, savings banks and institutions specialising in the provision of short-, medium- and long-term credit, and insurance companies, building societies, investment companies and other institutions of like character.

Credit institutions

Banks, savings banks and institutions specialising in the provision of short-, medium- and long-term credit.