COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.01.1996
COM(95) 709 final

96/0003 (COD)

Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Council Directive 89/647/EEC on a solvency ratio
for credit institutions

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

The purpose of this proposal is to amend Directive 89/647/EEC on a solvency ratio for credit institutions.

II. EXAMINATION OF THE ARTICLES OF THE PROPOSAL FOR A DIRECTIVE

Article 1: new subparagraph in Article 6(1)(c)(1)

This allows mortgage-backed securities to be treated in the same way as the mortgage loans referred to in Articles 6 and 11 from the point of view of the risk weighting. As the Directive stands at present, the risk on these securities is weighted at 100% and it is desirable to enable the competent authorities to weight them at 50% if they consider that the risk is the same as for the underlying mortgage loans.

Article 2: new wording of Article 11(4)

The existing provision allows only four Member States (Denmark, Germany, Greece and Austria) to weight certain commercial mortgage loans at 50% (instead of 100%) and to do so until 1 January 1996: the amendment extends this possibility to all Member States for a further five years, until 1 January 2001. During this period, an improvement is desirable in the statistics relating to rates of default and rates of losses on loans secured by mortgages on residential and non-residential immovable property, so that the situation can be reassessed at the end of the period and if necessary a definitive solution can be found.

The property must be situated within the territory of the Member States which accord the more favourable weighting of 50%, in order to limit possible distortions of competition which might arise in the Member States that do not apply this weighting. Certain conditions of a prudential nature have been added to ensure that the mortgage loan is repaid and to rule out loans to property developers: in particular the property must be either actively used or let by the owner, and, in the latter case, the rental income must be secured so that it is always in keeping with the value attributed to the property in order to operate the weighting.

The extension is justified on the grounds that the ending of the favourable weighting of commercial mortgage loans on 1 January 1996 would have adverse macroeconomic consequences in the four countries concerned, with prices increasing by an estimated 0.25%. The equality of conditions of competition is a reason for allowing all Member States to weight the credits in question at 50%, but the competent authorities are not obliged to apply the said weighting if they do not consider it necessary. The national authorities may always be stricter than is envisaged by the Directive on the solvency ratio, as amended by this proposal.

Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Council Directive 89/647/EEC on a solvency ratio for credit institutions

----

(Text with EEA Relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 57(2) thereof,

Having regard to the proposal from the Commission[1] ,

Having regard to the opinion of the Economic and Social Committee[2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty[3],

Whereas mortgage-backed securities may be treated as the loans referred to in Article 6(1)(c)(1) and Article 11(4) of Council Directive 89/647/EEC[4] if the competent authorities consider that they are entirely equivalent in the light of the credit risk; whereas the issuer of such securities must be legally and economically independent in relation to the original mortgage lender;

Whereas Article 11(4) of Directive 89/647/EEC provides for a derogation, on certain conditions, for four Member States, from Article 6(1)(c)(1), as regards the weighting to be applied to assets secured by mortgages on offices or on multi-purpose commercial premises; whereas this derogation expired on 1 January 1996;

Whereas when Directive 89/647/EEC was adopted, the Commission undertook to examine this transitional provision to determine whether, in the light of its findings and of international developments and in view of the need to avoid distortions of competition, it considered that there was a case for amending this provision and, if so, to put forward appropriate proposals; whereas the results of the study relating to this provision, although not absolutely conclusive, show that there is no significant difference between the rates of losses recorded in the Member States covered by the derogation and in those not so covered; whereas, therefore, this derogation can be extended to all Member States which so wish for a period of five years; whereas the property to which the mortgage relates must be subject to rigorous assessment; whereas the property must be either occupied or let by the owner; whereas in the latter case, the rental income must be secured to the satisfaction of the competent authorities; whereas loans for property development are excluded from this provision;

Whereas this Directive is the most appropriate means of attaining the objectives sought and is limited to the minimum required to attain those objectives and does not exceed what is necessary for this purpose;

---

(1) OJ No C

(2) OJ No C

(3) Opinion of the European Parliament of ....(OJ No C......., ...), common position of the Council of .... (OJ No C........., ...) and Decision of the European Parliament of ....(OJ No C ...., ...).

(4) OJ No L 386, 30.12.1989, p. 14, as last amended by Directive ... (contractual netting).

Whereas this Directive concerns the European Economic Area (EEA) and the procedure of Article 99 of the EEA Agreement has been complied with;

Whereas the Banking Advisory Committee has been consulted on the adoption of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/647/EEC is amended as follows:

1. The following subparagraphs are added to Article 6(1)(c)(1):

   "mortgage-backed securities which may be treated as the loans referred to in the first subparagraph of this point or in Article 11(4), if the competent authorities consider, given the legal framework in force in each Member State, that they are equivalent in the light of the credit risk.

   The authorities must in particular be satisfied that:

   (i) such securities are fully and directly backed by a pool of mortgages which are of the same nature as those defined in the first subparagraph of this point or in Article 11(4) and are fully performing when the mortgage-backed securities are created;

   (ii) a first charge on the underlying mortgage assets is held directly by investors in mortgage-backed securities, or in their name by a trustee, in the same proportion as their holdings bear to the securities they hold; when the trustee exercises the first charge, he does so on behalf of these investors;"

2. Article 11(4) is replaced by the following:

   "4. Until 1 January 2001 the competent authorities of the Member States may authorize their credit institutions to apply a 50% risk weighting to loans fully and completely secured to their satisfaction by mortgages on offices or on multi-purpose commercial premises situated within the territory of those Member States that allow the 50% risk weighting. The sum borrowed cannot exceed 60% of the value of the property in question, calculated on the basis of rigorous assessment criteria laid down in statutory or regulatory provisions, and the property must be either used or let by the owner; in the latter case, the rental value must be secured to the satisfaction of the competent authorities at least at a level envisaged in the assessment of the value of the property.

   The first sentence of the first subparagraph does not exclude that competent authorities of a Member State, which applies a higher risk weighting in its territory, may allow the 50% risk weighting to apply for this type of lending in the territories of those Member States that allow the 50% risk weighting."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 31 December 1997. They shall immediately 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 text of the provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament The President	For the Council The President

IMPACT ASSESSMENT FORM THE IMPACT OF THE PROPOSAL ON COMPETITIVENESS AND EMPLOYMENT

I. What is the main justification for the measure?

It reduces the credit risk weighting to be applied to certain assets, where the risk does not correspond to the present weighting.

II. Characteristics of the enterprises concerned

The enterprises concerned by this Directive are the credit institutions of the European Union.

III. What are the obligations imposed directly on enterprises?

The proposal imposes no new obligation on enterprises.

IV. What are the obligations likely to be imposed indirectly on enterprises by the local authorities?

None.

V. Are there special measures for SMEs? If so, what kind of measures?

None.

VI. What is the foreseeable effect

(a) on the competitiveness of firms?

(b) on employment?

(a) The aim of certain articles of the proposal is to grant more favourable treatment to certain asset items constituting claims in relation to the solvency ratio. Since the own fund requirements are lower, for the same balance sheet, the hope is that the capital liberated in this way can be used to increase credits to enterprises and to reduce their refinancing costs.

In addition, the extension of Article 11(4) to all Member States and for an additional transitional period may favour economic growth, in that mortgage loans on property for office and/or commercial use can be made at lower interest rates.

(b) The effects on employment are confined to the consequences on the increased capacity to grant additional loans which may result from the proposed measures.

VII. Have the social partners been consulted? What is their opinion?

No. The proposed measures have a direct effect only on the prudential legislation of credit institutions, which are not required to consult the social partners.

ISSN 0254-1475

COM(95) 709 final

DOCUMENTS

EN 10

Catalogue number : CB-CO-95-776-EN-C

ISBN 92-77-99231-X

Office for Official Publications of the European Communities

L-2985 Luxembourg