

Official Journal

of the European Communities

ISSN 0378-6986

C 196

Volume 44

12 July 2001

English edition

Information and Notices

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	I Information	
	Council	
2001/C 196/01	Declaration by the Council and the representatives of the Governments of the Member States, meeting within the Council of 28 June 2001 on combating racism and xenophobia on the Internet by intensifying work with young people	1
2001/C 196/02	Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council of 28 June 2001 on promoting young people's initiative, enterprise and creativity: from exclusion to empowerment	2
	Commission	
2001/C 196/03	Euro exchange rates	5
2001/C 196/04	Initiation of proceedings (Case COMP/M.2416 — Tetra Laval/Sidel) ⁽¹⁾	6
2001/C 196/05	Non-opposition to a notified concentration (Case COMP/M.2165 — Gruner+Jahr/Publi-groupe/G+J Medien) ⁽¹⁾	6
2001/C 196/06	Non-opposition to a notified concentration (Case COMP/M.2419 — Apax/Schering/Metagen) ⁽¹⁾	7
2001/C 196/07	Prior notification of a concentration (Case COMP/ECSC.1355 — Interseroh/Hansa) ⁽¹⁾	7
	The EEA Joint Committee	
2001/C 196/08	Decisions of the EEA Joint Committee for which the constitutional requirements under Article 103 of the EEA Agreement have been fulfilled	8

EN

Notice No

Contents (continued)

Page

European Central Bank

2001/C 196/09

Opinion of the European Central Bank of 13 June 2001 at the request of the Council of the European Union concerning a proposal for a Directive of the European Parliament and of the Council on financial collateral arrangements (CON/2001/13) 10

I

(Information)

COUNCIL

**DECLARATION BY THE COUNCIL AND THE REPRESENTATIVES OF THE GOVERNMENTS OF
THE MEMBER STATES, MEETING WITHIN THE COUNCIL****of 28 June 2001****on combating racism and xenophobia on the Internet by intensifying work with young people**

(2001/C 196/01)

The European Union is founded on the principles of liberty, democracy, respect for human rights, fundamental freedoms and the rule of law. Diversity and tolerance are democratic values unanimously recognised and respected in each Member State.

Anti-democratic influences exploit the Internet to communicate and disseminate their messages of racism, xenophobia and other expressions of intolerance, taking advantage of the fact that young people in Europe are frequent Internet consumers. The initiative, enterprise, creativity and social solidarity of youth should be harnessed to counteract these anti-democratic attitudes on the Internet wherever they appear.

Europe must combat all forms of racism, xenophobia and related expressions of intolerance, at local, national, European and worldwide level.

Therefore:

THE COUNCIL AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL:

- WELCOME the European Commission's communication entitled 'Creating a safer information society by improving the security of information infrastructures and combating computer-related crime (Europe 2002)' and especially welcome the European Commission's initiative to examine the scope for action against racist and xenophobic activity on the Internet;
- EMPHASISE the importance and responsibilities of schools, other relevant institutions and youth organisations in encouraging young people's direct involvement in the development of democratic values, as well as in creating opportunities for promotion of democracy, human rights and tolerance;

- EMPHASISE the need, among young people, to create an understanding of the current laws concerning publication and dissemination of racist and xenophobic material on the Internet and of the importance of a critical review of material found on the web, stressing the importance of schools and other relevant institutions and organisations in creating this understanding;
- STRESS the need to involve and educate those working with young people in order to increase their awareness and understanding of problems related to intolerance and increase their ability to apply democratic values when working with young people;
- EMPHASISE the importance and the need for an exchange of experience and information among the Member States, by promoting the development of the existing programmes, networks and institutions such as the European Monitoring Centre on Racism and Xenophobia involving authorities at national and local level as well as professionals in order to develop best practice in this area and the Community action plan on promoting the safer use of Internet;
- STRESS that efforts should be employed to harness the initiative and creativity of young people with a view to rejecting and counteracting racism, xenophobia and related expressions of intolerance to be found on the web;
- EMPHASISE the need to encourage Internet service providers based in the Union to provide means for the public to report racist and xenophobic contents that they encounter on the Internet;
- EMPHASISE the need to encourage cooperation between Internet service providers — i.e. access providers and web hosts — and police and legal authorities in the Member States, in order to combat racist and xenophobic material on the Internet.

**RESOLUTION OF THE COUNCIL AND OF THE REPRESENTATIVES OF THE GOVERNMENTS OF
THE MEMBER STATES MEETING WITHIN THE COUNCIL**

of 28 June 2001

on promoting young people's initiative, enterprise and creativity: from exclusion to empowerment

(2001/C 196/02)

I

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITY, MEETING WITHIN THE COUNCIL,

Bearing in mind that:

1. The Treaty establishing the European Community provides for Community action to be aimed at encouraging the development of youth exchanges and of exchanges of socio-educational instructors.
2. The Community has been assigned the task among others of promoting harmonious, balanced and sustainable development of economic activities, a high level of employment and social protection, and a rise in living standards and in the quality of life.
3. The promotion of employment, improvement of living and working conditions, and combating exclusion are mentioned among the specific objectives of the social provisions of the Treaty.
4. The European Parliament and the Council have by Decision No 1031/2000/EC of 13 April 2000 ⁽¹⁾ established the 'Youth' Community action programme. One objective of this programme is to encourage young people's initiative, enterprise and creativity so that they can play an active role in society.
5. On 9 November 2000 the Council and the Representatives of the Governments of the Member States, meeting within the Council, adopted a Resolution on the social inclusion of young people ⁽²⁾.
6. On 8 February 1999, the Council and the Ministers of Youth, meeting within the Council, adopted a Resolution on youth participation ⁽³⁾ which puts the inclusion of youth in institutions of social, political, cultural and economic life in the foreground.
7. In a Resolution on a youth policy for Europe ⁽⁴⁾, adopted by the European Parliament on 9 March 1999, the Member States and the Commission were encouraged to act promptly to approve knowledge acquired through non-formal learning, and to ensure that it is recognised in the labour market.
8. In the Presidency conclusions of the European Council meeting in Lisbon on 23 and 24 March 2000 one of the targets set was for the Member States, in accordance with their constitutional provisions, and also the Council and the Commission to take certain necessary steps within their areas of competence to fulfil *inter alia* the target of developing a common European format for curriculum vitae to be used on a voluntary basis in order to facilitate mobility by helping the assessment by both educational and training institutions and employers of knowledge acquired. The achievement of the priority objective of mobility will be based in particular on the action plan for mobility, approved by the Heads of State or Government at the European Council in Nice, and on a draft recommendation on mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers which, according to the conclusions of the European Council in Stockholm, it is intended to adopt by June 2001.
9. The memorandum on lifelong learning presented by the Commission to the Council (Education/Youth) of 9 November 2000, proposed consulting all the relevant public and private actors on six main topics including non-formal learning and the need to invest more in human resources.
10. Under its Decision 2000/819/EC of 20 December 2000 ⁽⁵⁾, the Council established a multiannual programme for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises (2001 to 2005).
11. In the conclusions of the European Council meeting in Lisbon on 23 and 24 March 2000 entrepreneurship is mentioned as one of the five basic skills which should be provided through lifelong learning.
12. In Council Decision 2001/63/EC of 19 January 2001 on guidelines for Member States' employment policies for the year 2001 ⁽⁶⁾, the development of entrepreneurship and job creation is identified as one of the four pillars,

⁽¹⁾ OJ L 117, 18.5.2000, p. 1.

⁽²⁾ OJ C 374, 28.12.2000, p. 5.

⁽³⁾ OJ C 42, 17.2.1999, p. 1.

⁽⁴⁾ OJ C 175, 21.6.1999, p. 48.

⁽⁵⁾ OJ L 333, 29.12.2000, p. 84.

⁽⁶⁾ OJ L 22, 24.1.2001, p. 18.

THEREFORE.

II

13. ARE OF THE VIEW that young people's initiative, enterprise and creativity are a key resource that should be better promoted in various spheres of society for the development of their own personal and social skills as well as being an important precondition for attaining the Union's strategic goal of becoming the world's most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth, more and better job opportunities and greater social cohesion.

14. WELCOME in this context the emphasis placed by the Lisbon Conclusions on lifelong learning as a basic component of the European social model.

15. EMPHASISE the importance of young people's own initiative and creativity in combating racism, xenophobia and intolerance.

16. EMPHASISE the importance of young people's initiative, enterprise and creativity when it comes to their ability to prevent social, political and cultural exclusion and the importance of strengthening young people's power and influence over their life situation.

17. CONSIDER the results of the questionnaire survey on non-formal education on which the French Presidency, in the light of the discussions initiated by the Portuguese Presidency during the year 2000, took the initiative on 8 December 2000.

18. CONSIDER that the promotion of young people's initiative, enterprise and creativity is one of the objectives of cooperation in youth issues,

III

INVITE the Commission to emphasis the importance of young people's initiative, enterprise and creativity in European cooperation in youth issues and in particular:

- (i) in the preparation of Community cooperation policy in the youth field, to associate young people themselves and to consider their initiative, enterprise and creativity as a resource in society;
- (ii) to ensure that the youth dimension is taken into account in Community activities concerning initiative, enterprise and creativity;

(iii) in the forthcoming evaluation of the Youth programme, to report to what extent young people's initiative, enterprise and creativity are promoted within the framework of the programme;

(iv) to involve young people in the development of European cooperation in the youth field and non-formal learning initiatives;

(v) to take particular note of young people's own initiative, enterprise and creativity in drawing up new strategies for lifelong learning,

IV

INVITE the Member States:

(i) to encourage and make more visible in all fields the spirit of initiative, enterprise and creativity of the young people;

(ii) to improve young people's information of available opportunities and support in starting and developing activities, including cultural and business activities;

(iii) to promote pupil participation and their initiative and creativity as a valuable resource in teaching and other school activities, and to contribute so that the education system stimulates active citizenship;

(iv) to promote student participation in higher education, and vocational training where young people's initiative, enterprise and creativity are a resource not only in education but also in research and other knowledge-developing activities;

(v) to take particular note of young people's own initiative, enterprise and creativity in drawing up new strategies for both lifelong learning and innovative methods of teaching and learning;

(vi) to integrate young people's initiative, enterprise and creativity in practical national level labour-market policy measures in the youth sector;

(vii) to develop and promote the sharing of experience and dissemination of best practice with respect to both boys' and girls' initiative, enterprise and creativity in clubs and associations, including Youth organisations,

V

INVITE the Commission and Member States, within their respective spheres of competence:

- (i) to integrate and promote young people's initiative, enterprise and creativity in combating exclusion;
 - (ii) to encourage young people's initiative and creativity in combating racism, xenophobia and intolerance;
 - (iii) to promote sharing of experience and dissemination of best practice with respect to activities and projects developed on the basis of young people's initiative, enterprise and creativity;
 - (iv) to encourage young people's initiative, enterprise and creativity as a key driving force in the context of the strategy for creating more and better jobs in Europe;
 - (v) to take into account the views of pupils and students in the further implementation of Community education programmes notably Socrates and Leonardo da Vinci, in order to put young people's initiative and creativity to use;
 - (vi) to promote research and sharing of experience in order to increase knowledge of young people's initiative, enterprise and creativity;
 - (vii) to emphasise the importance of non-formal learning as a means of expressing and developing young people's initiative, enterprise and creativity and encourage those engaged in non-formal learning to share their experience;
 - (viii) to promote existing cooperation between the Member States, the Commission and international organisations, especially the Council of Europe, with respect to research, methodology and assessment models concerning non-formal learning;
 - (ix) to clarify to what extent and how young people's initiative, enterprise and creativity are put to use as a resource in projects conducted with the support of the EU Structural Funds;
 - (x) to educate young people as critical consumers, and take particular note in this context of their important role as consumers as well as practitioners in sectors such as music, film and other creative industries and to promote their enterprise, initiative and creativity in these sectors.
-

COMMISSION

Euro exchange rates ⁽¹⁾

11 July 2001

(2001/C 196/03)

1 euro	=	7,4424	Danish krone
	=	9,3164	Swedish krona
	=	0,6078	Pound sterling
	=	0,8611	United States dollar
	=	1,3102	Canadian dollar
	=	107,21	Japanese yen
	=	1,5194	Swiss franc
	=	7,9825	Norwegian krone
	=	87,71	Icelandic króna ⁽²⁾
	=	1,6842	Australian dollar
	=	2,1105	New Zealand dollar
	=	7,1507	South African rand ⁽²⁾

⁽¹⁾ Source: reference exchange rate published by the ECB.

⁽²⁾ Source: Commission.

Initiation of proceedings**(Case COMP/M.2416 — Tetra Laval/Sidel)**

(2001/C 196/04)

(Text with EEA relevance)

On 5 July 2001 the Commission decided to initiate proceedings in the abovementioned case after finding that the notified concentration raises serious doubts as to its compatibility with the common market. The initiation of proceedings opens a second phase investigation with regards to the notified concentration. The decision is based on Article 6(1)(c) of Council Regulation (EEC) No 4064/89.

The Commission invites interested third parties to submit their observations on the proposed operation.

In order to be fully taken into account in the procedure observations must reach the Commission not later than 15 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.2416 — Tetra Laval/Sidel, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
Rue Joseph II/Jozef II-straat 70,
B-1000 Brussels.

Non-opposition to a notified concentration**(Case COMP/M.2165 — Gruner+Jahr/Publigroupe/G+J Medien)**

(2001/C 196/05)

(Text with EEA relevance)

On 27 October 2000 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in German and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CDE' version of the CELEX database, under document No 300M2165. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,
Information, Marketing and Public Relations,
2, rue Mercier,
L-2985 Luxembourg.
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

Non-opposition to a notified concentration
(Case COMP/M.2419 — Apax/Schering/Metagen)

(2001/C 196/06)

(Text with EEA relevance)

On 14 May 2001 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CEN' version of the CELEX database, under document No 301M2419. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,
Information, Marketing and Public Relations,
2, rue Mercier,
L-2985 Luxembourg.
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

Prior notification of a concentration
(Case COMP/ECSC.1355 — Interseroh/Hansa)

(2001/C 196/07)

(Text with EEA relevance)

1. On 28 June 2001 the Commission received notification of a proposed concentration pursuant to Article 66 of the Treaty establishing the European Coal and Steel Community (ECSC), by which the undertaking Interseroh AG, Germany, enters into a full merger, within the meaning of Article 66 of the ECSC Treaty, with Hansa Recycling GmbH, Germany.
2. The business activities of the undertakings concerned are:
 - Interseroh AG: trade in ferrous scrap metal,
 - Hansa Recycling GmbH: trade in steel and ferrous scrap metal.
3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Article 66 of the ECSC Treaty. However, the final decision on this point is reserved.
4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/ECSC.1355 — Interseroh/Hansa, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
Rue Joseph II/Jozef II-straat 70,
B-1000 Brussels.

THE EEA JOINT COMMITTEE

Decisions of the EEA Joint Committee for which the constitutional requirements under Article 103 of the EEA Agreement have been fulfilled

(2001/C 196/08)

Since March 2000, Decisions of the EEA Joint Committee indicate in a footnote whether their date of entry into force depends on the fulfilment of constitutional requirements by any of the contracting parties. Such requirements were notified as regards the Decisions listed below. The contracting parties in question have now notified the other contracting parties that they have completed their internal procedures. The dates of entry into force of the Decisions are as indicated.

Decision number	Date of adoption	Publication reference	Legal act integrated	Date of entry into force
66/2000	2.8.2000	OJ L 250, 5.10.2000, p. 48	Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures	1.3.2001
87/2000	27.10.2000	OJ L 7, 11.1.2001, p. 3	Commission Directive 2000/5/EC of 25 February 2000 amending Annexes C and D to Council Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC	1.4.2001
88/2000	27.10.2000	OJ L 7, 11.1.2001, p. 5	Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives of liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications	1.6.2001
91/2000	27.10.2000	OJ L 7, 11.1.2001, p. 13	Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)	1.6.2001
94/2000	27.10.2000	OJ L 7, 11.1.2001, p. 19	Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports	1.7.2001

Decision number	Date of adoption	Publication reference	Legal act integrated	Date of entry into force
97/2000	27.10.2000	OJ L 7, 11.1.2001, p. 25	Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)	1.6.2001
108/2000	30.11.2000	OJ L 45, 15.2.2001, p. 47	<p>Commission Decision 2000/518/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Switzerland</p> <p>Commission Decision 2000/519/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Hungary</p> <p>Commission Decision 2000/520/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce</p>	1.7.2001
48/2001	30.3.2001	OJ L 158, 14.6.2001, p. 63	Commission Decision 2000/709/EC of 6 November 2000 on the minimum criteria to be taken into account by Member States when designating bodies in accordance with Article 3(4) of Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures	1.7.2001

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 June 2001

at the request of the Council of the European Union concerning a proposal for a Directive of the European Parliament and of the Council on financial collateral arrangements

(CON/2001/13)

(2001/C 196/09)

1. On 3 May 2001, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on proposal COM(2001) 168 final of 27 March 2001 for a Directive of the European Parliament and of the Council on financial collateral arrangements (hereinafter referred to as the 'proposed Directive').
2. The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council of the ECB has adopted this opinion.
3. The ECB appreciates that in order to meet the objectives of ensuring an integrated European financial market and supporting the smooth functioning of the single monetary policy in the economic and monetary union, the creation of a uniform minimum legal framework for arrangements set up to limit credit risk in financial transactions through the provision of securities and cash as collateral under both pledge and transfer of title arrangements (including repurchase agreements) is proposed. It is noted that recital 10 of the proposed Directive states another general intention to protect 'Sound risk management practices commonly used in the financial market'. The core provisions of the proposed Directive, however, only encompass close-out netting and top-up collateral as defined in Article 3(1)(s) and Article 9(2)(a), respectively. It should be clarified that this is not to be understood in a way that other kinds of risk management practices commonly used in the financial market would be regarded as being unenforceable.
4. The ECB highly welcomes this initiative as a significant and important effort to further promote the efficient and safe use, both at a domestic and cross-border level, of financial collateral, beyond that already achieved by the Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems ⁽¹⁾ (hereinafter referred to as the 'Settlement Finality Directive') for the establishment of a sound legal framework for payment and security settlement systems as well as for the operations of central banks. The ECB would like to recall on this occasion the importance of a full implementation of the Settlement Finality Directive by all Member States.
5. The ECB would like to emphasise that it shares the conclusion of the Commission that the existing rules applicable to collateral in the European Union (EU) could be considered to be too complex and impracticable, especially in cross-border transactions. The promotion of simple and reliable methods of collateralisation is of fundamental interest to the ECB, as well as to national central banks, as it will further increase the smooth functioning of the single monetary policy of the Eurosystem (the ECB and the national central banks of Member States participating in stage III of the economic and monetary union), beyond what was already achieved by the implementation of the Settlement Finality Directive as regards the insulation from the effects of insolvency of collateral provided to a national central bank or the ECB. The interest of the Eurosystem derives from the second indent of Article 18.1 of the Statute of the European System of Central Banks and of the European Central Bank, which provides that in order to achieve the objectives of the European System of Central Banks and to carry out its tasks, the ECB and the national central banks may conduct credit operations with credit institutions and other market participants, with lending being based only on adequate collateral.
6. Although the Eurosystem already benefits from the application of the Settlement Finality Directive to its credit operations, this amounts mainly to protection from the effects of an insolvency of a counterparty. The ECB therefore welcomes the attempt by the proposed Directive to resolve the wider problems affecting the use of collateral, especially in a cross-border context. In the view of the ECB, this encompasses in particular a restriction on the imposition of onerous formalities on both the creation and the enforcement of collateral arrangements, an effective and simple Community regime for the creation of collateral and the protection of financial collateral arrangements from those rules of insolvency law that would inhibit the effective realisation of collateral or cast doubt on the validity of techniques currently used. Moreover, the ECB supports the creation of legal certainty with regard to cross-border use of book-entry assets, by the introduction of a clear and unique rule for determining where such assets are located, building on and further specifying the principles contained in the Settlement Finality Directive. This will not only support

⁽¹⁾ OJ L 166, 11.6.1998, p. 45.

the efficiency of operations necessary for the conduct of the single monetary policy where the Eurosystem provides liquidity to its counterparties against collateral both in a domestic and in a cross-border context, but also enhance the legal certainty and efficiency of those operations where money market participants balance this liquidity across the market with transactions among themselves that match individual surpluses and shortages of liquidity.

7. It is noted that the scope of the proposed Directive (Article 2(4)) is limited to public authorities, central banks, financial institutions under prudential supervision and legal persons with a capital base exceeding EUR 100 million or gross assets exceeding EUR 1 billion. The ECB would like to stress that the application of a certain threshold on the basis of the capital base or the gross assets should not lead to uncertainties as regards the application of the proposed Directive, in particular as such basis might change since the most recent accounting report. In addition, from an ECB point of view, it has to be ensured that all systems and their participants, that are protected by the Settlement Finality Directive, central counterparties, which are of crucial importance for the efficient functioning of payment and settlement systems, as well as all entities that have access to the refinancing operations of the Eurosystem, will also benefit from the application of the proposed Directive.
8. In general, the ECB acknowledges the need to carefully assess the extent of any limitations to the general insolvency regimes, whereby various considerations, which range from legal certainty, the efficiency of cross-border collateral transactions and the ease of collateral management to, in certain cases, supervisory interests, especially the possibility of reorganisation measures, have to be taken into account. However, it is suggested that it be considered whether those provisions in the proposed Directive that do not deal with protection against insolvency, but with substantive law or the conflict of law rule, could be made generally applicable, without the application of a threshold or other criteria. The creation of differing regimes for the establishment and use of the same kind of collateral, depending on the type of parties involved, implies ascertaining the status of the parties to an arrangement and is prone to create distortions in the smooth functioning of collateralised transactions. In any event, the introduction of a recital stating that Member States are allowed to go beyond the proposed Directive should be considered.
9. The ECB is in favour of the definition of 'financial collateral arrangements' contained in Article 3(1)(a) of the proposed Directive encompassing both pledge structures and all transfer of title arrangements (e.g. repurchase transactions or credit support arrangements), in order to contribute to the stability of the financial markets in the EU and to protect the collateralisation techniques used by the Eurosystem.
10. The ECB takes note that the proposed Directive covers both 'financial instruments' as defined in Article 3(1)(h) (including transferable securities) and cash. However, the ECB suggests that it be considered whether the scope of the proposed Directive could be extended to cover all types of assets that are eligible for Eurosystem credit operations, including *inter alia* credit claims in the form of bank loans. Such a solution would safeguard and promote the efficient cross-border use of all assets eligible for Eurosystem credit operations, which already benefit from a full insulation from the application of insolvency proceedings by virtue of Article 9(1) of the Settlement Finality Directive. This would further enhance the implementation of the single monetary policy of the Eurosystem.
11. The ECB welcomes the removal of formal requirements for financial collateral arrangements, apart from the requirement for an agreement to be in writing or evidenced in writing and signed by or on behalf of the collateral provider. This remaining requirement should not exclude transactions under general terms and conditions, which normally are not signed by the parties, or other existing market practices. The sole justification for any remaining formality should be the necessary evidence in insolvency situations.
12. The ECB also supports that, in order to limit the administrative burdens for participants using book-entry securities as collateral, the only perfection requirement should be, for transfers in ownership, the delivery of the collateral, and for other financial collateral security arrangements, either the delivery or the recording by the relevant entity maintaining the securities collateral account.
13. The ECB takes note that the proposed Directive foresees the enforcement of collateral with minimum formalities and without any assistance from or interference by courts or public authorities (Article 5). In this context, any modification to existing national insolvency procedures should take into account the aims of the proposed Directive (legal certainty, the efficiency of cross-border collateral transactions and the ease of collateral management) as well as the interest of prudential supervisors in effective reorganisation measures and the stability of the financial system, the latter being of concern to the Eurosystem as evidenced by Article 3.3 of the Statute of the ESCB and of the ECB. Moreover, the ECB stresses the importance of the principle contained in Article 5(4), that any realisation needs to be conducted in a commercially reasonable manner. Finally, Article 5 of the proposed Directive deals with enforcement by sale or by close-out netting. It could be considered also to allow a collateral taker to appropriate the collateral in case of an enforcement event, provided that the creditor is prevented from benefiting from undue enrichment.

14. The ECB also notes that there may be a discrepancy between Article 2(6)(b) and Article 5(3) of the proposed Directive (enforcement events), which might have to be removed. Article 2(6)(b) refers to 'obligations owed to the collateral taker by a person other than the collateral provider', but at the same time, the enforcement events of Article 5(3) only relate to the collateral provider and the collateral taker and not to any such third party obligor (e.g. a parent company providing collateral in order to secure the obligations of its subsidiary vis-à-vis a credit institution).
15. The ECB welcomes the intention of the proposed Directive to render effective close-out netting provisions in case of opening of insolvency or reorganisation proceedings. The enforceability of close-out netting as an enforcement mechanism should be effective and protected in general in the event of default, whether due to insolvency or other events. Moreover, the ECB understands that the enforceability of close-out netting is not restricted to certain financial collateral arrangements, e.g. repurchase agreements, but will be applied more widely, for all kinds of arrangements aiming to reduce risk and credit exposure, including, but not limited to, cross-product netting provisions and netting arrangements involving more than one financial collateral arrangement. To this end, both the definition of close-out netting in Article 3(1)(s) and Article 8 could be specified and clarified further. The close-out procedure should apply to the entire collateral and liabilities against which the collateral has been provided. The collateral taker should not be exposed to the risk of 'cherry-picking' by the receiver or liquidator of the collateral provider affirming favourable executory contracts and rejecting unfavourable executory contracts. As sound and efficient risk management practices commonly used in the financial market, including the risk control framework of the Eurosystem, rely on the ability to manage and reduce the credit exposures arising from all kinds of financial transactions on a net basis, any limitation to the scope of application of the proposed Directive to certain risk mitigation techniques could impair financial stability.
16. The ECB notes that Article 6 of the proposed Directive entails the right of use of collateral provided under a pledge arrangement, according to which the collateral taker is in a position to 'use' (sell, lend, repo or pledge) collateral pledged to him. Thus assimilating pledge arrangements and arrangements involving full transfer of ownership might potentially enhance the liquidity and efficiency of pledge arrangements. However, it is acknowledged that this concept might entail substantial changes to the legal systems of some Member States.
17. The ECB is generally in favour of the insulation of top-up collateral from the effects of insolvency. Where the collateral arrangement provides that, after the initial security interest or title transfer has been effected, there will be further collateral movements, those further collateral movements should be protected from invalidation as a result of circumstances that arise after the original agreement between the parties on the top-up collateral arrangement was concluded and the initial security interest or title transfer took place. The protection of top-up collateral will foster the effectiveness of risk control management systems, including the risk control framework of the Eurosystem. In addition, the ECB would like to mention that the second sentence of recital 11 should not be read in a way that would invalidate top-up collateral arrangements other than those referred to in Article 9(2)(a), in so far as they are currently recognised and valid in certain Member States.
18. The ECB also supports recognition of the substitution of assets, where the collateral arrangement stipulates that the collateral provider may substitute collateral after the security interest or title transfer has been effected, provided the substituting collateral is of no greater value than the collateral it is replacing. This will allow an increased effectiveness of the collateral management of all entities active in collateralised transactions, as well as contribute to the smooth functioning of securities settlement systems, by reducing settlement fails and thus enhancing financial stability.
19. The ECB welcomes the principle enshrined in Article 10 of the proposed Directive, according to which the law applicable to cross-border collateral arrangements in book-entry securities shall be determined as being the law of the country in which the securities collateral account is maintained (in accordance with the principle already set forth in Article 9(2) of the Settlement Finality Directive). It has to be ensured, however, that the alternative criteria contained in Article 10(2)(a) of the proposed Directive in order to identify the place where an account is maintained ('... provided that the relevant intermediary allocates the relevant account to that office or branch for purposes of reporting to its account holders or for regulatory or accounting purposes'), do not lead to new uncertainties as to which law applies. In this context, the ECB urges the entities concerned, in particular the Member States, to try to achieve, in the context of the ongoing discussions on a draft convention on 'the law applicable to dispositions of securities held through indirect holding systems' at the level of the Hague Conference on private international law, a solution which is consistent with the principles contained both in Article 10 of the proposed Directive and in Article 9(2) of the Settlement Finality Directive.

20. The ECB would like to raise the question whether the proposed Directive (and particular Article 10(2) referring to a relevant intermediary) also sufficiently covers situations of direct holdings in case of certain depository structures which merely reflect the holdings on an underlying register or directly in the books or records of an issuer, or structures in which securities are considered to be located in the books of the member of the central depository system.
21. Finally, in view of the high importance of further enhancing the efficient and safe use, both at a domestic and cross-border level, of financial collateral arrangements, both for the EU financial markets in general and the conduct of Eurosystem collateralised operations in

particular, the ECB would like to encourage all parties involved in the process of drafting and, ultimately, implementing the proposed Directive, to use all efforts for a quick finalisation of this process.

22. This opinion shall be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main on 13 June 2001.

The President of the ECB

Willem F. DUISENBERG
