

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/16/EEC

of 16 March 1992

amending Directive 89/299/EEC on the credit institution's own funds

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 Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions ⁽¹⁾, in which the eligible elements of the said own funds and the way they are calculated are defined,

Having regard to the proposal from the Commission ⁽²⁾,

In cooperation with the European Parliament ⁽³⁾,

Having regard to the opinion of the Economic and Social Committee ⁽⁴⁾,

Whereas Article 4 (1) of Directive 89/299/EEC permits joint and several commitments of borrowers in the case of credit institutions organized as cooperative societies or funds to be treated as own funds items under Article 2 (1), point 7, of the said Directive ; whereas no provision of the said Directive deals with the treatment of such commitments in cases where a credit institution organized as a cooperative society or a fund is converted into a public limited liability company ;

Whereas the Danish Government has expressed a strong interest in having its few mortgage credit institutions organized as cooperative societies or funds converted into public limited liability companies ; whereas, in order to

facilitate the conversion or to make it possible, a temporary derogation allowing them to include part of their joint and several commitments as own funds is required ; whereas this temporary derogation should not adversely affect competition between credit institutions ;

Whereas, in adopting Directive 89/299/EEC, the Council reserved for itself the implementing powers to make technical adjustments ; whereas the Commission undertook to make a proposal for a definitive solution to this problem 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 the said Directive ;

Whereas implementing powers of the same nature as those the Council reserved for itself in Directive 89/299/EEC were conferred on the Commission in 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 ⁽⁵⁾ ;

Whereas, taking into account the specific characteristics of the banking sector, it is appropriate to give the Committee provided for in Article 22 of the Second Banking Directive the role of assisting the Commission in exercising the powers conferred on it in accordance with the procedural rules laid down in Article 2, procedure III (b), of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁶⁾,

⁽¹⁾ OJ No L 124, 5. 5. 1989, p. 16.

⁽²⁾ OJ No C 172, 3. 7. 1991, p. 3.

⁽³⁾ OJ No C 13, 20. 1. 1992 (Decision of 12 February 1992 not yet published in the Official Journal).

⁽⁴⁾ OJ No C 339, 31. 12. 1991, p. 2.

⁽⁵⁾ OJ No L 386, 30. 12. 1989, p. 1.

⁽⁶⁾ OJ No L 197, 18. 7. 1987, p. 33.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/299/EEC is hereby amended as follows:

1. The following Article shall be inserted:

Article 4a

Denmark may allow its mortgage credit institutions organized as cooperative societies or funds before 1 January 1990 and converted into public limited liability companies to continue to include joint and several commitments of members, or of borrowers as referred to in Article 4 (1) claims on whom are treated in the same way as such joint and several commitments, in their own funds, subject to the following limits:

- (a) the basis for calculation of the part of joint and several commitments of borrowers shall be the total of the items referred to in Article 2 (1), points 1 and 2, minus those referred to in Article 2 (1), points 9, 10 and 11;
- (b) the basis for calculation on 1 January 1991 or, if converted at a later date, on the date of conversion, shall be the maximum basis for calculation. The basis for calculation may never exceed the maximum basis for calculation;
- (c) the maximum basis for calculation shall, from 1 January 1997, be reduced by half of the proceeds from any issue of new capital, as defined in Article 2 (1), point 1, made after that date; and
- (d) the maximum amount of joint and several commitments of borrowers to be included as own funds must never exceed:

50 % in 1991 and 1992,

45 % in 1993 and 1994,

40 % in 1995 and 1996,

35 % in 1997,

30 % in 1998,

20 % in 1999,

10 % in 2000, and

0 % after 1 January 2001,

of the basis for calculation;

2. Article 8 shall be replaced by the following:

Article 8

1. Without prejudice to the report referred to in the second subparagraph of Article 2 (2), technical adaptations to be made to this Directive in the following areas shall be adopted in accordance with the procedure laid down in paragraph 2:

- clarification of the definitions to ensure uniform application of this Directive throughout the Community,
- clarification of the definitions in order to take account in the implementation of this Directive of developments on financial markets, and
- the alignment of terminology on, and the framing of definitions in accordance with, subsequent acts on credit institutions and related matters.

2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.

The Commission representative 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 in 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 concerning the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period 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, save where the Council has decided against the said measures by a simple majority.

Article 2

1. Member States shall put into effect the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993. They shall forthwith inform the Commission thereof.

When Member States adopt the measures referred to in the first subparagraph, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the essential provisions of internal law which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 16 March 1992.

For the Council

The President

Jorge BRAGA DE MACEDO