ISSN 0378-6988

Official Journal

of the European Communities

L 204

Volume 41

21 July 1998

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

DIRECTIVE 98/30/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 1998

concerning common rules for the internal market in natural gas

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 66 and 100a 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 laid down in Article 189b of the Treaty [3],

(1) Whereas, according to Article 7a of the Treaty, the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured; whereas it is important to adopt measures to continue the completion of the internal market;

(2) Whereas, under Article 7c of the Treaty, differences in development of certain economies have to be taken into account, but derogations must be of a temporary nature and cause the least possible disturbance to the functioning of the common market;

(3) Whereas the establishment of a competitive natural gas market is an important element of the completion of the internal energy market;

(4) Whereas Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids [4] and Council Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users [5] constitute a first phase of the completion of the internal market in natural gas;

(5) Whereas it is now necessary to take further measures with a view to establishing the internal market in natural gas;

(6) Whereas the provisions of this Directive should not affect the full application of the Treaty, in particular the provisions concerning the free movement of goods in the internal market and the rules on competition, and do not affect the powers of the Commission under the Treaty;

(7) Whereas the internal market in natural gas needs to be established gradually, in order to enable the industry to adjust in a flexible and ordered manner to its new environment and in order to take account of the different market structures in the Member States;

(8) Whereas the establishment of the internal market in the natural gas sector should favour the interconnection and interoperability of systems, for example through compatible qualities of gas;

(9) Whereas a certain number of common rules should be established for the organisation and operation of the natural gas sector; whereas, in accordance with the principle of subsidiarity, these rules are no more than general principles providing for a framework, the detailed implementation of which should be left to Member States, thus allowing each Member State to maintain or choose the

---

[1] OJ C 65, 14.3.1992, p. 14, and OJ C 123, 4.5.1994, p. 26.

[2] OJ C 73, 15.3.1993, p. 31, and OJ C 195, 18.7.1994, p. 82.

[3] Opinion of the European Parliament of 17 November 1993 (OJ C 329, 6.12.1993, p. 182), Council Common Position (EC) No 17/98 of 12 February 1998 (OJ C 91, 26.3.1998, p. 46) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Council Decision of 11 May 1998.

[4] OJ L 147, 12.6.1991, p. 37. Directive as last amended by Directive 95/49/EC (OJ L 233, 30.9.1995, p. 86).

[5] OJ L 185, 17.7.1990, p. 16. Directive as last amended by the 1994 Act of Accession.

regime which corresponds best to a particular situation, in particular with regard to authorisations and the supervision of supply contracts;

(10) Whereas the external supply of natural gas is of particular importance for the purchase of natural gas in Member States highly dependent on gas imports;

(11) Whereas, as a general rule, undertakings in the natural gas sector should be able to operate without being discriminated against;

(12) Whereas for some Member States the imposition of public service obligations may be necessary to ensure security of supply and consumer and environmental protection, which, in their view, free competition, left to itself, cannot necessarily guarantee;

(13) Whereas long-term planning may be one means of carrying out those public service obligations, taking into account the possibility of third parties seeking access to the system; whereas Member States may monitor take-or-pay contracts undertaken in order to keep up to date with the situation on supply;

(14) Whereas Article 90(1) of the Treaty obliges the Member States to respect the rules on competition with regard to public undertakings and undertakings which have been granted special or exclusive rights;

(15) Whereas Article 90(2) of the Treaty subjects undertakings entrusted with the operation of services of general economic interest to these rules under specific conditions; whereas the implementation of this Directive will have an impact on the activities of such undertakings; whereas, as referred to in Article 3(3), Member States need not apply Article 4, in particular, to their distribution infrastructure in order not to obstruct in law or in fact the fulfilment of obligations of general economic interest imposed on gas undertakings;

(16) Whereas, when imposing public service obligations on undertakings of the natural gas sector, Member States must therefore respect the relevant rules of the Treaty as interpreted by the Court of Justice of the European Communities;

(17) Whereas basic criteria and procedures should be laid down concerning the authorisations which Member States may grant for the construction or operation of relevant facilities under their national system; whereas these provisions should not affect the relevant rules of national legislation subjecting the construction or operation of relevant facilities to an authorisation requirement; whereas, however, such requirement should not have the effect of restricting competition among the undertakings of the sector;

(18) Whereas Decision No 1254/96/EC of the European Parliament and of the Council of 5 June 1996 laying down a series of guidelines for trans-European energy networks [1], contributes to the development of integrated infrastructures for the natural gas sector;

(19) Whereas the technical rules for the operation of systems and direct lines must be transparent and must ensure interoperability of systems;

(20) Whereas basic rules must be laid down with regard to transmission, storage and liquefied natural gas undertakings, as well as to distribution and supply undertakings;

(21) Whereas it is necessary to provide for access by the competent authorities to the internal accounts of undertakings, with due regard for confidentiality;

(22) Whereas the accounts of all integrated natural gas undertakings should provide for a high degree of transparency; whereas the accounts should be separate for different activities when this is necessary in order to avoid discrimination, cross-subsidisation and other distortions of competition, taking into account in relevant cases that transmission for accounting purposes includes re-gasification; whereas separate accounts should not be required for legal entities, such as stock or futures exchanges, which do not, other than in this trading capacity, perform any of the functions of a natural gas undertaking; whereas integrated accounts for hydrocarbon production and related activities may be produced as part of the requirement for accounts for non-gas activities required by this Directive; whereas the relevant information in Article 23(3) should include, where required, accounting information about upstream pipelines;

(23) Whereas access to the system should be open in accordance with this Directive and should lead to a

[1] OJ L 161, 29.6.1996, p. 147. Decision as last amended by Decision No 1047/97/EC (OJ L 152, 11.6.1997, p. 12).

sufficient and, where appropriate, a comparable level of opening-up of markets in different Member States; whereas, at the same time, the opening-up of markets should not create unnecessary disequilibrium in the competitive situation of undertakings in the different Member States;

(24) Whereas, owing to the diversity of structures and the special characteristics of systems in Member States, there should be different procedures for system access operating in accordance with objective, transparent and non-discriminatory criteria;

(25) Whereas, in order to achieve a competitive market in natural gas, provision should be made for access to upstream pipeline networks; whereas separate treatment is required as respects such access to upstream pipeline networks, having regard, in particular, to the special economic, technical and operational characteristics relating to such networks; whereas the provisions of this Directive do not in any event affect national taxation rules;

(26) Whereas provision should be made regarding authorisation, construction and use of direct lines;

(27) Whereas provision should be made for safeguards and dispute settlement procedures;

(28) Whereas any abuse of a dominant position or any predatory behaviour should be avoided;

(29) Whereas, as some Member States are liable to experience special difficulties in adjusting their systems, provision should be made for temporary derogations;

(30) Whereas long-term take-or-pay contracts are a market reality for securing Member States' gas supply; whereas, in particular, provision should be made for derogations from certain provisions of this Directive in the case of a natural gas undertaking which is or would be in serious economic difficulties because of its take-or-pay obligations; whereas these derogations should not undermine the purpose of this Directive to liberalise the internal market in natural gas; whereas any take-or-pay contracts entered into or renewed after the entry into force of this Directive should be concluded prudently in order not to hamper a significant opening of the market; whereas, therefore, such derogations should be limited in time and scope and granted in a transparent manner, under the supervision of the Commission;

(31) Whereas specific provisions are needed for markets and investments in other areas which have not yet reached a developed stage; whereas derogations for such markets and areas should be limited in time and scope; whereas, for the sake of transparency and uniformity, the Commission should have a significant role in the granting of these derogations;

(32) Whereas this Directive constitutes a further phase of liberalisation; whereas, once it has been put into effect, some obstacles to trade in natural gas between Member States will nevertheless remain in place; whereas proposals for improving the operation of the internal market in natural gas should be made in the light of experience; whereas the Commission should therefore report to the European Parliament and the Council on the application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the rules relating to the organisation and functioning of the natural gas sector, including liquefied natural gas (LNG), access to the market, the operation of systems, and the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas.

Article 2

For the purposes of this Directive:

1. 'natural gas undertaking' means any natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical and/or maintenance tasks related to those functions, but shall not include final customers;

2. 'upstream pipeline network' means any pipeline or network of pipelines operated and/or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;

3. 'transmission' means the transport of natural gas through a high pressure pipeline network other than an upstream pipeline network with a view to its delivery to customers;

4. 'transmission undertaking' means any natural or legal person who carries out the function of transmission;

5. 'distribution' means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers;

6. 'distribution undertaking' means any natural or legal person who carries out the function of distribution;

7. 'supply' means the delivery and/or sale of natural gas, including LNG, to customers;

8. 'supply undertaking' means any natural or legal person who carries out the function of supply;

9. 'storage facility' means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, excluding the portion used for production operations;

10. 'storage undertaking' means any natural or legal person who carries out the function of storage;

11. 'LNG facility' means a terminal which is used for the liquefaction of natural gas or the offloading, storage and re-gasification of LNG;

12. 'system' means any transmission networks and/or distribution networks and/or LNG facilities owned and/or operated by a natural gas undertaking, including its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission and distribution;

13. 'interconnected system' means a number of systems which are linked with each other;

14. 'direct line' means a natural gas pipeline complementary to the interconnected system;

15. 'integrated natural gas undertaking' means a vertically or horizontally integrated undertaking;

16. 'vertically integrated undertaking' means a natural gas undertaking performing two or more of the tasks of production, transmission, distribution, supply or storage of natural gas;

17. 'horizontally integrated undertaking' means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non-gas activity;

18. 'related undertaking' means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive, 83/349/EEC, of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts [1], and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;

19. 'system user' means any natural or legal person supplying to, or being supplied by, the system;

20. 'customers' means wholesale or final customers of natural gas and natural gas undertakings which purchase natural gas;

21. 'final customer' means a consumer purchasing natural gas for his own use;

22. 'wholesale customers', where Member States recognise their existence, means any natural or legal persons who purchase and sell natural gas and who do not carry out transmission or distribution functions inside or outside the system where they are established;

23. 'long-term planning' means the planning of supply and transportation capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;

24. 'emergent market' means a Member State in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;

25. 'security' means both security of supply and provision, and technical safety.

---

[1] OJ L 193, 18.7.1983, p. 1. Directive as last amended by the 1994 Act of Accesion.

CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive market in natural gas, and shall not discriminate between such undertakings as regards either rights or obligations.

2. Having full regard to the relevant provisions of the Treaty, in particular Article 90 thereof, Member States may impose on natural gas undertakings, in the general economic interest, public-service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and to environmental protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable; they, and any revision thereof, shall be published and notified to the Commission by Member States without delay. As a means of carrying out public-service obligations in relation to security of supply, Member States which so wish may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

3. Member States may decide not to apply the provisions of Article 4 with respect to distribution insofar as the application of these provisions would obstruct, in law or in fact, the performance of the obligations imposed on natural gas undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, *inter alia*, competition with regard to eligible customers in accordance with this Directive and Article 90 of the Treaty.

Article 4

1. In circumstances where an authorisation (e. g. licence, permission, concession, consent or approval) is required for the construction or operation of natural gas facilities, the Member States or any competent authority they designate shall grant authorisations to build and/or operate such facilities, pipelines and associated equipment on their territory, in accordance with paragraphs 2 to 4. Member States or any competent authority they designate may also grant authorisations on the same basis for the supply of natural gas and for wholesale customers.

2. Where Member States have a system of authorisation, they shall lay down objective and non-discriminatory criteria which shall be met by an undertaking applying for an authorisation to build and/or operate natural gas facilities or applying for an authorisation to supply natural gas. The non-discriminatory criteria and procedures for the granting of authorisations shall be made public.

3. Member States shall ensure that the reasons for any refusal to grant an authorisation are objective and non-discriminatory and are given to the applicant. Reasons for such refusals shall be forwarded to the Commission for information. Member States shall establish a procedure enabling the applicant to appeal against such refusals.

4. For the development of newly supplied areas and efficient operation generally, and without prejudice to Article 20, Member States may decline to grant a further authorisation to build and operate distribution pipeline systems in any particular area once such pipeline systems have been or are proposed to be built in that area and if existing or proposed capacity is not saturated.

Article 5

Member States shall ensure that technical rules establishing the minimum technical design and operational requirements for the connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines, are developed and made available. These technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [1].

CHAPTER III

TRANSMISSION, STORAGE AND LNG

Article 6

Member States shall take the measures necessary to ensure that transmission, storage and LNG undertakings act in accordance with Articles 7 and 8.

---

[1] OJ L 109, 26.4.1983, p. 8. Directive as last amended by Directive 96/139/EC (OJ L 32, 10.2.1996, p. 31).

Article 7

1. Each transmission, storage and/or LNG undertaking shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment.

2. In any event, the transmission, storage and/or LNG undertaking shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.

3. Each transmission, storage and/or LNG undertaking shall provide any other transmission undertaking, any other storage undertaking and/or any distribution undertaking with sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.

Article 8

1. Without prejudice to Article 12 or any other legal duty to disclose information, each transmission, storage and/or LNG undertaking shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.

2. Transmission undertakings shall not, in the context of sales or purchases of natural gas by the transmission undertakings or related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

CHAPTER IV

DISTRIBUTION AND SUPPLY

Article 9

1. Member States shall ensure that distribution undertakings act in accordance with Articles 10 and 11.

2. Member States may impose on distribution undertakings and/or supply undertakings, an obligation to deliver to customers located in a given area or of a certain class or both. The tariff for such deliveries may be regulated, for instance to ensure equal treatment of the customers concerned.

Article 10

1. Each distribution undertaking shall operate, maintain and develop under economic conditions a secure, reliable and efficient system, with due regard to the environment.

2. In any event, the distribution undertaking must not discriminate between system users or classes of system users, particularly in favour of its related undertakings.

3. Each distribution undertaking shall provide any other distribution undertaking, and/or any transmission and/or storage undertaking with sufficient information to ensure that the transport of gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.

Article 11

1. Without prejudice to Article 12 or any other legal duty to disclose information, each distribution undertaking shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.

2. Distribibution undertakings shall not, in the context of sales or purchases of natural gas by the distribution undertakings or related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

CHAPTER V

UNBUNDLING AND TRANSPARENCY OF ACCOUNTS

Article 12

Member States or any competent authority they designate, including the dispute settlement authorities referred to in Article 21(2) and Article 23(3), shall have right of access to the accounts of natural gas undertakings as set out in Article 13 which they need to consult in carrying out their functions. Member States and any designated competent authority, including the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Member States may introduce exceptions to the principle of confidentiality where this is necessary in order for the competent authorities to carry out their functions.

Article 13

1. Member States shall take the necessary steps to ensure that the accounts of natural gas undertakings are kept in accordance with paragraphs 2 to 5 of this Article.

2. Natural gas undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies [1].

Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public at their head office.

3. Integrated natural gas undertakings shall, in their internal accounting, keep separate accounts for their natural gas transmission, distribution and storage activities, and, where appropriate, consolidated accounts for non-gas activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. These internal accounts shall include a balance sheet and a profit and loss account for each activity.

Where Article 16 applies and access to the system is on the basis of a single charge for both transmission and distribution, the accounts for transmission and distribution activities may be combined.

4. Undertakings shall specify in their internal accounting the rules for the allocation of assets and liabilities, expenditure and income as well as for depreciation, without prejudice to nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in paragraph 3. These rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated.

5. The annual accounts shall indicate in notes any transaction of a certain size conducted with related undertakings.

[1] OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 94/8/EC (OJ L 82, 25.3.1994, p. 33).

CHAPTER VI

ACCESS TO THE SYSTEM

Article 14

For the organisation of access to the system, Member States may choose either or both procedures referred to in Article 15 and in Article 16. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

Article 15

1. In the case of negotiated access, Member States shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to the system so as to conclude supply contracts with each other on the basis of voluntary commercial agreements. The parties shall be obliged to negotiate access to the system in good faith.

2. The contracts for access to the system shall be negotiated with the relevant natural gas undertakings. Member States shall require natural gas undertakings to publish their main commercial conditions for the use of the system within the first year following implementation of this Directive and on an annual basis every year thereafter.

Article 16

Member States opting for a procedure of regulated access shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right of access to the system, on the basis of published tariffs and/or other terms and obligations for use of that system. This right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking.

Article 17

1. Natural gas undertakings may refuse access to the system on the basis of lack of capacity or where the access to the system would prevent them from carrying out the public-service obligations referred to in Article 3(2) which are assigned to them or on the basis of serious economic and financial difficulties with take-or-pay contracts having regard to the criteria and procedures set out in Article 25 and the alternative chosen by the Member State according to paragraph 1 of that Article.

Duly substantiated reasons shall be given for such a refusal.

2. Member States may take the measures necessary to ensure that the natural gas undertaking refusing access to the system on the basis of lack of capacity or a lack of connection shall make the necessary enhancements as far as it is economical to do so or when a potential customer is willing to pay for them. In circumstances where Member States apply Article 4(4), Member States shall take such measures.

Article 18

1. Member States shall specify eligible customers, meaning those customers inside their territory which have the legal capacity to contract for, or to be sold, natural gas in accordance with Articles 15 and 16, given that all customers mentioned in paragraph 2 of this Article must be included.

2. Member States shall take the necessary measures to ensure that at least the following customers are designated as eligible customers:

— gas-fired power generators, irrespective of their annual consumption level; however, and in order to safeguard the balance of their electricity market, the Member States may introduce a threshold, which may not exceed the level envisaged for other final customers, for the eligibility of combined heat and power producers. Such thresholds shall be notified to the Commission,

— other final customers consuming more than 25 million cubic metres of gas per year on a consumption-site basis.

3. Member States shall ensure that the definition of eligible customers referred to in paragraph 1 will result in an opening of the market equal to at least 20 % of the total annual gas consumption of the national gas market.

4. The percentage mentioned in paragraph 3 shall increase to 28 % of the total annual gas consumption of the national gas market five years after the entry into force of this Directive, and to 33 % thereof 20 years after the entry into force of this Directive.

5. If the definition of eligible customers as referred to in paragraph 1 results in a market opening of more than 30 % of the total annual gas consumption of the national gas market, the Member State concerned may modify the definition of eligible customers to the extent that the opening of the market is reduced to no lower than 30 % of such consumption. Member States shall modify the definition of eligible customers in a balanced manner, not creating specific disadvantages for certain types or classes of eligible customers, but taking into account existing market structures.

6. Member States shall take the following measures to ensure that the opening of their natural gas market is increased over a period of 10 years:

— the threshold set in the second indent of paragraph 2 for eligible customers other than gas-fired power generators, shall be reduced to 15 million cubic metres per year on a consumption-site basis five years after the entry into force of this Directive, and to 5 million cubic metres per year on such basis 10 years after the entry into force of this Directive,

— the percentage mentioned in paragraph 5 shall increase to 38 % of the total annual gas consumption of the national gas market five years after the entry into force of this Directive, and to 43 % of such consumption 10 years after the entry into force of this Directive.

7. In respect of emergent markets, the gradual market opening provided for by this Article shall start to apply from the expiry of the derogation referred to in Article 26(2).

8. Distribution undertakings, if not already specified as eligible customers under paragraph 1, shall have the legal capacity to contract for natural gas in accordance with Articles 15 and 16 for the volume of natural gas being consumed by their customers designated as eligible within their distribution system, in order to supply those customers.

9. Member States shall publish by 31 January of each year the criteria for the definition of eligible customers referred to in paragraph 1. This information, together with all other appropriate information to justify the fulfilment of market opening under this Article, shall be sent to the Commission to be published in the *Official Journal of the European Communities*. The Commission may request a Member State to modify its specifications if they create obstacles to the correct application of this Directive as regards the smooth functioning of the internal market in natural gas. If the Member State concerned does not comply with this request within a period of three months, a final decision shall be taken in accordance with procedure I of Article 2 of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].

[1] OJ L 197, 18.7.1987, p. 33.

Article 19

1. To avoid imbalance in the opening of gas markets during the period referred to in Article 28:

(a) contracts for the supply of gas under the provisions of Articles 15, 16 and 17 with an eligible customer in the system of another Member State shall not be prohibited if the customer is considered as eligible in both systems involved;

(b) in cases where transactions as described in subparagraph (a) are refused because the customer is eligible in only one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested gas supply, at the request of the Member State where the eligible customer is located.

2. In parallel with the procedure and the timetable provided for in Article 28, and not later than after half of the period provided for in that Article, the Commission shall review the application of paragraph 1(b) of this Article on the basis of market developments taking into account the common interest. In the light of experience, the Commission shall evaluate this situation and report on any possible imbalance in the opening of gas markets with regard to paragraph 1(b).

Article 20

1. Member States shall take the necessary measures to enable:

— natural gas undertakings established within their territory to supply the customers described in Article 18 of this Directive through a direct line,

— any such eligible customer with their territory to be supplied through a direct line by natural gas undertakings.

2. In circumstances where an authorisation (e. g. licence, permission, concession, consent or approval) is required for the construction or operation of direct lines, the Member States or any competent authority they designate shall lay down the criteria for the grant of authorisations for the construction or operation of such lines in their territory. These criteria shall be objective, transparent and non-discriminatory.

3. Member States may make authorisations to construct a direct line subject either to the refusal of system access on the basis of Article 17 or to the opening of a dispute settlement procedure under Article 21.

Article 21

1. Member States shall ensure that the parties negotiate access to the system in good faith and that none of them abuses its negotiating position to prevent the successful outcome of such negotiations.

2. Member States shall designate a competent authority, which must be independent of the parties, to settle expeditiously disputes relating to the negotiations in question. In particular, this authority shall settle disputes concerning negotiations and refusal of access within the scope of this Directive. The competent authority shall present its conclusions without delay or if possible within 12 weeks of the introduction of the dispute. Recourse to this authority shall be without prejudice to the exercise of rights of appeal under Community law.

3. In the event of cross-border disputes, the dispute settlement authority shall be the dispute settlement authority covering the system of the natural gas undertaking which refuses use of, or access to, the system. Where, in cross-border disputes, more than one such authority covers the system concerned, the authorities shall consult with a view to ensuring that the provisions of this Directive are applied consistently.

Article 22

Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 86 thereof.

Article 23

1. Member States shall take the necessary measures to ensure that natural gas undertakings and customers required to be eligible under Article 18, wherever they are located, are able to obtain access to upstream pipeline networks, including facilities supplying technical services incidental to such access, in accordance with this Article, except for the parts of such networks and facilities which are used for local production operations at the site of a field where the gas is produced. The measures shall be notified to the Commission in accordance with the provisions of Article 29.

2. The access referred to in paragraph 1 shall be provided in a manner determined by the Member State in accordance with the relevant legal instruments. Member States shall apply the objectives of fair and open access,

achieving a competitive market in natural gas and avoiding any abuse of a dominant position, taking into account security and regularity of supplies, capacity which is or can reasonably be made available, and environmental protection. The following may be taken into account:

(a) the need to refuse access where there is an incompatibility of technical specifications which cannot be reasonably overcome;

(b) the need to avoid difficulties which cannot be reasonably overcome and could prejudice the efficient, current and planned future production of hydrocarbons, including that from fields of marginal economic viability;

(c) the need to respect the duly substantiated reasonable needs of the owner or operator of the upstream pipeline network for the transport and processing of gas and the interests of all other users of the upstream pipeline network or relevant processing or handling facilities who may be affected; and

(d) the need to apply their laws and administrative procedures, in conformity with Community law, for the grant of authorisation for production or upstream development.

3. Member States shall ensure that they have in place dispute settlement arrangements, including an authority independent of the parties with access to all relevant information, to enable disputes relating to access to upstream pipeline networks to be settled expeditiously, taking into account the criteria in paragraph 2 and the number of parties which may be involved in negotiating access to such networks.

4. In the event of cross-border disputes, the dispute settlement arrangements for the Member State having jurisdiction over the upstream pipeline network which refuses access shall be applied. Where, in cross-border disputes, more than one Member State covers the network concerned, the Member State concerned shall consult with a view to ensuring that the provisions of this Directive are applied consistently.

CHAPTER VII

FINAL PROVISIONS

Article 24

1. In the event of a sudden crisis in the energy market or where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may temporarily take the necessary safeguard measures.

2. Such measures shall cause the least possible disturbance to the functioning of the internal market and shall not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

3. The Member State concerned shall without delay notify these measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.

Article 25

1. If a natural gas undertaking encounters, or considers it would encounter, serious economic and financial difficulties because of its take-or-pay commitments accepted in one or more gas-purchase contracts, an application for a temporary derogation from Article 15 and/or Article 16 may be sent to the Member State concerned or the designated competent authority. Applications shall, according to the choice of Member States, be presented on a case-by-case basis either before or after refusal of access to the system. Member States may also give the natural gas undertaking the choice to present an application either before or after refusal of access to the system. Where a natural gas undertaking has refused access, the application shall be presented without delay. The applications shall be accompanied by all relevant information on the nature and extent of the problem and on the efforts undertaken by the gas undertaking to solve the problem.

If alternative solutions are not reasonably available, and taking into account the provisions of paragraph 3, the Member State or the designated competent authority may decide to grant a derogation.

2. The Member State, or the designated competent authority, shall notify the Commission without delay of its decision to grant a derogation, together with all the relevant information with respect to the derogation. This information may be submitted to the Commission in an aggregated form, enabling the Commission to reach a well-founded decision. Within four weeks of its receipt of this notification, the Commission may request that the Member State or the designated competent authority concerned amend or withdraw the decision to grant a derogation. If the Member State or the designated competent authority concerned does not comply with this

request within a period of four weeks, a final decision shall be taken expeditiously in accordance with procedure I of Article 2 of Decision 87/373/EEC.

The Commission shall preserve the confidentiality of commercially sensitive information.

3. When deciding on the derogations referred to in paragraph 1, the Member State, or the designated competent authority, and the Commission shall take into account, in particular, the following criteria:

(a) the objective to achieve a competitive gas market;

(b) the need to fulfil public-service obligations and to ensure security of supply;

(c) the position of the natural gas undertaking in the gas market and the actual state of competition in this market;

(d) the seriousness of the economic and financial difficulties encountered by natural gas undertakings and transmission undertakings or eligible customers;

(e) the dates of signature and terms of the contract in question, including the extent to which they allow for market changes;

(f) the efforts made to find a solution to the problem;

(g) the extent to which, when accepting the take-or-pay commitments in question, the undertaking could reasonably have foreseen, having regard to the provisions of this Directive, that serious difficulties were likely to arise;

(h) the level of connection of the system with other systems and the degree of interoperability of these systems; and

(i) the effects the granting of a derogation would have on the correct application of this Directive as regards the smooth functioning of the internal natural gas market.

A decision on a request for a derogation concerning take-or-pay contracts concluded before the entry into force of this Directive should not lead to a situation in which it is impossible to find economically viable alternative outlets. Serious difficulties shall in any case be deemed not to exist when the sales of natural gas do not fall below the level of minimum offtake guarantees contained in gas-purchase take-or-pay contracts or in so far as the relevant gas-purchase take-or-pay contract can be adapted or the natural gas undertaking is able to find alternative outlets.

4. Natural gas undertakings which have not been granted a derogation as referred to in paragraph 1 shall not refuse, or shall no longer refuse, access to the system because of take-or-pay commitments accepted in a gas purchase contract. Member States shall ensure that the relevant provisions of Chapter VI are complied with.

5. Any derogation granted under the above provisions shall be duly substantiated. The Commission shall publish the decision in the *Offical Journal of the European Communities*.

6. The Commission shall, within five years of the entry into force of this Directive, submit a review report on the experience gained from the application of this Article, so as to allow the European Parliament and the Council to consider, in due course, the need to adjust it.

Article 26

1. Member States not directly connected to the interconnected system of any other Member State and having only one main external supplier may derogate from Article 4, Article 18(1), (2), (3), (4) and (6) and/or Article 20 of this Directive. A supplier having a market share of more than 75 % shall be considered to be a main supplier. This derogation shall automatically expire from the moment when at least one of these conditions no longer applies. Any such derogation shall be notified to the Commission.

2. A Member State, qualifying as an emergent market, which because of the implementation of this Directive would experience substantial problems, not associated with the contractual take-or-pay commitments referred to in Article 25, may derogate from Article 4, Article 18(1), (2), (3), (4) and (6) and/or Article 20 of this Directive. This derogation shall automatically expire from the moment when the Member State no longer qualifies as an emergent market. Any such derogation shall be notified to the Commission.

3. Where implementation of this Directive would cause substantial problems in a geographically limited area of a Member State, in particular concerning the development of the transmission infrastructure, and with a view to encouraging investments, the Member State may apply to the Commission for a temporary derogation from Article 4, Article 18(1), (2), (3), (4) and (6) and/or Article 20 for developments within this area.

4. The Commission may grant the derogation referred to in paragraph 3, taking into account, in particular, the following criteria:

— the need for infrastructure investments, which would not be economical to operate in a competitive market environment,

— the level and pay-back prospects of investments required,

— the size and maturity of the gas system in the area concerned,

— the prospects for the gas market concerned,

— the geographical size and characteristics of the area or region concerned, and

— socio-economic and demographic factors.

A derogation may be granted only if no gas infrastructure has been established in this area, or has been so established for less than 10 years. The temporary derogation may not exceed 10 years from the time gas is first supplied in the area.

5. The Commission shall inform the Member States of applications made under paragraphs 3 prior to taking a decision pursuant to paragraph 4, taking into account respect for confidentiality. This decision, as well as the derogations referred to in paragraphs 1 and 2, shall be published in the *Official Journal of the European Communities*.

Article 27

1. Before the end of the first year following the entry into force of this Directive, the Commission shall submit a report to the European Parliament and the Council on harmonisation requirements which are not linked to the provisions of this Directive. If necessary, the Commission shall attach to the report any harmonisation proposals necessary for the effective operation of the internal natural gas market.

2. The European Parliament and the Council shall give their views on such proposals within two years of their submission.

Article 28

The Commission shall review the application of this Directive and submit a report on the experience gained on the functioning of the internal market in natural gas and the implementation of the general rules mentioned in Article 3 in order to allow the European Parliament and the Council, in the light of experience gained, to consider, in due time, the possibility of provisions for further improving the internal market in natural gas, which would be effective 10 years after the entry into force of the Directive.

Article 29

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than two years from the date specified in Article 30. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, 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 reference shall be laid down by the Member States.

Article 30

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 31

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	J. CUNNINGHAM

DIRECTIVE 98/31/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 1998

amending Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions

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],

Having regard to the opinion of the European Monetary Institute [3],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [4],

(1) Whereas the risks associated with commodities trading and commodity derivatives are currently subject to Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [5]; whereas, however, the market risks associated with those positions are not captured accurately by Directive 89/647/EEC; whereas it is necessary to extend the concept of the 'trading book' to positions in commodities or commodity derivatives which are held for trading purposes and are subject mainly to market risks; whereas institutions must comply with this Directive as regards the coverage of commodity risks on their overall business; whereas the perpetration of serious fraud by certain commodity futures traders is of growing concern to the Community and a threat to the image and integrity of the futures trading business; whereas it is desirable that the Commission should consider defining an appropriate prudential framework in order to prevent these fraudulent practices in the future;

(2) Whereas Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions [6] lays down a standardised method for the calculation of capital requirements for market risks incurred by investment firms and credit institutions; whereas institutions have developed their own risk-management systems (internal models), designed to measure more accurately than the standardised method the market risks incurred by investment firms and credit institutions; whereas the use of more accurate methods of measuring risks should be encouraged;

(3) Whereas the use of such internal models for the purpose of calculating capital requirements requires strict internal control mechanisms and should be subject to recognition and supervision by the competent authorities; whereas the continued reliability of the results of the internal model calculation should be verified by a back-testing procedure;

(4) Whereas it is appropriate that competent authorities may allow margin requirements for exchange-traded futures and options, and on a transitional basis for cleared over-the-counter derivatives of the same nature, to be used as substitutes for the capital requirement calculated for such instruments in accordance with this Directive, provided that this does not lead to a capital requirement which is lower than the capital requirement calculated according to the other methods prescribed in this Directive; whereas the application of this principle does not require that

[1] OJ C 240, 6.8.1997, p. 24, and OJ C 118, 17.4.1998, p. 16.
[2] OJ C 19, 21.1.1998, p. 9.
[3] Opinion delivered on 7 October 1997.
[4] Opinion of the European Parliament of 18 December 1997 (OJ C 14, 19.1.1998), Council common position of 9 March 1998 (OJ C 135, 30.4.1998, p. 7) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Council Decision of 19 May 1998.
[5] OJ L 386, 30.12.1989, p. 14. Directive as last amended by Directive 98/32/EC of the European Parliament and of the Council (see page 26 of this Official Journal).
[6] OJ L 141, 11.6.1993, p. 1. Directive as amended by Directive 98/33/EC of the European Parliament and of the Council (see page 29 of this Official Journal).

the equivalence between such margin requirements and the capital requirements calculated according to the other methods prescribed in this Directive must be continually verified by the institutions applying this principle;

(5) Whereas the rules adopted at the wider international level may, in order to encourage more sophisticated risk-management methods based on internal models, lower capital requirements for credit institutions from third countries; whereas those credit institutions compete with investment firms and credit institutions incorporated in the Member States; whereas for investment firms and credit institutions incorporated in the Member States, only an amendment of Directive 93/6/EEC can provide similar incentives for the development and use of internal models;

(6) Whereas for the purpose of calculating market-risk-capital requirements, positions in gold and gold derivatives should be treated in a similar fashion to foreign-exchange positions;

(7) Whereas the issue of subordinated debt should not automatically exclude an issuer's equity from being included in a portfolio qualifying for a 2 % specific-risk weighting according to point 33 of Annex I to Directive 93/6/EEC;

(8) Whereas this Directive is in accordance with the work of an international forum of banking supervisors on the supervisory treatment of market risk and of positions in commodities and commodity derivatives;

(9) Whereas it is necessary to have a transitional capital regime on an optional basis for investment firms and credit institutions undertaking significant commodities business, having a diversified commodity portfolio and being not yet able to use models for the purpose of calculating the commodities risk capital requirement, in order to ensure a harmonious application of this Directive;

(10) Whereas this Directive is the most appropriate means of attaining the objectives sought and does not go beyond what is necessary to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 93/6/EEC is hereby amended as follows:

1. Article 2 is amended as follows:

(a) point 6(a) and the introductory phrase and subpoints (i) and (ii) of point 6(b) shall be replaced by the following:

'(a) its proprietary positions in financial instruments, commodities and commodity derivatives which are held for resale and/or which are taken on by the institution with the intention of benefiting in the short term from actual and/or expected differences between their buying and selling prices, or from other price or interest-rate variations, and positions in financial instruments, commodities and commodity derivatives, arising from matched principal broking, or positions taken in order to hedge other elements of the trading book;

(b) the exposures due to the unsettled transactions, free deliveries and over-the-counter (OTC) derivative instruments referred to in paragraphs 1, 2, 3 and 5 of Annex II, the exposures due to repurchase agreements and securities and commodities lending which are based on securities or commodities included in the trading book as defined in (a) referred to in paragraph 4 of Annex II, those exposures due to reverse repurchase agreements and securities-borrowing and commodities-borrowing transactions described in the same paragraph, provided the competent authorities so approve, which meet either conditions (i), (ii), (iii) and (v) or conditions (iv) and (v) as follows:

(i) the exposures are marked to market daily following the procedures laid down in Annex II;

(ii) the collateral is adjusted in order to take account of material changes in the value of the securities or commodities involved in the agreement or transaction in question, according to a rule acceptable to the competent authorities';

(b) points 15 and 16 shall be replaced by the following:

'15. "warrant" shall mean a security which gives the holder the right to purchase an underlying at a stipulated price until or at the warrant's expiry date. It may be settled by the delivery of the underlying itself or by cash settlement.

16. "stock financing" shall means positions where physical stock has been sold forward and the cost of funding has been locked in until the date of the forward sale';

(c) point 17, first paragraph, shall be replaced by the following:

'17. "repurchase agreement" and "reverse repurchase agreement" shall mean any agreement in which an institution or its counter-party transfers securities or commodities or guaranteed rights relating to title to securities or commodities where that guarantee is issued by a recognised exchange which holds the rights to the securities or commodities and the agreement does not allow an institution to transfer or pledge a particular security or commodity to more than one counter-party at one time, subject to a commitment to repurchase them (or substituted securities or commodities of the same description) at a specified price on a future date specified, or to be specified, by the transferor, being a repurchase agreement for the institution selling the securities or commodities and a reverse repurchase agreement for the institution buying them';

(d) point 18 shall be replaced by the following:

'18. "securities or commodities lending" and "securities or commodities borrowing" shall mean any transaction in which an institution or its counter-party transfers securities or commodities against appropriate collateral subject to a commitment that the borrower will return equivalent securities or commodities at some future date or when requested to do so by the transferor, that transaction being securities or commodities lending for the institution transferring the securities or commodities and being securities or commodities borrowing for the institution to which they are transferred.

Securities or commodities borrowing shall be considered an interprofessional transaction when the counter-party is subject to prudential coordination at Community level or is a Zone A credit institution as defined in Directive 89/647/EEC or is a recognised third-country investment firm or when the transaction is concluded with a recognised clearing house or exchange';

2. in Article 4(1), first subparagraph, points (i) and (ii) shall be replaced by the following:

'(i) the capital requirements, calculated in accordance with Annexes I, II and VI and, as appropriate, Annex VIII, for their trading-book business;

(ii) the capital requirements, calculated in accordance with Annexes III and VII and, as appropriate, Annex VIII, for all of their business activities'.

3. Article 5(2) shall be replaced by the following:

'2. Notwithstanding paragraph 1, those institutions which calculate the capital requirements for their trading-book business in accordance with Annexes I and II, and as appropriate Annex VIII, shall monitor and control their large exposures in accordance with Directive 92/121/EEC subject to the modifications laid down in Annex VI to this Directive';

4. Article 7(10) and the introductory part of Article 7(11), shall be replaced by the following:

'10. Where the rights of waiver provided for in paragraphs 7 and 9 are not exercised, the competent authorities may, for the purpose of calculating the capital requirements set out in Annexes I and VIII and the exposures to clients set out in Annex VI on a consolidated basis, permit positions in the trading book of one institution to offset positions in the trading book of another institution according to the rules set out in Annexes I, VI and VIII.

In addition, they may allow foreign-exchange positions in one institution to offset foreign-exchange positions in another institution in accordance with the rules set out in Annex III and/or Annex VIII. They may also allow commodities positions in one institution to offset commodities positions in another institution in accordance with the rules set out in Annex VII and/or Annex VIII.

11. The competent authorities may also permit offsetting of the trading book and of the foreign-exchange and commodities positions, respectively, of undertakings located in third countries, subject to the simultaneous fulfilment of the following conditions:'.

5. Article 8(5) shall be replaced by the following:

'5. The competent authorities shall oblige institutions to report to them immediately any case in which their counter-parties in repurchase and reverse repurchase agreements or securities and commodities-lending and securities and commodities-borrowing transactions default on their obligations. The Commission shall report to the Council on such cases and their implications for the treatment of such agreements and transactions in this Directive not more than three years after the date referred to in Article 12. Such

report shall also describe the way that institutions meet those of conditions (i) to (v) in Article 2(6)(b) that apply to them, in particular condition (v). Furthermore it shall give details of any changes in the relative volume of institutions' traditional lending and their lending through reverse repurchase agreements and securities-borrowing or commodities-borrowing transactions. If the Commission concludes on the basis of this report and other information that further safeguards are needed to prevent abuse, it shall make appropriate proposals'.

6. The following Article shall be inserted:

'*Article 11a*

Until 31 December 2006, Member States may authorise their institutions to use the minimum spread, carry and outright rates set out in the following table instead of those indicated in paragraphs 13, 14, 17 and 18 of Annex VII provided that the institutions, in the opinion of their competent authorities:

(i) undertake significant commodities business,

(ii) have a diversified commodities portfolio, and

(iii) are not yet in a position to use internal models for the purpose of calculating the capital requirement on commodities risk in accordance with Annex VIII.

Table

	Precious metals (except gold)	Base metals	Agri-cultural products (softs)	Other, including energy products
Spread rate (%)	1,0	1,2	1,5	1,5
Carry rate (%)	0,3	0,5	0,6	0,6
Outright rate (%)	8	10	12	15

Member States shall inform the Commission of the use they make of this Article'.

7. Annexes I, II, III and V shall be amended, and Annexes VII and VIII added in accordance with the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 months after the date of its entry into force. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed 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 Luxembourg, 22 June 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	J. CUNNINGHAM

ANNEX

1. Annex I is amended as follows:

(a) In Paragraph 4, the last sentence is deleted and the following subparagraph is added:

'The competent authorities may allow the capital requirement for an exchange-traded future to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the future and that it is at least equal to the capital requirement for a future that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. Until 31 December 2006 the competent authorities may also allow the capital requirement for an OTC derivatives contract of the type referred to in this paragraph cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the derivatives contract and that it is at least equal to the capital requirement for the contract in question that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII'.

(b) In paragraph 5, the third subparagraph is replaced by the following:

'The competent authorities shall require that the other risks, apart from the delta risk, associated with options are safeguarded against. The competent authorities may allow the requirement against a written exchange-traded option to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement against an option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. Until 31 December 2006 the competent authorities may also allow the capital requirement for an OTC option cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement for an OTC option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. In addition they may allow the requirement on a bought exchange-traded or OTC option to be the same as that for the instrument underlying it, subject to the constraint that the resulting requirement does not exceed the market value of the option. The requirement against a written OTC option shall be set in relation to the instrument underlying it'.

(c) Paragraph 6 is replaced by the following:

'6. Warrants relating to debt instruments and equities shall be treated in the same way as options under paragraph 5'.

(d) Paragraph 33(i) is replaced by the following:

'(i) the equities shall not be those of issuers which have issued only traded debt instruments that currently attract an 8 % requirement in Table 1 appearing in paragraph 14 or that attract a lower requirement only because they are guaranteed or secured'.

2. Annex II is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. In the case of transactions in which debt instruments, equities and commodities (excluding repurchase and reverse repurchase agreements and securities or commodities lending and securities or commodities borrowing) are unsettled after their due delivery dates, an institution must calculate the price difference to which it is exposed. This is the difference between the agreed settlement price for the debt instrument, equity or commodity in question and its current market value, where the difference could involve a loss for the institution. It must multiply this difference by the appropriate factor in column A of the table appearing in paragraph 2 in order to calculate its capital requirement'.

(b) Paragraphs 3.1 and. 3.2 are replaced by the following:

'3.1. An institution shall be required to hold capital against counterparty risk if:

(i) it has paid for securities or commodities before receiving them or it has delivered securities or commodities before receiving payment for them;

and

(ii) in the case of cross-border transactions, one day or more has elapsed since it made that payment or delivery.

3.2. The capital requirement shall be 8 % of the value of the securities or commodities or cash owed to the institution multiplied by the risk weighting applicable to the relevant counterparty'.

(c) The heading before paragraph 4.1 and the first subparagraph of paragraph 4.1 are replaced by the following:

'Repurchase and reverse repurchase agreements, securities or commodities lending and borrowing

4.1. In the case of repurchase agreements and securities or commodities lending based on securities or commodities included in the trading book the institution shall calculate the difference between the market value of the securities or commodities and the amount borrowed by the institution or the market value of the collateral, where that difference is positive. In the case of reverse repurchase agreements and securities or commodities borrowing, the institution shall calculate the difference between the amount the institution has lent or the market value of the collateral and the market value of the securities or commodities it has received, where that difference is positive'.

3. Annex III is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. If the sum of an institution's overall net foreign-exchange position and its net gold position, calculated in accordance with the procedure set out below, exceeds 2 % of its total own funds, it shall multiply the sum of its net foreign-exchange position and its net gold position by 8 % in order to calculate its own-funds requirement against foreign-exchange risk.

Until 31 December 2004, the competent authorities may allow institutions to calculate their own-funds requirement by multiplying by 8 % the amount by which the sum of the overall net foreign-exchange position and the net gold position exceeds 2 % of the total own funds'.

(b) Paragraphs 3.1 and 3.2 are replaced by the following:

'3.1. Firstly, the institution's net open position in each currency (including the reporting currency) and in gold shall be calculated. This position shall consist of the sum of the following elements (positive or negative):

— the net spot position (i. e. all asset items less all liability items, including accrued interest, in the currency in question or, for gold, the net spot position in gold),

— the net forward position (i. e. all amounts to be received less all amounts to be paid under forward exchange and gold transactions, including currency and gold futures and the principal on currency swaps not included in the spot position),

— irrevocable guarantees (and similar instruments) that are certain to be called and likely to be irrecoverable,

— net future income/expenses not yet accrued but already fully hedged (at the discretion of the reporting institution and with the prior consent of the competent authorities, net future income/expenses not yet entered in accounting records but already fully hedged by forward foreign-exchange transactions may be included here). Such discretion must be exercised on a consistent basis,

— the net delta (or delta-based) equivalent of the total book of foreign-currency and gold options,

— the market value of other (i. e. non-foreign-currency and non-gold) options,

— any positions which an institution has deliberately taken in order to hedge against the adverse effect of the exchange rate on its capital ratio may be excluded from the calculation of net open currency positions. Such positions should be of a non-trading or structural nature and their exclusion, and any variation of the terms of their exclusion, shall require the consent of the competent authorities. The same treatment subject to the same conditions as above may be applied to positions which an institution has which relate to items that are already deducted in the calculation of own funds.

3.2. The competent authorities shall have the discretion to allow institutions to use the net present value when calculating the net open position in each currency and in gold'.

(c) Paragraph 4, first sentence, is replaced by the following:

'4. Secondly, net short and long positions in each currency other than the reporting currency and the net long or short position in gold shall be converted at spot rates into the reporting currency'.

(d) Paragraph 7 is replaced by the following:

'7. Secondly, until 31 December 2004, the competent authorities may allow institutions to apply an alternative method to those outlined in paragraphs 1 to 6 for the purposes of this Annex. The capital requirement produced by this method must be sufficient to exceed 2 % of the net open position as measured in paragraph 4 and, on the basis of an analysis of exchange-rate movements during all the rolling 10-working-day periods over the preceding three years, to exceed the likely loss 99 % or more of the time.

The alternative method described in the first subparagraph may only be used under the following conditions:

(i) the calculation formula and the correlation coefficients are set by the competent authorities, based on their analysis of exchange-rate movements;

(ii) the competent authorities review the correlation coefficients regularly in the light of developments in foreign-exchange markets'.

4. Annex V is amended as follows:

(a) Paragraph 2, first sentence, is replaced by the following:

'Notwithstanding paragraph 1, the competent authorities may permit those institutions which are obliged to meet the own-funds requirements laid down in Annexes I, II, III, IV, VI, VII and VIII to use an alternative definition when meeting those requirements only'.

(b) Paragraph 4 is replaced by the following:

'4. The subordinated loan capital referred to in paragraph 2(c) may not exceed a maximum of 150 % of the original own funds left to meet the requirements laid down in Annexes I, II, III, IV, VI, VII, and VIII and may approach that maximum only in particular circumstances acceptable to the relevant authorities'.

(c) Paragraphs 6 and 7 are replaced by the following:

'6. The competent authorities may permit investment firms to exceed the ceiling for subordinated loan capital prescribed in paragraph 4 if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 200 % of the original own funds left to meet the requirements imposed in Annexes I, II, III, IV, VI, VII and VIII or 250 % of the same amount where investment firms deduct item 2(d) referred to in paragraph 2 when calculating own funds.

7. The competent authorities may permit the ceiling for subordinated loan capital prescribed in paragraph 4 to be exceeded by a credit institution if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in paragraph 5 does not exceed 250 % of the original own funds left to meet the requirements imposed in Annexes I, II, III, VI, VII and VIII'.

5. The following Annexes are added:

'ANNEX VII

COMMODITIES RISK

1. Each position in commodities or commodity derivatives shall be expressed in terms of the standard unit of measurement. The spot price in each commodity shall be expressed in the reporting currency.

2. Positions in gold or gold derivatives shall be considered as being subject to foreign-exchange risk and treated according to Annex III or Annex VIII, as appropriate, for the purpose of calculating market risk.

3. For the purposes of this Annex, positions which are purely stock financing may be excluded from the commodities risk calculation only.

4. The interest-rate and foreign-exchange risks not covered by other provisions of this Annex shall be included in the calculation of general risk for traded debt instruments and in the calculation of foreign-exchange risk.

5. When the short position falls due before the long position, institutions shall also guard against the risk of a shortage of liquidity which may exist in some markets.

6. For the purpose of paragraph 19, the excess of an institution's long (short) positions over its short (long) positions in the same commodity and identical commodity futures, options and warrants shall be its net position in each commodity. The competent authorities shall allow positions in derivative instruments to be treated, as laid down in paragraphs 8, 9 and 10, as positions in the underlying commodity.

7. The competent authorities may regard the following positions as positions in the same commodity:

   — positions in different sub-categories of commodities in cases where the sub-categories are deliverable against each other,

   and

   — positions in similar commodities if they are close substitutes and if a minimum correlation of 0,9 between price movements can be clearly established over a minimum period of one year.

Particular instruments

8. Commodity futures and forward commitments to buy or sell individual commodities shall be incorporated in the measurement system as notional amounts in terms of the standard unit of measurement and assigned a maturity with reference to expiry date. The competent authorities may allow the capital requirement for an exchange-traded future to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the future and that it is at least equal to the capital requirement for a future that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. Until 31 December 2006 the competent authorities may also allow the capital requirement for an OTC commodity derivatives contract of the type referred to in this paragraph cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the derivatives contract and that it is at least equal to the capital requirement for the contract in question that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII.

9. Commodity swaps where one side of the transaction is a fixed price and the other the current market price shall be incorporated into the maturity ladder approach as a series of positions equal to the notional amount of the contract, with one position corresponding with each payment on the swap and slotted into the maturity ladder set out in the table appearing in paragraph 13. The positions would be long positions if the institution is paying a fixed price and receiving a floating price and short positions if the institution is receiving a fixed price and paying a floating price.

   Commodity swaps where the sides of the transaction are in different commodities are to be reported in the relevant reporting ladder for the maturity ladder approach.

10. Options on commodities or on commodity derivatives shall be treated as if they were positions equal in value to the amount of the underlying to which the option refers, multiplied by its delta for the purposes of this Annex. The latter positions may be netted off against any offsetting positions in the identical underlying commodity or commodity derivative. The delta used shall be that of the exchange concerned, that calculated by the competent authorities or, where none of those is available or for OTC options, that calculated by the institution itself, subject to the competent authorities being satisfied that the model used by the institution is reasonable.

However, the competent authorities may also prescribe that institutions calculate their deltas using a methodology specified by the competent authorities.

The competent authorities shall require that the other risks, apart from the delta risk, associated with commodity options are safeguarded against. The competent authorities may allow the requirement for a written exchange-traded commodity option to be equal to the margin required by the exchange if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement against an option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. Until 31 December 2006 the competent authorities may also allow the capital requirement for an OTC commodity option cleared by a clearing house recognised by them to be equal to the margin required by the clearing house if they are fully satisfied that it provides an accurate measure of the risk associated with the option and that it is at least equal to the capital requirement for an OTC option that would result from a calculation made using the method set out in the remainder of this Annex or applying the internal models method described in Annex VIII. In addition they may allow the requirement on a bought exchange-traded or OTC commodity option to be the same as that for the commodity underlying it, subject to the constraint that the resulting requirement does not exceed the market value of the option. The requirement for a written OTC option shall be set in relation to the commodity underlying it.

11. Warrants relating to commodities shall be treated in the same way as commodity options under paragraph 10.

12. The transferor of commodities or guaranteed rights relating to title to commodities in a repurchase agreement and the lender of commodities in a commodities lending agreement shall include such commodities in the calculation of its capital requirement under this Annex.

(a) *Maturity ladder approach*

13. The institution shall use a separate maturity ladder in line with the following table for each commodity. All positions in that commodity and all positions which are regarded as positions in the same commodity pursuant to paragraph 7 shall be assigned to the appropriate maturity bands. Physical stocks shall be assigned to the first maturity band.

Maurity band (1)	Spread rate (in %) (2)
0 ≤ 1 month	1,50
> 1 ≤ 3 months	1,50
> 3 ≤ 6 months	1,50
> 6 ≤ 12 months	1,50
> 1 ≤ 2 years	1,50
> 2 ≤ 3 years	1,50
> 3 years	1,50

14. Competent authorities may allow positions which are, or are regarded pursuant to paragraph 7 as, positions in the same commodity to be offset and assigned to the appropriate maturity bands on a net basis for:

— positions in contracts maturing on the same date,

and

— positions in contracts maturing within 10 days of each other if the contracts are traded on markets which have daily delivery dates.

15. The institution shall then work out the sum of the long positions and the sum of the short positions in each maturity band. The amount of the former (latter) which are matched by the latter (former) in a given maturity band shall be the matched positions in that band, while the residual long or short position shall be the unmatched position for the same band.

16. That part of the unmatched long (short) position for a given maturity band that is matched by the unmatched short (long) position for a maturity band further out shall be the matched position between two maturity bands. That part of the unmatched long or unmatched short position that cannot be thus matched shall be the unmatched position.

17. The institution's capital requirement for each commodity shall be calculated on the basis of the relevant maturity ladder as the sum of the following:

(i) the sum of the matched long and short positions, multiplied by the appropriate spread rate as indicated in the second column of the table appearing in paragraph 13 for each maturity band and by the spot price for the commodity;

(ii) the matched position between two maturity bands for each maturity band into which an unmatched position is carried forward, multiplied by 0,6 % (carry rate) and by the spot price for the commodity;

(iii) the residual unmatched positions, multiplied by 15 % (outright rate) and by the spot price for the commodity.

18. The institution's overall capital requirement for commodities risk shall be calculated as the sum of the capital requirements calculated for each commodity according to paragraph 17.

(b) *Simplified approach*

19. The institution's capital requirement for each commodity shall be calculated as the sum of:

(i) 15 % of the net position, long or short, multiplied by the spot price for the commodity;

(ii) 3 % of the gross position, long plus short, multiplied by the spot price for the commodity.

20. The institution's overall capital requirement for commodities risk shall be calculated as the sum of the capital requirements calculated for each commodity according to paragraph 19.

ANNEX VIII

INTERNAL MODELS

1. The competent authorities may, subject to the conditions laid down in this Annex, allow institutions to calculate their capital requirements for position risk, foreign-exchange risk and/or commodities risk using their own internal risk-management models instead of or in combination with the methods described in Annexes I, III and VII. Explicit recognition by the competent authorities of the use of models for supervisory capital purposes shall be required in each case.

2. Recognition shall only be given if the competent authority is satisfied that the institution's risk-management system is conceptually sound and implemented with integrity and that, in particular, the following qualitative standards are met:

(i) the internal risk-measurement model is closely integrated into the daily risk-management process of the institution and serves as the basis for reporting risk exposures to senior management of the institution;

(ii) the institution has a risk control unit that is independent from business trading units and reports directly to senior management. The unit must be responsible for designing and implementing the institution's risk-management system. It shall produce and analyse daily reports on the output of the risk-measurement model and on the appropriate measures to be taken in terms of trading limits;

(iii) the institution's board of directors and senior management are actively involved in the risk-control process and the daily reports produced by the risk-control unit are reviewed by a level of management with sufficient authority to enforce both reductions of positions taken by individual traders as well as in the institution's overall risk exposure;

(iv) the institution has sufficient numbers of staff skilled in the use of sophisticated models in the trading, risk-control, audit and back-office areas;

(v) the institution has established procedures for monitoring and ensuring compliance with a documented set of internal policies and controls concerning the overall operation of the risk-measurement system;

(vi) the institution's models have a proven track record of reasonable accuracy in measuring risks;

(vii) the institution frequently conduct a rigorous programme of stress testing and the results of these tests are reviewed by senior management and reflected in the policies and limits it sets;

(viii) the institution must conduct, as part of its regular internal auditing process, an independent review of its risk-measurement system. This review must include both the activities of the business trading units and of the independent risk-control unit. At least once a year, the institution must conduct a review of its overall risk-management process. The review must consider:

— the adequacy of the documentation of the risk-management system and process and the organisation of the risk-control unit,

— the integration of market risk measures into daily risk management and the integrity of the management information system,

— the process the institution employs for approving risk-pricing models and valuation systems that are used by front and back-office personnel,

— the scope of market risks captured by the risk-measurement model and the validation of any significant changes in the risk-measurement process,

— the accuracy and completeness of position data, the accuracy and appropriateness of volatility and correlation assumptions, and the accuracy of valuation and risk sensitivity calculations,

— the verification process the institution employs to evaluate the consistency, timeliness and reliability of data sources used to run internal models, including the independence of such data sources,

and

— the verification process the institution uses to evaluate back-testing that is conducted to assess the model's accuracy.

3. The institution shall monitor the accuracy and performance of its model by conducting a back-testing programme. The back-testing has to provide for each business day a comparison of the one-day value-at-risk measure generated by the institution's value by the end of the subsequent business day. Competent authorities shall examine the institution's capability to perform back-testing on both actual and hypothetical changes in the portfolio's value. Back-testing on hypothetical changes in the portfolio's value is based on a comparison between the portfolio's end-of-day value and, assuming unchanged positions, its value at the end of the subsequent day. Competent authorities shall require institutions to take appropriate measures to improve their back-testing programme if deemed deficient.

4. For the purpose of calculating capital requirements for specific risk associated with traded debt and equity positions, the competent authorities may recognise the use of an institution's internal model if in addition to compliance with the conditions in the remainder of this Annex the model:

— explains the historical price variation in the portfolio,

— captures concentration in terms of magnitude and changes of composition of the portfolio,

— is robust to an adverse environment,

— is validated through back-testing aimed at assessing whether specific risk is being accurately captured. If competent authorities allow this back-testing to be performed on the basis of relevant sub-portfolios, these must be chosen in a consistent manner.

5. Institutions using internal models which are not recognised in accordance with paragraph 4 shall be subject to a separate capital charge for specific risk as calculated according to Annex I.

6. For the purpose of paragraph 10(ii) the results of the institution's own calculation shall be scaled up by a multiplication factor of at least 3.

7. The multiplication factor shall be increased by a plus-factor of between 0 and 1 in accordance with the following table, depending on the number of overshootings for the most recent 250 business days as evidenced by the institution's back-testing. Competent authorities shall require the institutions to calculate overshootings consistently on the basis of back-testing either on actual or on hypothetical changes in the portfolio's value. An overshooting is a one-day change in the portfolio's value that exceeds the related one-day value-at-risk measure generated by the institution's model. For the purpose of determining the plus-factor the number of overshootings shall be assessed at least quarterly.

Number of overshootings	Plus-factor
Fewer than 5	0,00
5	0,40
6	0,50
7	0,65
8	0,75
9	0,85
10 or more	1,00

The competent authorities can, in individual cases and owing to an exceptional situation, waive the requirement to increase the multiplication factor by the plus-factor according to the above table, if the institution has demonstrated to the satisfaction of the competent authorities that such an increase is unjustified and that the model is basically sound.

If numerous overshootings indicate that the model is not sufficiently accurate, the competent authorities shall revoke the model's recognition or impose appropriate measures to ensure that the model is improved promptly.

In order to allow competent authorities to monitor the appropriateness of the plus-factor on an ongoing basis, institutions shall notify promptly, and in any case no later than within five working days, the competent authorities of overshootings that result form their back-testing programme and that would according to the above table imply an increase of a plus-factor.

8. If the institution's model is recognised by the competent authorities in accordance with paragraph 4 for the purpose of calculating capital requirements for specific risk, the institution shall increase its capital requirement calculated pursuant to paragraphs 6, 7 and 10 by a surcharge in the amount of either:

   (i) the specific risk portion of the value-at-risk measure which should be isolated according to supervisory guidelines; or, at the institution's option,

   (ii) the value-at-risk measures of sub-portfolios of debt and equity positions that contain specific risk.

   Institutions using option (ii) are required to identify their sub-portfolio structure beforehand and should not change it without the consent of the competent authorities.

9. The competent authorities may waive the requirement pursuant to paragraph 8 for a surcharge if the institution demonstrates that in line with agreed international standards its model accurately captures also the event risk and default risk for its traded debt and equity positions.

10. Each institution must meet a capital requirement expressed as the higher of:

   (i) its previous day's value-at-risk number measured according to the parameters specified in this Annex;

(ii) an average of the daily value-at-risk measures on each of the preceding 60 business days, multiplied by the factor mentioned in paragraph 6, adjusted by the factor mentioned in paragraph 7.

11. The calculation of value-at-risk shall be subject to the following minimum standards:

(i) at least daily calculation of value-at-risk;

(ii) a 99th percentile, one-tailed confidence interval;

(iii) a 10-day equivalent holding period;

(iv) an effective historical observation period of at least one year except where a shorter observation period is justified by a significant upsurge in price volatility;

(v) three-monthly data set updates.

12. The competent authorities shall require that the model captures accurately all the material price risks of options or option-like positions and that any other risks not captured by the model are covered adequately by own funds.

13. The competent authorities shall require that the risk-measurement model captures a sufficient number of risk factors, depending on the level of activity of the institution in the respective markets. As a minimum, the following provisions shall be respected:

(i) for interest rate risk, the risk-measurement system shall incorporate a set of risk factors corresponding to the interest rates in each currency in which the institution has interest rate sensitive on- or off-balance sheet positions. The institution shall model the yield curves using one of the generally accepted approaches. For material exposures to interest-rate risk in the major currencies and markets, the yield curve shall be divided into a minimum of six maturity segments, to capture the variations of volatility of rates along the yield curve. The risk-measurement system must also capture the risk of less than perfectly correlated movements between different yield curves;

(ii) for foreign-exchange risk, the risk-measurement system shall incorporate risk factors corresponding to gold and to the individual foreign currencies in which the institution's positions are denominated;

(iii) for equity risk, the risk-measurement system shall use a separate risk factor at least for each of the equity markets in which the institution holds significant positions;

(iv) for commodity risk, the risk-measurement system shall use a separate risk factor at least for each commodity in which the institution holds significant positions. The risk-measurement system must also capture the risk of less than perfectly correlated movements between similar, but not identical, commodities and the exposure to changes in forward prices arising from maturity mismatches. It shall also take account of market characteristics, notably delivery dates and the scope provided to traders to close out positions.

14. The competent authorities may allow institutions to use empirical correlations within risk categories and across risk categories if they are satisfied that the institution's system for measuring correlations is sound and implemented with integrity'.

DIRECTIVE 98/32/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 1998

amending, as regards in particular mortgages, Council Directive 89/647/EEC on a solvency ratio for credit institutions

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],

(1) Whereas it is appropriate to treat mortgage-backed securities as 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 equivalent in the light of the credit risk; whereas the market for securitisation is undergoing rapid development; whereas it is therefore desirable that the Commission should examine with the Member States the prudential treatment of asset-backed securities and put forward, within a year from the adoption of this Directive, proposals aimed at adapting existing legislation in order to define an appropriate prudential treatment for asset-backed securities;

(2) Whereas Article 11(4) of Directive 89/647/EEC provides for a derogation from Article 6(1)(c)(1), on certain conditions, for four Member States 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;

(3) Whereas when Directive 89/647/EEC was adopted, the Commission undertook to examine this derogation to determine whether, in the light of its findings and of international developments and in view of the need to avoid distortions of competition, 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 covered; whereas, therefore, this derogation can be extended to all Member States which so wish until 31 December 2006;

(4) Whereas the property to which the mortgage relates must be subject to rigorous assessment criteria and regular revaluation to take account of the developments in the commercial property market; whereas the property must be either occupied or let by the owner; whereas loans for property development are excluded from this provision;

(5) Whereas this Directive is the most appropriate means for attaining the objectives sought and does not go beyond what is necessary to achieve these objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/647/EEC is amended as follows:

1. In Article 6(1)(c)(1) the following subparagraph shall be added:

---

(1) OJ C 114, 19.4.1996, p. 9.
(2) OJ C 30, 30.1.1997, p. 99.
(3) Opinion of the European Parliament of 17 September 1996 (OJ C 320, 28.10.1996, p. 26), Council common position of 9 March 1998 (OJ C 135, 30.4.1998, p.1) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Council Decision of 19 May 1998.
(4) OJ L 386, 30.12.1989, p. 14. Directive as last amended by Directive 96/10/EC (OJ L 85, 3.4.1996, p. 17).

'"mortgage-backed securities" which may be treated as loans referred to in the first subparagraph or in Article 11(4), if the competent authorities consider, having regard to the legal framework in force in each Member State, that they are equivalent in the light of the credit risk. Without prejudice to the types of securities which may be included in and are capable of fulfilling the conditions in this point 1, "mortgage-backed securities" may include instruments within the meaning of Section B(1)(a) and (b) of the Annex to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (*). The competent 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 or in Article 11(4) and are fully performing when the mortgage-backed securities are created;

(ii) an acceptable high-priority charge on the underlying mortgage asset items is held either directly by investors in mortgage-backed securities or on their behalf by a trustee or mandated representative in the same proportion to the securities which they hold.

(*) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7)'.

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

'4. Until 31 December 2006, the competent authorities of the Member States may authorise 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, subject to the following conditions:

(i) the 50 % risk weighting applies to the part of the loan that does not exceed a limit calculated according to either (a) or (b):

(a) 50 % of the market value of the property in question.

The market value of the property must be calculated by two independent valuers making independent assessments at the time the loan is made. The loan must be based on the lower of the two valuations.

The property shall be revalued at least once a year by one valuer. For loans not exceeding ECU 1 million and 5 % of the own funds of the credit institution, the property shall be revalued at least every three years by one valuer;

(b) 50 % of the market value of the property or 60 % of the mortgage lending value, whichever is lower, in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions.

The mortgage lending value shall mean the value of the property as determined by a valuer making a prudent assessment of the future marketability of the property by taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property. Speculative elements shall not be taken into account in the assessment of the mortgage lending value. The mortgage lending value shall be documented in a transparent and clear manner.

At least every three years or if the market falls by more than 10 %, the mortgage lending value and in particular the underlying assumptions concerning the development of the relevant market, shall be reassessed.

In both (a) and (b) "market value" shall mean the price at which the property could be sold under private contract between a willing seller and an arm's length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale;

(ii) the 100 % risk weighting applies to the part of the loan that exceeds the limits set out in (i);

(iii) the property must be either used or let by the owner.

The first subparagraph shall not prevent the competent authorities of a Member State, which applies a higher risk weighting in its territory, from allowing, under the conditions defined above, the 50 % risk weighting to apply for this type of lending in the territories of those Member States that allow the 50 % risk weighting.

The competent authorities of the Member States may allow their credit institutions to apply a 50 % risk weighting to the loans outstanding on 21 July 2000 provided that the conditions listed in this paragraph are fulfilled. In this case the property shall be valued according to the assessment criteria laid down above not later than 21 July 2003.

For loans granted before 31 December 2006, the 50 % risk weighting remains applicable until their maturity, if the credit institution is bound to observe the contractual terms.

Until 31 December 2006, the competent authorities of the Member State may also authorise their credit institutions to apply a 50 % risk weighting to the part of the loans fully and completely secured to their satisfaction by shares in Finnish housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, provided that the conditions laid down in this paragraph are fulfilled.

Member States shall inform the Commission of the use they make of this paragraph.'

3. Article 11(5) shall be replaced by the following:

'5. Member States may apply a 50 % risk weighting to property leasing transactions concluded before 31 December 2006 and concerning assets for business use situated in the country of the head office and governed by statutory provisions whereby the lessor retains full ownership of the rented asset until the tenant exercises his option to purchase. Member States shall inform the Commission of the use they make of this paragraph'.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 months after its entry into force. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the filed governed 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 Luxembourg, 22 June 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	J. CUNNINGHAM

DIRECTIVE 98/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 1998

amending Article 12 of Council Directive 77/780/EEC on the taking up and pursuit of the business of credit institutions, Articles 2, 5, 6, 7, 8 of and Annexes II and III to Council Directive 89/647/EEC on a solvency ratio for credit institutions and Article 2 of and Annex II to Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions

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],

(1) Whereas the first Council Directive (77/780/EEC) of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions [4] allows the exchange of information between competent authorities and certain other authorities or bodies within a Member State or between Member States; whereas the said Directive also allows the conclusion by Member States of cooperation agreements providing for the exchange of information with the competent authorities of third countries; whereas on grounds of consistency, this authorisation to conclude agreements on the exchange of information with third countries should be extended so as to include the exchange of information with certain other authorities or bodies in those countries provided that the information disclosed is subject to appropriate guarantees of professional secrecy;

(2) Whereas Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [5] weights assets and off-balance-sheet items according to their degree of credit risk;

(3) Whereas churches and religious communities which, constituted in the form of a legal person under public law, raise taxes in accordance with the laws conferring such a right on them represent a credit risk similar to that of regional governments and local authorities; whereas, accordingly, it is consistent to afford the competent authorities the possibility of treating claims on churches and religious communities in the same way as claims on regional governments and local authorities where these churches and religious communities raise taxes; whereas, however, the option to apply a 0 % weighting to claims on regional governments and local authorities shall not extend to claims on churches and religious communities only on the basis of the right to raise taxes;

(4) Whereas Commission Directive 94/7/EC of 15 March 1994 adapting Council Directive 89/647/EEC on a solvency ratio for credit institutions as regards the technical definition of 'multilateral development banks' [6] included the European Investment Fund in that definition; whereas the Fund constitutes a new and unique structure of cooperation in Europe in order to contribute to the strengthening of the internal market, the promotion of economic recovery in Europe and the furthering of economic and social cohesion;

(5) Whereas within the meaning of Article 6(1)(d)(7) of Directive 89/647/EEC, a weighting of 100 % should be applied to the unpaid portion of capital

---

(1) OJ C 208, 19.7.1996, p. 8, and OJ C 259, 26.8.1997, p. 1.
(2) OJ C 30, 30.1.1997, p. 13.
(3) Opinion of the European Parliament of 10 April 1997 (OJ C 132, 28.4.1997, p. 234), Council common position of 9 March 1998 (OJ C 135, 30.4.1998, p. 32) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Council Decision of 19 May 1998.
(4) OJ L 322, 17.12.1977, p. 30. Directive as last amended by Directive 96/13/EC (OJ L 66, 16.3.1996, p. 15).
(5) OJ L 386, 30.12.1989, p. 14. Directive as last amended by Directive 98/32/EC (see page 29 of this Official Journal).
(6) OJ L 89, 6.4.1994, p. 17.

subscribed to the European Investment Fund by credit institutions;

(6) Whereas the capital of the European Investment Fund reserved for subscription by financial institutions is limited to 30 %, of which 20 % is to be paid up at the outset in four annual payments each of 5 %; whereas, accordingly, 80 % is not to be paid up, remaining a contingent liability on the members of the Fund; whereas, having regard to the European Council's stated objective when creating the Fund of encouraging commercial banks to participate, such participation should not be penalised and whereas, accordingly, it would be more appropriate to apply a 20 % weighting to the unpaid portion of subscribed capital;

(7) Whereas Annex I to Directive 89/647/EEC, which deals with the classification of off-balance-sheet items, classifies certain items as full risk and, accordingly, applies a 100 % weighting; whereas Article 6(4) of that Directive lays down that 'where off-balance-sheet items carry explicit guarantees, they shall be weighted as if they had been incurred on behalf of the guarantor rather than the counterparty. Where the potential exposure arising from off-balance-sheet transactions is fully and completely secured, to the satisfaction of the competent authorities, by any of the asset items recognised as collateral in paragraph 1(a)(7) or 1(b)(11), weightings of 0 % or 20 % shall apply, depending on the collateral in question';

(8) Whereas the clearing of over-the-counter (OTC) derivative instruments provided by clearing houses acting as a central counterparty plays an important role in certain Member States; whereas it is appropriate to recognise the benefits from such a clearing in terms of a reduction of credit risk and related systemic risk in the prudential treatment of credit risk; whereas it is necessary for the current and potential future exposures arising from cleared OTC derivatives contracts to be fully collateralised and for the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral to be eliminated in order for cleared OTC derivatives to be granted for a transitional period the same prudential treatment as exchange-traded derivatives; whereas the competent authorities must be satisfied as to the level of the initial margins and variation margins required and the quality of and the level of protection provided by the posted collateral;

(9) Whereas account should also be taken of the case where the guarantee is secured by real collateral within the meaning of Article 6(1)(c)(1) in respect of off-balance-sheet items which are sureties or guarantees having the character of credit substitutes;

(10) Whereas within the meaning of points 2, 4 and 7 of Article 6(1)(a) of Directive 89/647/EEC, a zero weighting is applied to assets constituting claims on Zone A central governments and central banks or explicitly guaranteed by them and to assets secured by collateral in the form of Zone A central government or central bank securities; whereas, within the meaning of Article 7(1) of that Directive, the Member States may, on certain conditions, apply a zero weighting to assets constituting claims on their own regional governments and local authorities and to claims on third parties and off-balance-sheet items held on behalf of third parties and guaranteed by those regional governments or local authorities;

(11) Whereas Article 8(1) of Directive 89/647/EEC lays down that the Member States may apply a weighting of 20 % to asset items which are secured, to the satisfaction of the competent authorities, by collateral in the form of securities issued by Zone A regional governments or local authorities; whereas collateral in the form of securities issued by regional governments or local authorities of the Member States should be regarded as being guaranteed by those regional governments and local authorities within the meaning of Article 7(1) with a view to allowing the competent authorities to apply a zero weighting to assets and off-balance-sheet items secured by such collateral, again subject to the conditions laid down in that paragraph;

(12) Whereas Annex II to Directive 89/647/EEC lays down the treatment of off-balance-sheet items commonly referred to as OTC-derivative instruments concerning interest and foreign exchange rates in the context of the calculation of credit institutions' capital requirements;

(13) Whereas Articles 2(1)(a), Article 2(2), Article 2(3)(b), and Article 2(6) and Article 3(1) and (2) of this Directive and the Annex thereto are in accordance with the work of an international forum of banking supervisors on a refined and in

some aspects more stringent supervisory treatment of the credit risks inherent in OTC derivative instruments, in particular the extension of compulsory capital cover to OTC derivative instruments concerning underlyings other than interest and foreign exchange rates and the possibility of taking into account the risk-reducing effects of contractual netting agreements recognised by competent authorities when calculating the capital requirements for the potential future credit risks inherent in OTC derivative instruments;

(14) Whereas for internationally active credit institutions and groups of credit institutions in a wide range of third countries, which compete with Community credit institutions, the rules adopted on the wider international level will result in a refined supervisory treatment of OTC derivative instruments; whereas this refinement results in a more appropriate compulsory capital cover taking into account the risk-reducing effects of supervisorily recognised contractual netting agreements on potential future credit risks;

(15) Whereas for Community credit institutions a similar refinement of the supervisory treatment of OTC derivative instruments including the possibility of taking into account the risk reducing effects of supervisorily recognised contractual netting agreements on potential future credit risks can be achieved only by amending Directive 89/647/EEC;

(16) Whereas to ensure a level playing-field between credit institutions and investment firms competing in the Community, consistency in the supervisory treatment of their respective activities in the area of OTC derivative instruments is necessary and can only be achieved by adaptations of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions [1];

(17) Whereas this Directive is the most appropriate means of attaining the objectives sought and does not go beyond what is necessary to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In Directive 77/780/EEC Article 12(3) shall be replaced by the following:

'3. Member States may conclude cooperation agreements, providing for the exchange of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs (5) and (5a) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be for the purpose of performing the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement'.

Article 2

Directive 89/647/EEC is amended as follows:

1. Article 2 shall be amended as follows:

(a) In paragraph (1) the following indent shall be added:

'— "recognised exchanges" shall mean exchanges recognised by the competent authorities which:

(i) function regularly,

(ii) have rules, issued or approved by the appropriate authorities of the home country of the exchange, which define the conditions for the operation of the exchange, the conditions for access to the exchange as well as the conditions that must be satisfied by a contract before it can effectively be dealt on the exchange,

(iii) have a clearing mechanism that provides for contracts listed in Annex III to be subject to daily margin requirements providing an appropriate protection in the opinion of the competent authorities.'

(b) In paragraph (2) the following subparagraph shall be added:

[1] OJ L 141, 11.6.1993, p. 1.

'The competent authorities may also include within the concept of regional governments and local authorities, churches and religious communities constituted in the form of a legal person under public law, in so far as they raise taxes in accordance with legislation conferring on them the right to do so. However, in this case the option set out in Article 7 shall not apply'.

2. In Article 5(3), the first sentence shall be replaced by the following:

'3. In the case of the off-balance-sheet items referred to in Article 6(3), the potential costs of replacing contracts in the event of counterparty default shall be calculated by means of one of the two methods set out in Annex II'.

3. Article 6 shall be amended as follows:

(a) In paragraph (2) the following sentence shall be added:

'The portion of unpaid capital subscribed to the European Investment Fund may be weighted at 20 %'.

(b) Paragraph (3) shall be replaced by the following:

'3. The methods set out in Annex II shall be applied to the off-balance-sheet items listed in Annex III except for:

— contracts traded on recognised exchanges,

— foreign-exchange contracts (except contracts concerning gold) with an original maturity of 14 calendar days or less.

Until 31 December 2006, the competent authorities of Member States may exempt from the application of the methods set out in Annex II over-the-counter (OTC) contracts cleared by a clearing house where the latter acts as the legal counterparty and all participants fully collateralise on a daily basis the exposure they present to the clearing house, thereby providing a protection covering both the current exposure and the potential future exposure. The competent authorities must be satisfied that the posted collateral gives the same level of protection as collateral which complies with paragraph 1(a)(7) and that the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral is eliminated. Member States shall inform the Commission of the use they make of this option'.

(c) In paragraph (4) the following subparagraph shall be added:

'The Member States may apply a 50 % weighting to off-balance-sheet items which are sureties or guarantees having the character of credit substitutes and which are fully guaranteed, to the satisfaction of the competent authorities, by mortgages meeting the conditions set out in paragraph (1)(c)(1), subject to the guarantor having a direct right to such collateral'.

4. Article 7 shall be amended as follows:

(a) in paragraph (1) the following shall be added after the words 'local authorities':

'or secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by those regional governments or local authorities';

(b) in paragraph (2) the following shall be added after the words 'the latter':

', including collateral in the form of securities'.

5. Article 8(1) shall be replaced by the following:

'1. Without prejudice to Article 7(1) the Member States may apply a weighting of 20 % to asset items which are secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by Zone A regional governments or local authorities, by deposits placed with Zone A credit institutions other than the lending institution, or by certificates of deposit or similar instruments issued by such credit institutions'.

6. Annexes II and III shall be amended or replaced in accordance with Parts A and B of the Annex to this Directive.

Article 3

Directive 93/6/EEC is amended as follows:

1. Article 2(10) shall be replaced by the following:

'10. "over-the-counter (OTC) derivative instruments" shall mean the off-balance-sheet items to which according to the first subparagraph of Article 6(3) of Directive 89/647/EEC the methods set out in Annex II to the said Directive shall be applied'.

2. Annex II, point 5, shall be replaced by the following:

'5. In order to calculate the capital requirement on their OTC derivative instruments, institutions shall apply Article II to Directive 89/647/EEC. The risk weightings to be applied to the relevant counterparties shall be determined in accordance with Article 2(9) of this Directive.

Until 31 December 2006, the competent authorities of Member States may exempt from the application of the methods set out in Annex II OTC contracts cleared by a clearing house where the latter acts as the legal counterparty and all participants fully collateralise on a daily basis the exposure they present to the clearing house, thereby providing a protection covering both the current exposure and the potential future exposure. The competent authorities must be satisfied that the posted collateral gives the same level of protection as collateral which complies with Article 6(1)(a)(7) of Directive 89/647/EEC and that the risk of a build-up of the clearing house's exposures beyond the market value of posted collateral is eliminated. Member States shall inform the Commission of the use they make of this option'.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive not later than 24 months after the date of its entry into force. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 reference shall be laid down by Member States.

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

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	J. CUNNINGHAM

ANNEX

A. Annex II to Directive 89/647/EEC is amended as follows:

1. The heading is replaced by the following:

'*ANNEX II*

THE TREATMENT OF OFF-BALANCE SHEET ITEMS';

2. Point 1 is replaced by the following:

'1. Choice of the method

To measure the credit risks associated with the contracts listed in points 1 and 2 of Annex III, credit institutions may choose, subject to the consent of the competent authorities, one of the methods set out below. Credit institutions which have to comply with Article 6(1) of Directive 93/6/EEC must use method 1 set out below. To measure the credit risks associated with the contracts listed in point 3 of Annex III all credit institutions must use method 1 set out below';

3. In point 2, Table 1 is replaced by the following:

'TABLE [a] [b]

Residual maturity [c]	Interest-rate contracts	Contracts concerning foreign-exchange rates and gold	Contracts concerning equities	Contracts concerning precious metals except gold	Contracts concerning commodities other than precious metals
One year or less	0 %	1 %	6 %	7 %	10 %
Over one year, less than five years	0,5 %	5 %	8 %	7 %	12 %
Over five years	1,5 %	7,5 %	10 %	8 %	15 %

[a] Contracts which do not fall within one of the five categories indicated in this table shall be treated as contracts concerning commodities other than precious metals.

[b] For contracts with multiple exchanges of principal, the percentages have to be multiplied by the number of remaining payments still to be made according to the contract.

[c] For contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the residual maturity would be equal to the time until the next reset date. In the case of interest-rate contracts that meet these criteria and have a remaining maturity of over one year, the percentage shall be no lower than 0,5 %.

For the purpose of calculating the potential future exposure in accordance with step (b) the competent authorities may allow credit institutions until 31 December 2006 to apply the following percentages instead of those prescribed in Table 1 provided that the institutions make use of the option set out in Article 11a of Directive 93/6/EEC for contracts within the meaning of point 3(b) and (c) of Annex III:

Table 1a

Residual maturity	Precious metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
One year or less	2 %	2,5 %	3 %	4 %
Over one year, less than five years	5 %	4 %	5 %	6 %
Over five years	7,5 %	8 %	9 %	10 %'

4. In Table 2, the heading in the first row of the third column is replaced by:

'Contracts concerning foreign-exchange rates and gold'.

5. In point 2 the following paragraph is added at the end:

'For methods 1 and 2 the competent authorities must ensure that the notional amount to be taken into account is an appropriate yardstick for the risk inherent in the contract. Where, for instance, the contract provides for a multiplication of cash flows, the notional amount must be adjusted in order to take into account the effects of the multiplication on the risk structure of that contract'.

6. In point (3)(b) the following paragraph is added:

'The competent authorities may recognise as risk-reducing contractual-netting agreements covering foreign-exchange contracts with an original maturity of 14 calendar days or less written options or similar off-balance-sheet items to which this Annex does not apply because they bear only a negligible or no credit risk. If, depending on the positive or negative market value of these contracts, their inclusion in another netting agreement can result in an increase or decrease of the capital requirements, competent authorities must oblige their credit institution to use a consistent treatment.'

7. In point (3)(c)(ii), the first paragraph and the introductory wording and the second paragraph, first indent, are replaced by the following:

'(ii) Other netting agreements

In application of method 1:

in step (a) the current replacement cost for the contracts included in a netting agreement may be obtained by taking account of the actual hypothetical net replacement cost which results from the agreement; in the case where netting leads to a net obligation for the credit institution calculating the net replacement cost, the current replacement cost is calculated as "0";

in step (b) the figure for potential future credit exposure for all contracts included in a netting agreement may be reduced according to the following equation:

$$PCE_{red} = 0{,}4 * PCE_{gross} + 0{,}6 * NGR * PCE_{gross}$$

where:

— PCE_{red} = the reduced figure for potential future credit exposure for all contracts with a given counterparty included in a legally valid bilateral netting agreement,

— PCE_{gross} = the sum of the figures for potential future credit exposure for all contracts with a given counterparty which are included in a legally valid bilateral netting agreement and are calculated by multiplying their notional principal amounts by the percentages set out in Table 1,

— NGR = "net-to-gross ratio": at the discretion of the competent authorities either:

(i) separate calculation: the quotient of the net replacement cost for all contracts included in a legally valid bilateral netting agreement with a given counterparty (numerator) and the gross replacement cost for all contracts included in a legally valid bilateral netting agreement with that counterparty (denominator), or

(ii) aggregate calculation: the quotient of the sum of the net replacement cost calculated on a bilateral basis for all counterparties taking into account the contracts included in legally valid netting agreements (numerator) and the gross replacement cost for all contracts included in legally valid netting agreements (denominator).

If Member States permit credit institutions a choice of methods, the method chosen is to be used consistently.

For the calculation of the potential future credit exposure according to the above formula perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts. Perfectly matching contracts are forward foreign exchange contracts or similar contracts in which notional principal is equivalent to cash flows if the cash flows fall due on the same value date and fully or partly in the same currency.

In the application of method 2, in step (a)

— perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts, the notional principal amounts are multiplied by the percentages given in Table 2'.

B. Annex III to Directive 89/647/EEC is replaced by the following:

'*ANNEX III*

TYPES OF OFF-BALANCE-SHEET ITEMS

1. Interest-rate contracts:
   (a) single-currency interest rate swaps,
   (b) basis-swaps,
   (c) forward-rate agreements,
   (d) interest-rate futures,
   (e) interest-rate options purchased,
   (f) other contracts of similar nature.
2. Foreign-exchange contracts and contracts concerning gold:
   (a) cross-currency interest-rate swaps,
   (b) forward foreign-exchange contracts,
   (c) currency futures,
   (d) currency options purchased,
   (e) other contracts of a similar nature,
   (f) contracts concerning gold of a nature similar to (a) to (e).
3. Contracts of a nature similar to those in points 1(a) to (e) and 2(a) to (d) concerning other reference items or indices concerning:
   (a) equities,
   (b) precious metals except gold,
   (c) commodities other than precious metals,
   (d) other contracts of a similar nature'.

DIRECTIVE 98/34/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 1998

laying down a procedure for the provision of information in the field of technical standards and regulations

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 100a, 213 and 43 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 laid down in Article 189b of the Treaty [3],

(1) Whereas Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [4] has been variously and substantially amended; whereas for reasons of clarity and rationality the said Directive should be consolidated;

(2) Whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured; whereas, therefore, the prohibition of quantitative restrictions on the movement of goods and of measures having an equivalent effect is one of the basic principles of the Community;

(3) Whereas in order to promote the smooth functioning of the internal market, as much transparency as possible should be ensured as regards national initiatives for the establishment of technical standards or regulations;

(4) Whereas barriers to trade resulting from technical regulations relating to products may be allowed only where they are necessary in order to meet essential requirements and have an objective in the public interest of which they constitute the main guarantee;

(5) Whereas it is essential for the Commission to have the necessary information at its disposal before the adoption of technical provisions; whereas, consequently, the Member States which are required to facilitate the achievement of its task pursuant to Article 5 of the Treaty must notify it of their projects in the field of technical regulations;

(6) Whereas all the Member States must also be informed of the technical regulations contemplated by any one Member State;

(7) Whereas the aim of the internal market is to create an environment that is conducive to the competitiveness of undertakings; whereas increased provision of information is one way of helping undertakings to make more of the advantages inherent in this market; whereas it is therefore necessary to enable economic operators to give their assessment of the impact of the national technical regulations proposed by other Member States, by providing for the regular publication of the titles of notified drafts and by means of the provisions relating to the confidentiality of such drafts;

(8) Whereas it is appropriate, in the interests of legal certainty, that Member States publicly announce that a national technical regulation has been adopted in accordance with the formalities laid down in this Directive;

(9) Whereas, as far as technical regulations for products are concerned, the measures designed to ensure the proper functioning or the continued development of the market include greater transparency of national intentions and a broadening of the criteria and conditions for assessing the potential effect of the proposed regulations on the market;

---

[1] OJ C 78, 12.3.1997, p. 4.
[2] OJ C 133, 28.4.1997, p. 5.
[3] Opinion of the European Parliament of 17 September 1997 (OJ C 304, 6.10.1997, p. 79), Council Common Position of 23 February 1998 (OJ C 110, 8.4.1998, p. 1) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Decision of the Council of 28 May 1998.
[4] OJ L 109, 26.4.1983, p. 8. Directive as last amended by Commission Decision 96/139/EC (OJ L 32, 10.2.1996, p. 31).

(10) Whereas it is therefore necessary to assess all the requirements laid down in respect of a product and to take account of developments in national practices for the regulation of products;

(11) Whereas requirements, other than technical specifications, referring to the life cycle of a product after it has been placed on the market are liable to affect the free movement of that product or to create obstacles to the proper functioning of the internal market;

(12) Whereas it is necessary to clarify the concept of a *de facto* technical regulation; whereas, in particular, the provisions by which the public authority refers to technical specifications or other requirements, or encourages the observance thereof, and the provisions referring to products with which the public authority is associated, in the public interest, have the effect of conferring on such requirements or specifications a more binding value than they would otherwise have by virtue of their private origin;

(13) Whereas the Commission and the Member States must also be allowed sufficient time in which to propose amendments to a contemplated measure, in order to remove or reduce any barriers which it might create to the free movement of goods;

(14) Whereas the Member State concerned must take account of these amendments when formulating the definitive text of the measure envisaged;

(15) Whereas it is inherent in the internal market that, in particular where the principle of mutual recognition cannot be implemented by the Member States, the Commission adopts or proposes the adoption of binding Community acts; whereas a specific temporary standstill period has been established in order to prevent the introduction of national measures from compromising the adoption of binding Community acts by the Council or the Commission in the same field;

(16) Whereas the Member State in question must, pursuant to the general obligations laid down in Article 5 of the Treaty, defer implementation of the contemplated measure for a period sufficient to allow either a joint examination of the proposed amendments or the preparation of a proposal for a binding act of the Council or the adoption of a binding act of the Commission; whereas the time limits laid down in the Agreement of the representatives of the Governments of the Member States meeting within the Council of 28 May 1969 providing for standstill and notification to the Commission [1], as amended by the Agreement of 5 March 1973 [2], have proved inadequate in the cases concerned and should accordingly be extended;

(17) Whereas the procedure concerning the standstill arrangement and notification of the Commission contained in the abovementioned agreement of 28 May 1969 remains applicable to products subject to that procedure which are not covered by this Directive;

(18) Whereas, with a view to facilitating the adoption of Community measures by the Council, Member States should refrain from adopting technical regulations once the Council has adopted a common position on a Commission proposal concerning that sector;

(19) Whereas, in practice, national technical standards may have the same effects on the free movement of goods as technical regulations;

(20) Whereas it would therefore appear necessary to inform the Commission of draft standards under similar conditions to those which apply to technical regulations; whereas, pursuant to Article 213 of the Treaty, the Commission may, within the limits and under the conditions laid down by the Council in accordance with the provisions of the Treaty, collect any information and carry out any checks required for the performance of the tasks entrusted to it;

(21) Whereas it is also necessary for the Member States and the standards institutions to be informed of standards contemplated by standards institutions in the other Member States;

(22) Whereas systematic notification is actually necessary only in the case of new subjects for standardisation and in so far as the treatment of these subjects at national level may give rise to differences in national standards which are liable to disturb the functioning of the market as a result; whereas any subsequent notification or communication relating to the progress of national activities must depend on the interest in such activities expressed by those to whom this new subject has already been communicated;

(23) Whereas the Commission must nevertheless be able to request the communication of all or part of the national standardisation programmes so that it can review the development of standardisation activity in particular economic sectors;

---

[1] OJ C 76, 17.6.1969, p. 9.
[2] OJ C 9, 15.3.1973, p. 3.

(24) Whereas the European standardisation system must be organised by and for the parties concerned, on a basis of coherence, transparency, openness, consensus, independence of special interests, efficiency and decision-making based on national representation;

(25) Whereas the functioning of standardisation in the Community must be based on fundamental rights for the national standardisation bodies, such as the possibility of obtaining draft standards, being informed of the action taken in response to comments submitted, being associated with national standardisation activities or requesting the preparation of European standards in place of national standards; whereas it is for the Member States to take the appropriate measures in their power to ensure that their standardisation bodies observe these rights;

(26) Whereas the provisions concerning the standstill arrangements applicable to national standardisation bodies when a European standard is in preparation must be brought into line with the relevant provisions adopted by the standardisation bodies within the framework of the European standardisation bodies;

(27) Whereas it is necessary to set up a Standing Committee, the members of which will be appointed by the Member States with the task of helping the Commission to examine draft national standards and cooperating in its efforts to lessen any adverse effects thereof on the free movement of goods;

(28) Whereas the Standing Committee should be consulted on the draft standardisation requests referred to in this Directive;

(29) Whereas this Directive must not affect the obligations of the Member States concerning the deadlines for transposition of the Directives set out in Annex III, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive, the following meanings shall apply:

1. 'product', any industrially manufactured product and any agricultural product, including fish products;

2. 'technical specification', a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures.

   The term 'technical specification' also covers production methods and processes used in respect of agricultural products as referred to Article 38(1) of the Treaty, products intended for human and animal consumption, and medicinal products as defined in Article 1 of Directive 65/65/EEC [1], as well as production methods and processes relating to other products, where these have an effect on their characteristics;

3. 'other requirements', a requirement, other than a technical specification, imposed on a product for the purpose of protecting, in particular, consumers or the environment, and which affects its life cycle after it has been placed on the market, such as conditions of use, recycling, reuse or disposal, where such conditions can significantly influence the composition or nature of the product or its marketing;

4. 'standard', a technical specification approved by a recognised standardisation body for repeated or continuous application, with which compliance is not compulsory and which is one of the following:

   — international standard: a standard adopted by an international standardisation organisation and made available to the public,

   — European standard: a standard adopted by a European standardisation body and made available to the public,

   — national standard: a standard adopted by a national standardisation body and made available to the public;

5. 'standards programme', a work programme of a recognised standardisation body listing the subjects on which standardisation work is being carried out;

[1] Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (OJ 22, 9.2.1965, p. 369/65), Directive as last amended by Directive 93/39/EEC (OJ L 214, 24.8.1993, p. 22).

6. 'draft standard', document containing the text of the technical specifications concerning a given subject, which is being considered for adoption in accordance with the national standards procedure, as that document stands after the preparatory work and as circulated for public comment or scrutiny;

7. 'European standardisation body', a body referred to in Annex I;

8. 'national standardisation body', a body referred to in Annex II;

9. 'technical regulation', technical specifications and other requirements, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 10, prohibiting the manufacture, importation, marketing or use of a product.

   De facto technical regulations include:

   — laws, regulations or administrative provisions of a Member State which refer either to technical specifications or other requirements or to professional codes or codes of practice which in turn refer to technical specifications or other requirements and compliance with which confers a presumption of conformity with the obligations imposed by the aforementioned laws, regulations or administrative provisions,

   — voluntary agreements to which a public authority is a contracting party and which provide, in the public interest, for compliance with technical specifications or other requirements, excluding public procurement tender specifications,

   — technical specifications or other requirements which are linked to fiscal or financial measures affecting the consumption of products by encouraging compliance with such technical specifications or other requirements; technical specifications or other requirements linked to national social-security systems are not included.

   This comprises technical regulations imposed by the authorities designated by the Member States and appearing on a list to be drawn up by the Commission before 1 July 1995, in the framework of the Committee referred to in Article 5.

   The same procedure shall be used for amending this list;

10. 'draft technical regulation', the text of a technical specification or other requirement, including administrative provisions formulated with the aim of enacting it or of ultimately having it enacted as a technical regulation, the text being at a stage of preparation at which substantial amendments can still be made.

This Directive shall not apply to those measures Member States consider necessary under the Treaty for the protection of persons, in particular workers, when products are used, provided that such measures do not affect the products.

Article 2

1. The Commission and the standardisation bodies referred to in Annexes I and II shall be informed of the new subjects for which the national bodies referred to in Annex II have decided, by including them in their standards programme, to prepare or amend a standard, unless it is an identical or equivalent transposition of an international or European standard.

2. The information referred to in paragraph 1 shall indicate, in particular, whether the standard concerned:

— will transpose an international standard without being the equivalent,

— will be a new national standard, or

— will amend a national standard.

After consulting the Committee referred to in Article 5, the Commission may draw up rules for the consolidated presentation of this information and a plan and criteria governing the presentation of this information in order to facilitate its evaluation.

3. The Commission may ask for all or part of the standards programmes to be communicated to it.

It shall make this information available to the Member States in a form which allows the different programmes to be assessed and compared.

4. Where appropriate, the Commission shall amend Annex II on the basis of communications from the Member States.

5. The Council shall decide, on the basis of a proposal from the Commission, on any amendment to Annex I.

Article 3

The standardisation bodies referred to in Annexes I and II, and the Commission, shall be sent all draft standards on request; they shall be kept informed by the body concerned of the action taken on any comments they have made relating to drafts.

Article 4

1. Member States shall take all necessary steps to ensure that their standardisation bodies:

— communicate information in accordance with Articles 2 and 3,

— publish the draft standards in such a way that comments may also be obtained from parties established in other Member States,

— grant the other bodies referred to in Annex II the right to be involved passively or actively (by sending an observer) in the planned activities,

— do not object to a subject for standardisation in their work programme being discussed at European level in accordance with the rules laid down by the European standardisation bodies and undertake no action which may prejudice a decision in this regard.

2. Member States shall refrain in particular from any act of recognition, approval or use by reference to a national standard adopted in breach of Articles 2 and 3 and of paragraph 1 of this Article.

Article 5

A Standing Committee shall be set up consisting of representatives appointed by the Member States who may call on the assistance of experts or advisers; its chairman shall be a representative of the Commission.

The Committee shall draw up its own rules of procedure.

Article 6

1. The Committee shall meet at least twice a year with the representatives of the standards institutions referred to in Annexes I and II.

2. The Commission shall submit to the Committee a report on the implementation and application of the procedures set out in this Directive, and shall present proposals aimed at eliminating existing or foreseeable barriers to trade.

3. The Committee shall express its opinion on the communications and proposals referred to in paragraph 2 and may in this connection propose, in particular, that the Commission:

— request the European standards institutions to draw up a European standard within a given time limit,

— ensure where necessary, in order to avoid the risk of barriers to trade, that initially the Member States concerned decide amongst themselves on appropriate measures,

— take all appropriate measures,

— identify the areas where harmonisation appears necessary, and, should the case arise, undertake appropriate harmonisation in a given sector.

4. The Committee must be consulted by the Commission:

(a) before any amendment is made to the lists in Annexes I and II (Article 2(1));

(b) when drawing up the rules for the consolidated presentation of information and the plan and criteria for the presentation of standards programmes (Article 2(2));

(c) when deciding on the actual system whereby the exchange of information provided for in this Directive is to be effected and on any change to it;

(d) when reviewing the operation of the system set up by this Directive;

(e) on the requests to the standards institutions referred to in the first indent of paragraph 3.

5. The Committee may be consulted by the Commission on any preliminary draft technical regulation received by the latter.

6. Any question regarding the implementation of this Directive may be submitted to the Committee at the request of its chairman or of a Member State.

7. The proceedings of the Committee and the information to be submitted to it shall be confidential.

However, the Committee and the national authorities may, provided that the necessary precautions are taken, consult, for an expert opinion, natural or legal persons, including persons in the private sector.

Article 7

1. Member States shall take all appropriate measures to ensure that, during the preparation of a European standard referred to in the first indent of Article 6(3) or after its approval, their standardisation bodies do not take any action which could prejudice the harmonisation intended and, in particular, that they do not publish in the field in question a new or revised national standard which is not completely in line with an existing European standard.

2. Paragraph 1 shall not apply to the work of standards institutions undertaken at the request of the public authorities to draw up technical specifications or a standard for specific products for the purpose of enacting a technical regulation for such products.

Member States shall communicate all requests of the kind referred to in the preceding subparagraph to the Commission as draft technical regulations, in accordance with Article 8(1), and shall state the grounds for their enactment.

Article 8

1. Subject to Article 10, Member States shall immediately communicate to the Commission any draft technical regulation, except where it merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a statement of the grounds which make the enactment of such a technical regulation necessary, where these have not already been made clear in the draft.

Where appropriate, and unless it has already been sent with a prior communication, Member States shall simultaneously communicate the text of the basic legislative or regulatory provisions principally and directly concerned, should knowledge of such text be necessary to assess the implications of the draft technical regulation.

Member States shall communicate the draft again under the above conditions if they make changes to the draft that have the effect of significantly altering its scope, shortening the timetable originally envisaged for implementation, adding specifications or requirements, or making the latter more restrictive.

Where, in particular, the draft seeks to limit the marketing or use of a chemical substance, preparation or product on grounds of public health or of the protection of consumers or the environment, Member States shall also forward either a summary or the references of all relevant data relating to the substance, preparation or product concerned and to known and available substitutes, where such information may be available, and communicate the anticipated effects of the measure on public health and the protection of the consumer and the environment, together with an analysis of the risk carried out as appropriate in accordance with the general principles for the risk evaluation of chemical substances as referred to in Article 10(4) of Regulation (EEC) No 793/93 [1] in the case of an existing substance or in Article 3(2) of Directive 67/548/EEC [2], in the case of a new substance.

The Commission shall immediately notify the other Member States of the draft and all documents which have been forwarded to it; it may also refer this draft, for an opinion, to the Committee referred to in Article 5 and, where appropriate, to the committee responsible for the field in question.

With respect to the technical specifications or other requirements referred to in the second subparagraph of Article 1(9), third indent, the detailed comments or opinions of the Commission or the Member States may concern only the aspect which may hinder trade and not the fiscal or financial aspect of the measure.

2. The Commission and the Member States may make comments to the Member State which has forwarded a draft technical regulation; that Member State shall take such comments into account as far as possible in the subsequent preparation of the technical regulation.

3. Member States shall communicate the definitive text of a technical regulation to the Commission without delay.

4. Information supplied under this Article shall not be confidential except at the express request of the notifying Member State. Any such request shall be supported by reasons.

In cases of this kind, if necessary precautions are taken, the Committee referred to in Article 5 and the national authorities may seek expert advice from physical or legal persons in the private sector.

---

[1] Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances (OJ L 84, 5.4.1993, p. 1).

[2] Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ L 196, 16.8.1967, p. 1). Directive, as amended by Directive 92/32/EEC, (OJ L 154, 5.6.1992, p. 1).

5. When draft technical regulations form part of measures which are required to be communicated to the Commission at the draft stage under another Community act, Member States may make a communication within the meaning of paragraph 1 under that other act, provided that they formally indicate that the said communication also constitutes a communication for the purposes of this Directive.

The absence of a reaction from the Commission under this Directive to a draft technical regulation shall not prejudice any decision which might be taken under other Community acts.

Article 9

1. Member States shall postpone the adoption of a draft technical regulation for three months from the date of receipt by the Commission of the communication referred to in Article 8(1).

2. Member States shall postpone:

— for four months the adoption of a draft technical regulation in the form of a voluntary agreement within the meaning of Article 1(9), second indent,

— without prejudice to paragraphs 3, 4 and 5, for six months the adoption of any other draft technical regulation,

from the date of receipt by the Commission of the communication referred to in Article 8(1) if the Commission or another Member State delivers a detailed opinion, within three months of that date, to the effect that the measure envisaged may create obstacles to the free movement of goods within the internal market.

The Member State concerned shall report to the Commission on the action it proposes to take on such detailed opinions. The Commission shall comment on this reaction.

3. Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 8(1) if, within the three months following that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 189 of the Treaty.

4. Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 8(1) if, within the three months following that date, the Commission announces its finding that the draft technical regulation concerns a matter which is covered by a proposal for a directive, regulation or decision presented to the Council in accordance with Article 189 of the Treaty.

5. If the Council adopts a common position during the standstill period referred to in paragraphs 3 and 4, that period shall, subject to paragraph 6, be extended to 18 months.

6. The obligations referred to in paragraphs 3, 4 and 5 shall lapse:

— when the Commission informs the Member States that it no longer intends to propose or adopt a binding Community act,

— when the Commission informs the Member States of the withdrawal of its draft or proposal,

— when the Commission or the Council has adopted a binding Community act.

7. Paragraphs 1 to 5 shall not apply in those cases where, for urgent reasons, occasioned by serious and unforeseeable circumstances relating to the protection of public health or safety, the protection of animals or the preservation of plants, a Member State is obliged to prepare technical regulations in a very short space of time in order to enact and introduce them immediately without any consultations being possible. The Member State shall give, in the communication referred to in Article 8, the reasons which warrant the urgency of the measures taken. The Commission shall give its views on the communication as soon as possible. It shall take appropriate action in cases where improper use is made of this procedure. The European Parliament shall be kept informed by the Commission.

Article 10

1. Articles 8 and 9 shall not apply to those laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which Member States:

— comply with binding Community acts which result in the adoption of technical specifications,

— fulfil the obligations arising out of international agreements which result in the adoption of common technical specifications in the Community,

— make use of safeguard clauses provided for in binding Community acts,

— apply Article 8(1) of Directive 92/59/EEC [1],

— restrict themselves to implementing a judgment of the Court of Justice of the European Communities,

— restrict themselves to amending a technical regulation within the meaning of Article 1(9) of this Directive, in accordance with a Commission request, with a view to removing an obstacle to trade.

2. Article 9 shall not apply to the laws, regulations and administrative provisions of the Member States prohibiting manufacture insofar as they do not impede the free movement of products.

3. Article 9(3) to (6) shall not apply to the voluntary agreements referred to in Article 1(9), second indent.

4. Article 9 shall not apply to the technical specifications or other requirements referred to in Article 1(9), third indent.

Article 11

The Commission shall report every two years to the European Parliament, the Council and the Economic and Social Committee on the results of the application of this Directive. Lists of standardisation work entrusted to the European standardisation organisations pursuant to this Directive, as well as statistics on the notifications received, shall be published on an annual basis in the *Official Journal of the European Communities*.

Article 12

When Member States adopt a technical regulation, it shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of its official publication. The methods of making such reference shall be laid down by Member States.

Article 13

1. The Directives and Decisions listed in Annex III, Part A are hereby repealed without prejudice to the obligations of the Member States concerning the deadlines for transposition of the said Directives, set out in Annex III, Part B.

2. References to the repealed directives and decisions shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex IV.

Article 14

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 15

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	J. CUNNINGHAM

[1] Council Directive 92/59/EEC of 29 June 1992 on general product safety (OJ L 228, 11.8.1992, p. 24).

ANNEX I

EUROPEAN STANDARDISATION BODIES

CEN

European Committee for Standardisation

Cenelec

European Committee for Electrotechnical Standardisation

ETSI

European Telecommunications Standards Institute

ANNEX II

NATIONAL STANDARDISATION BODIES

1. BELGIUM

IBN/BIN
Institut belge de normalisation
Belgisch Instituut voor Normalisatie

CEB/BEC
Comité électrotechnique belge
Belgisch Elektrotechnisch Comité

2. DENMARK

DS
Dansk Standard

NTA
Telestyrelsen, National Telecom Agency

3. GERMANY

DIN
Deutsches Institut für Normung e.V.

DKE
Deutsche Elektrotechnische Kommission im DIN und VDE

4. GREECE

ΕΛΟΤ
Ελληνικός Οργανισμός Τυποποίησης

5. SPAIN

AENOR
Asociación Española de Normalización y Certificación

6. FRANCE

AFNOR
Association française de normalisation

UTE
Union technique de l'électricité — Bureau de normalisation auprès de l'AFNOR

7. IRELAND

NSAI
National Standards Authority of Ireland

ETCI
Electrotechnical Council of Ireland

8. ITALY

UNI [1]
Ente nazionale italiano di unificazione

CEI [1]
Comitato elettrotecnico italiano

[1] UNI and CEI, in cooperation with the Istituto superiore delle Poste e telecommunicazioni and the ministero dell'Industria, have allocated the work within ETSI to CONCIT, Comitato nazionale di coordinamento per le tecnologie dell'informazione.

9. LUXEMBOURG

ITM
Inspection du travail et des mines

SEE
Service de l'énergie de l'État

10. NETHERLANDS

NNI
Nederlands Normalisatie-instituut

NEC
Nederlands Elektrotechnisch Comité

11. AUSTRIA

ON
Österreichisches Normungsinstitut

ÖVE
Österreichischer Verband für Elektrotechnik

12. PORTUGAL

IPQ
Instituto Português da Qualidade

13. UNITED KINGDOM

BSI
British Standards Institution

BEC
British Electrotechnical Committee

14. FINLAND

SFS
Suomen Standardisoimisliitto SFS ry
Finlands Standardiseringsförbund SFS rf

THK/TFC
Telehallintokeskus
Teleförvaltningscentralen

SESKO
Suomen Sähköteknillinen Standardisoimisyhdistys SESKO ry
Finlands Elektrotekniska Standardiseringsförening SESKO rf

15. SWEDEN

SIS
Standardiseringen i Sverige

SEK
Svenska elektriska kommissionen

ITS
Informationstekniska standardiseringen

ANNEX III

PART A

Repealed Directives and Decisions

(referred to by Article 13)

Directive 83/189/EEC and its following amendments

Council Directive 88/182/EEC

Commission Decision 90/230/EEC

Commission Decision 92/400/EEC

Directive 94/10/EC of the European Parliament and Council

Commission Decision 96/139/EC

PART B

List of deadlines for transposition into national law

(referred to in Article 13)

Directive	Deadline for transposition
83/189/EEC (OJ L 109, 26.4.1983, p. 8)	31.3.1984
88/182/EEC (OJ L 81, 26.3.1988, p. 75)	1.1.1989
94/10/EC (OJ L 100, 19.4.1994, p. 30)	1.7.1995

ANNEX IV

CORRELATION TABLE

Directive 83/189/EEC	This Directive
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 11
Article 12	Article 12
—	Article 13
—	Article 14
—	Article 15
Annex I	Annex I
Annex II	Annex II
—	Annex III
—	Annex IV