

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive for the implementation of Article 67 of the Treaty —
Liberalization of capital movements

COM(87) 550 final

(Submitted by the Commission to the Council on 4 November 1987)

(88/C 26/01)

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, which consulted the Monetary Committee for this purpose,

Having regard to the opinion of the European Parliament,

Whereas Article 8A of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of capital is ensured;

Whereas Member States should be able to take, within the framework of appropriate Community procedures, the requisite measures to regulate bank liquidity and, if necessary, to restrict temporarily short-term capital movements which, even where there is no appreciable divergence in economic fundamentals, seriously disrupt the conduct of their monetary and exchange-rate policies;

Whereas, in the interests of transparency, it is advisable to indicate the scope, in accordance with the nomenclature laid down in this Directive, of the transitional measures adopted for the benefit of the Kingdom of Spain and the Portuguese Republic by the 1985 Act of Accession in the field of capital movements;

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 Council Directive 86/566/EEC of 17 November 1986 also provides for transitional arrangements to be

applied for the benefit of those two Member States in respect of their obligations to liberalize capital movements; whereas it is appropriate for those two Member States to be able to postpone the application of the new liberalization obligations resulting from this Directive for the same periods and for the same economic reasons;

Whereas the Hellenic Republic and Ireland are faced, albeit to differing degrees, with difficult balance-of-payments situations and high levels of external indebtedness; whereas the immediate and complete liberalization of capital movements by those two Member States would make it more difficult for them to continue to apply the measures they have taken to improve their external positions and to reinforce the capacity of their financial systems to adapt to the requirements of an integrated financial market in the Community; whereas it is appropriate, in accordance with Article 8C of the Treaty, to grant to those two Member States, in the light of their specific circumstances, further time in which to comply with the obligations arising from this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Without prejudice to the following provisions, Member States shall abolish restrictions on the movement of capital taking place between persons resident in Member States. The different categories of capital movement are set out in Annex I to this Directive.

2. Transfers in respect of capital movements shall be made on the same exchange-rate conditions as those ruling for payments relating to current transactions.

Article 2

Member States shall notify the Commission, the Monetary Committee and the Committee of Governors of Central Banks, by the date of their entry into force at the latest, of measures to regulate bank liquidity which have a specific impact on capital operations carried out by credit institutions with non-residents and which involve regulation of the net external positions of such institutions or of the setting of compulsory reserve ratios on their external assets or liabilities.

Such measures shall be confined to what is necessary for the purposes of domestic monetary regulation.

Article 3

1. Where short-term capital movements of exceptional magnitude impose severe strains on foreign-exchange markets and lead to serious disturbances in the conduct of a Member State's monetary and exchange-rate policies, being reflected in particular in substantial variations in domestic liquidity, the Commission may, after consulting the Monetary Committee and the Committee of Governors of Central Banks, authorize that Member State to take in respect of the capital movements listed in Annex II to this Directive, protective measures the conditions and details of which the Commission shall determine.

2. The Member State concerned may itself take the protective measures referred to above, on grounds of urgency, should these measures be necessary. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. The Commission may, after consulting the Monetary Committee and the Committee of Governors of Central Banks, decide that the Member State concerned shall amend or abolish the measures.

3. The period of application of protective measures taken pursuant to this Article shall not exceed six months.

Article 4

The provisions of this Directive shall not prejudice the right of Member States to take all requisite measures to prevent infringements of their laws and regulations or to lay down

procedures for the declaration of capital movements for purposes of administrative or statistical information.

Application of those measures and procedures may not have the effect of impeding the capital movements in question.

Article 5

For the Kingdom of Spain and the Portuguese Republic, the scope, in accordance with the nomenclature of capital movements contained in Annex I to this Directive, of the provisions of the 1985 Act of Accession in the field of capital movements shall be as indicated in Annex III.

Article 6

1. The Member States shall take the measures necessary for them to comply with this Directive no later than ... They shall forthwith inform the Commission thereof. They shall also make known, by the date of their entry into force at the latest, any new measure or any amendment made to the provisions governing the capital movements listed in Annex I to this Directive.

2. The Kingdom of Spain and the Portuguese Republic, without prejudice for these two Member States to Articles 61 to 66 and 222 to 232 of the 1985 Act of Accession, and the Hellenic Republic and Ireland may temporarily continue to apply restrictions on the capital movements listed in Annex IV to this Directive, subject to the conditions and time limits laid down in that Annex.

Article 7

The nomenclature of capital movements and the explanatory notes in Annex I, together with Annexes II, III and IV, form an integral part of this Directive.

Article 8

The Council Directive of 11 May 1960, as last amended by Council Directive 86/566/CEE of 17 November 1986, is hereby repealed.

Article 9

This Directive is addressed to the Member States.

ANNEX I

NOMENCLATURE OF THE CAPITAL MOVEMENTS REFERRED TO IN ARTICLE I OF THE DIRECTIVE

In this nomenclature, capital movements are classified according to the economic nature of the assets and liabilities they concern, denominated either in national currency or in foreign exchange.

The capital movements listed in this nomenclature are taken to cover:

- all the operations necessary for the purposes of capital movements: conclusion and performance of the transaction and related transfers. The transaction is generally between residents of different Member States although some capital movements are carried out by a single person for his own account (e.g. transfers of assets belonging to emigrants),
- operations carried out by any natural or legal person (*), including operations in respect of the assets or liabilities of Member States or of other public administrations and agencies, subject to the provisions of Article 68, paragraph 3 of the Treaty,
- access for the economic operator to all the financial techniques available on the market approached for the purpose of carrying out the operation in question. For example, the concept of acquisition of securities and other financial instruments covers not only spot transactions but also all the dealing techniques available: forward transactions, transactions carrying an option or warrant, swaps against other assets, etc. Similarly, the concept of operations in current and deposit accounts with financial institutions, includes not only the opening and placing of funds on accounts but also forward foreign exchange transactions, irrespective of whether these are intended to cover an exchange risk or to take an open foreign exchange position,
- operations to liquidate or assign assets built up, repatriation of the proceeds of liquidation thereof (*) or immediate use of such proceeds within the limits of Community obligations,
- operations to repay credits or loans.

I — DIRECT INVESTMENTS (*)

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.
- A. *Direct investments on national territory by non-residents (*)*
- B. *Direct investments abroad by residents (*)*

II — INVESTMENTS IN REAL ESTATE (not included under I) (*)

- A. *Investments in real estate on national territory by non-residents*
- B. *Investments in real estate abroad by residents*

III — OPERATIONS IN SECURITIES NORMALLY DEALT IN ON THE CAPITAL MARKET
(not included under I, IV or V)

- (a) Shares and other securities of a participating nature (*).
- (b) Bonds (*).
- A. *Transaction in securities on the capital market*

(*) See explanatory notes below.

1. Acquisition by non-residents of domestic securities dealt in on a stock exchange (*).
2. Acquisition by residents of foreign securities dealt in on a stock exchange.
3. Acquisition by non-residents of domestic securities not dealt in on a stock exchange (*).
4. Acquisition by residents of foreign securities not dealt in on a stock exchange.

B. Admission of securities to the capital market ()*

- (i) Introduction on a stock exchange (*).
 - (ii) Issue and placing on a capital market (*).
1. Admission of domestic securities to a foreign capital market.
 2. Admission of foreign securities to the domestic capital market.

IV — OPERATIONS IN UNITS OF COLLECTIVE INVESTMENT UNDERTAKINGS (*)

- (a) Units of undertakings for collective investment in securities normally dealt in on the capital market (shares, other equities and bonds).
- (b) Units of undertakings for collective investment in securities or instruments normally dealt in on the money market.
- (c) Units of undertakings for collective investment in other assets.

A. Transactions in units of collective investment undertakings

1. Acquisition by non-residents of units of national undertakings dealt in on a stock exchange.
2. Acquisition by residents of units of foreign undertakings dealt in on a stock exchange.
3. Acquisition by non-residents of units of national undertakings not dealt in on a stock exchange.
4. Acquisition by residents of units of foreign undertakings not dealt in on a stock exchange.

B. Admission of units of collective investment undertakings to the capital market

- (i) Introduction on a stock exchange.
 - (ii) Issue and placing on a capital market.
1. Admission of units of national collective investment undertakings to a foreign capital market.
 2. Admission of units of foreign collective investment undertakings to the domestic capital market.

V — OPERATIONS IN SECURITIES AND OTHER INSTRUMENTS NORMALLY DEALT IN ON THE MONEY MARKET (*)

A. Transactions in securities and other instruments on the money market

1. Acquisition by non-residents of domestic money market securities and instruments.
2. Acquisition by residents of foreign money market securities and instruments.

B. Admission of securities and other instruments to the money market

- (i) Introduction on a recognized money market (*).
 - (ii) Issue and placing on a recognized money market.
1. Admission of domestic securities and instruments to a foreign money market.
 2. Admission of foreign securities and instruments to the domestic money market.

(*) See explanatory notes below.

VI — OPERATIONS IN CURRENT AND DEPOSIT ACCOUNTS WITH FINANCIAL INSTITUTIONS (*)

- A. *Operations carried out by non-residents with domestic financial institutions*
- B. *Operations carried out by residents with foreign financial institutions*

VII — CREDITS RELATED TO COMMERCIAL TRANSACTIONS OR TO THE PROVISION OF SERVICES IN WHICH A RESIDENT IS PARTICIPATING (*)

- 1. Short-term (less than one year).
- 2. Medium-term (from one to five years).
- 3. Long-term (five years or more).
- A. *Credits granted by non-residents to residents*
- B. *Credits granted by residents to non-residents*

VIII — FINANCIAL LOANS AND CREDITS (not included under I, VII and XI) (*)

- 1. Short-term (less than one year).
- 2. Medium-term (from one to five years).
- 3. Long-term (five years or more).
- A. *Loans and credits granted by non-residents to residents*
- B. *Loans and credits granted by residents to non-residents*

IX — SURETIES, OTHER GUARANTEES AND RIGHTS OF PLEDGE

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

X — 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*

XI — PERSONAL CAPITAL MOVEMENTS

- A. *Loans*
- B. *Gifts and endowments*
- C. *Dowries*
- D. *Inheritances and legacies*
- E. *Settlement of debts by immigrants in their previous country of residence*
- F. *Transfers of assets constituted by residents, in the event of emigration, at the time of their installation or during their period of stay abroad*
- G. *Transfers, during their period of stay, of immigrants' savings to their previous country of residence*

XII — PHYSICAL IMPORT AND EXPORT OF FINANCIAL ASSETS

- A. *Securities*
- B. *Means of payment of every kind*

(*) See explanatory notes below.

XIII — 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 VI)*
- 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 I-1 of the nomenclature include legally independent undertakings (wholly-owned subsidiaries) and branches.

As regards those undertakings mentioned under I-2 of the nomenclature 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 I-3 of the nomenclature, 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.

Investments in real estate

Purchases of buildings and land and the construction of buildings by private persons for gain or personal use. This category also includes rights of usufruct, easements and building rights.

Introduction on a stock exchange or on a recognized money market

Access — in accordance with a specified procedure — for securities and other negotiable instruments to dealings, whether controlled officially or unofficially, on an officially recognized stock exchange or in an officially recognized segment of the money market.

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).

Issue of securities and other negotiable instruments

Sale by way of an offer to the public.

Placing of securities and other negotiable instruments

The direct sale of securities by the issuer or by the consortium which the issuer has instructed to sell them, with no offer being made to the public.

Domestic or foreign securities and other instruments

Securities according to the country in which the issuer has his principal place of business. Acquisition by residents of domestic securities and other instruments issued on a foreign market ranks as the acquisition of foreign securities.

Shares and other securities of a participating nature

Including rights to subscribe to new issues of shares.

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.

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.

Securities and other instruments normally dealt in on the money market

Treasury bills and other negotiable bills, certificates of deposit, bankers' acceptances, commercial paper and other like instruments.

Credits related to commercial transactions or to the provision of services

Contractual trade credits (advances or payments by instalment in respect of work in progress or on order and extended payment terms, whether or not involving subscription to a commercial bill) and their financing by credits provided by credit institutions. This category also includes factoring operations.

Financial loans and credits

Financing of every kind granted by financial institutions, including financing related to commercial transactions or to the provision of services in which no resident is participating.

This category also includes mortgage loans, consumer credit and financial leasing, as well as back-up facilities and other note-issuance facilities.

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 including any capital appreciation, amount of repayments, proceeds of execution of judgements, etc.

Natural or legal persons

As defined by the national rules.

Financial institutions

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

Credit institutions

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

*ANNEX II***LIST OF OPERATIONS REFERRED TO IN ARTICLE 3 OF THE DIRECTIVE**

Nature of operation	Heading
Operations in securities and other instruments normally dealt in on the money market	V
Operations in current and deposit accounts with financial institutions	VI
Operations in units of collective investment undertakings	
— undertakings for investment in securities or instruments normally dealt in on the money market	IV-A and B(c)
Financial loans and credits	
— short-term	VIII-A and B-1
Personal capital movements	
— loans	XI-A
Physical import and export of financial assets	
— securities normally dealt in on the money market	
— means of payment	XII

*ANNEX III***REFERRED TO IN ARTICLE 5 OF THE DIRECTIVE**

Scope of the provisions of the 1985 Act of Accession relating to capital movements, in accordance with the nomenclature of capital movements set out in Annex I to the Directive:

Articles of the Act of Accession (dates of expiry of transitional provisions)	Nature of operation	Heading
(a) Provisions concerning the Kingdom of Spain		
Article 62 (31.12.1990)	Direct investments abroad by residents	I-B
Article 63 (31.12.1990)	Investments in real estate abroad by residents	II-B
Article 64 (31.12.1988)	Operations in securities normally dealt in on the capital market	
	— Acquisition by residents of foreign securities dealt in on a stock exchange	
	— excluding bonds issued on a foreign market and denominated in national currency	III-A-2
	Operations in units of collective investment undertakings	
	— Acquisitions by residents of units of collective investment undertakings dealt in on a stock exchange	
	— excluding units of undertakings taking the form of common funds	IV-A-2

Articles of the Act of Accession (dates of expiry of transitional provisions)	Nature of operation	Heading
(b) Provisions concerning the Portuguese Republic		
Article 222 (31.12.1989)	Direct investments on national territory by non-residents	I-A
Article 224 (31.12.1992)	Direct investments abroad by residents	I-B
Articles 225 and 226 (31.12.1990)	Investments in real estate on national territory by non-residents	II-A
Article 227 (31.12.1992)	Investments in real estate abroad by residents	II-B
Article 228 (31.12.1990)	Personal capital movements	
	(i) for the purpose of applying the higher amounts specified in Article 228 paragraph 2:	
	— Dowries	XI-C
	— Inheritances and legacies	XI-D
	— Transfers of assets built up by residents in case of emigration at the time of their installation or during their period of stay abroad	XI-F
	(ii) for the purpose of applying the lower amounts specified in Article 228 paragraph 2:	
	— Gifts and endowments	XI-B
	— Settlement of debts by immigrants in their previous country of residence	XI-E
	— Transfers of immigrants' savings to their previous country of residence during their period of stay	XI-G
Article 229 (31.12.1990)	Operations in securities normally dealt in on the capital market	
	— Acquisitions by residents of foreign securities dealt in on a stock exchange	
	— excluding bonds issued on a foreign market and denominated in national currency	III-A-2
	Operations in units of collective investment undertakings	
	— Acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	
	— excluding units of undertakings taking the form of common funds	IV-A-2

ANNEX IV

REFERRED TO IN ARTICLE 6 paragraph 2 OF THE DIRECTIVE

- I. The Kingdom of Spain and the Portuguese Republic may continue to apply or reintroduce, until 1 October 1989 and 31 December 1990 respectively, restrictions existing on the date of entry into force of this Directive on capital movements given in List I below:

LIST I

Nature of operation	Heading
Operations in units of collective investment undertakings	
— Acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	
— undertakings subject to Directive 85/611/EEC ⁽¹⁾ and taking the form of common funds	IV-A-2(a)
— Acquisition by residents of units of foreign collective investment undertakings not dealt in on a stock exchange	
— undertakings subject to Directive 85/611/EEC ⁽¹⁾	IV-A-4(a)
⁽¹⁾ Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ No L 375, 31. 12. 1985).	

II. The Kingdom of Spain and the Portuguese Republic may continue to apply or reintroduce, until 31 December 1990 and 31 December 1992 respectively, restrictions existing on the date of entry into force of this Directive on capital movements given in List II below:

LIST II

Nature of operation	Heading
Operations in securities normally dealt in on the capital market	
— Acquisition by residents of foreign securities dealt in on a stock exchange	
— bonds issued on a foreign market and denominated in national currency	III-A-2(b)
— Acquisition by residents (non-residents) of foreign (domestic) securities not dealt in on a stock exchange	III-A-3 and 4
— Admission of securities to the capital market	
— where they are dealt in on or in the process of introduction to a stock exchange in a Member State	III-B-1 and 2
Operations in units of collective investment undertakings	
— Acquisition by residents of units of foreign collective investment undertakings dealt in on a stock exchange	
— undertakings not subject to Directive 85/611/EEC ⁽¹⁾ and taking the form of common funds	IV-A-2
— Acquisition by residents (non-residents) of units of foreign (domestic) collective investment undertakings not dealt in on a stock exchange	
— undertakings not subject to Directive 85/611/EEC ⁽¹⁾ and the sole object of which is the acquisition of assets that have been liberalized	IV-A-3 and 4
— Admission to the capital market of units of collective investment undertakings	
— undertakings subject to Directive 85/611/EEC ⁽¹⁾	IV-B-1 and 2(a)
Credits related to commercial transactions or to the provision of services in which a resident is participating	
— Long-term credits	VII-A and B-3
⁽¹⁾ See footnote to List I.	

III. The Kingdom of Spain and Ireland, until 31 December 1990, and the Hellenic Republic and the Portuguese Republic, until 31 December 1992, may continue to apply or reintroduce restrictions existing at the date of entry into force of this Directive on capital movements given in List III below:

LIST III

Nature of operation	Heading
Operations in securities dealt in on the capital market	
— Admission of securities to the capital market	
— where they are not dealt in on or in the process of introduction to a stock exchange in a Member State	III-B-1 and 2
Operations in units of collective investment undertakings	
— Admission to the capital market of units of collective investment undertakings	
— undertakings not subject to Directive 85/611/EEC ⁽¹⁾ and the sole object of which is the acquisition of assets that have been liberalized	IV-B-1 and 2
Financial loans and credits	
— medium-term and long-term	VIII-A, B-2 and 3

(¹) See footnote to List I.

IV. The Kingdom of Spain and Ireland, until 31 December 1990, and the Hellenic Republic and the Portuguese Republic, until 31 December 1992, may defer liberalization of the capital movements given in List IV below:

LIST IV

Nature of operation	Heading
Operations in securities and other instruments normally dealt in on the money market	V
Operations in current and deposit accounts with financial institutions	VI
Operations in units of collective investment undertakings	
— undertakings for investment in securities or instruments normally dealt in on the money market	IV-A and B(c)
Financial loans and credits	
— short-term	VIII-A and B-1
Personal capital movements	
— loans	XI-A
Physical import and export of financial assets	
— securities normally dealt in on the money market	
— means of payment	XII