

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 15 November 1989

REEXAMINED PROPOSAL FOR A
COUNCIL DIRECTIVE
ON A SOLVENCY RATIO FOR
CREDIT INSTITUTIONS

(presented by the Commission pursuant to
Article 149(2)(d) of the EEC Treaty)

REEXAMINED PROPOSAL
FOR A COUNCIL DIRECTIVE
ON A SOLVENCY RATIO FOR CREDIT INSTITUTIONS

Explanatory Memorandum

1. The original proposal for a Council Directive on a Solvency ratio for Credit Institutions was submitted by the Commission to the Council on 27 April 1988¹⁾.
2. The Economic and Social Committee delivered its opinion²⁾ on 27 October 1988 and the European Parliament delivered its opinion³⁾ on 15 March 1989.
3. Pursuant to Article 149(3) of the Treaty, the Commission submitted an amended proposal⁴⁾ which largely took account of the proposed amendments.
4. On 24 July 1989 the Council unanimously agreed on a common position⁵⁾ on which the Council has delivered its reasons⁶⁾ and the Commission its observations⁷⁾.
5. The European Parliament had its second reading on 25 October 1989 under the cooperation procedure and voted in favour of four amendments⁸⁾.

1) OJ N° C 135 of 25.5.1988, p.4

2) OJ N° C 337 of 31.12.1988, p. 8

3) OJ N° C 96 of 17.4.1989, p. 83

4) OJ N° C 167 of 3.7.1989, p. 40

5) The Council Doc. 7836/89 of 24.7.1989

6) The Council Doc. 7836/89, Add. 1 of 20.7.1989 and CON. 1 of 24.7.1989 and CON. 2 of 25.10.1989

7) Sec(89) 206 final - SYN 133 of 24.7.1989

8) EP 135.514

6. The two first amendments adopted by the European Parliament concern the question of comitology and they propose to use the management committee, procedure II B of the Council's decision of 13 July 1987⁹⁾. The Parliament rejected Art. 9(2) of the Council's common position in which the Council suggested the use of regulatory committee procedure III B.
7. The Commission thought it appropriate to propose in all the banking directives the procedure of regulatory committee, procedure IIIA of the Council's decision of 13 July 1987. This procedure gives the Commission all the powers it needs and it is the only adequate procedure taking into account the nature of the measures which will have to be taken. In the banking field, the implementing powers will not be used for a day-to-day management, as it is the case in other sectors (e.g. agriculture) where the management committee procedure is appropriate.
8. This is the reason why the Commission, although it welcomes the decision of the European Parliament to reject the position of the Council on Comitology, prefers to persist in its reexamined proposal and vigorously defend the regulatory committee version IIIA.
9. The third amendment adopted by the European Parliament proposes to prolong by five years and until 2001 the special derogation in Article 11(4) which grants credit institutions the right to apply a 50% weighting on loans backed by mortgage on commercial properties. The Parliament argues that for reasons of competition this derogation should have the same length of time as the derogation in Article 11(5). The Commission can not accept this amendment for the reason that the latter derogation is a general one which all Member States can apply whereas the derogation in Article 11(4) only is included in order to help three Member States with specific problems.
- 10 The last amendment is a textual improvement of Article 11(5) which the Commission is prepared to accept.

⁹⁾ OJ N° L 197 of 18.7.1987, p. 33

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Common position of the Council

Reexamined proposal of the Commission

Recitals 1 to 13 unchanged

14th Recital

Whereas technical modifications to the detailed rules contained in this directive may from time to time be necessary to respond to new developments in the banking sector; whereas the Commission shall accordingly make such modifications as are necessary, after consulting the Banking Advisory Committee, within the limits of the implementing powers delegated to the Commission by the provisions of the Treaty; whereas that Committee shall act as a 'Regulatory' Committee, according to the rules of procedure laid down in Article 2, procedure III, variant (b) of Council Decision 87/373/EEC of 13 July 1987 laying down procedures for the exercise of implementing powers conferred on the Commission³⁾;

14th Recital

Whereas technical modifications to the detailed rules contained in this directive may from time to time be necessary to respond to new developments in the banking sector; whereas the Commission shall accordingly make such modifications as are necessary, after consulting the Banking Advisory Committee, within the limits of the implementing powers delegated to the Commission by the provisions of the Treaty; whereas that Committee shall act as a 'Regulatory' Committee, according to the rules of procedure laid down in Article 2, procedure III, variant (a) of Council Decision 87/373/EEC of 13 July 1987 laying down procedures for the exercise of implementing powers conferred on the Commission³⁾

³⁾ OJ No L 197, 18.7.1987, p. 33

³⁾ OJ No L 197, 18.7.1987, p. 33

Common position of the Council

Reexamined proposal of the Commission

Articles 1 to 8: unchanged

Article 9(1): unchanged

Article 9(2)

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

The Commission representative shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States in the committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

Article 9(2)

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

The Commission representative shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States in the committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall implement the envisaged measures when they are in conformity with the opinion of the Committee.

Common position of the Council

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If the Council does not act within three months of the referral to it the Commission shall adopt the measures adopted, unless the Council has decided against those measures by a simple majority.

Reexamined proposal of the Commission

When the envisaged measures do not confirm with the opinion of the Committee, or in the absence of an opinion, the Commission shall without delay submit to the Council a proposal relating to the measures to take. The Council shall act according to qualified majority voting.

If at the end of the period which will be set in the case of each decision to be taken by the Council as a result of this paragraph, a period which must not exceed three months from the day on which the Council was informed, the Council has not acted, the Commission shall implement the proposed measures.

Articles 10 to 11(4) unchanged

Article 11

5. 50% for property leasing transactions concluded within ten years of the date laid down in Article 12(1) 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.

Article 11

5. The Member States may apply a weighting of 50% in respect of property leasing transactions concluded within ten years of the date laid down in Article 12(1) 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.

Articles 12 and 13: unchanged

Amendments proposed
by the European Parliament
but rejected
by the Commission

Solvency ratio for credit institutions

Doc. A 3-45/89

DECISION

(COOPERATION PROCEDURE : second reading)

on the common position of the Council with a view to the adoption of a directive on a solvency ratio for credit institutions

The European Parliament,

- having regard to the common position of the Council (Doc. C 3-17/89 - SYN 133)
 - having regard to the relevant provisions of the EEC Treaty and its Rules of Procedure,
1. Has amended the common position as set out below;
 2. Has instructed its President to forward this decision to the Council and Commission.

Common position of the Council

Whereas technical modification to the detailed rules contained in this directive may from time to time be necessary to respond to new developments in the banking sector; whereas the Commission shall accordingly make such modifications as are necessary, after consulting the Banking Advisory Committee, within the limits of the implementing powers delegated to the Commission by the provisions of the Treaty; whereas that Committee shall act as a 'Regulatory' Committee, according to the rules of procedure, laid down in Article 2, procedure III, variant (a) of Council Decision 87/373/EEC of 13 July 1987 laying down procedures for the exercise of implementing powers conferred on the Commission;

Amendments adopted by Parliament
(Amendment No. 1)

Fourteenth recital

Whereas technical modification to the detailed rules contained in this directive may from time to time be necessary to respond to new developments in the banking sector; whereas the Commission shall accordingly make such modifications as are necessary, being assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission; whereas appropriate measures shall be adopted in accordance with procedure II, variant (b) set out in Article 2 of Council Decision 87/373/EEC of 13 July 1987;

(Amendment No. 2)

Article 9(2), third, fourth and fifth subparagraphs

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal concerning the measures to be taken. The Council shall act by a qualified majority.

If the Council does not act within three months of the referral to it the Commission shall adopt the measures proposed, unless the Council has decided against those measures by a simple majority.

4. By derogation from Article 6(1)(c)(1), until 1 January 1996 Germany, Denmark and Greece may apply a weighting of 50% to assets which are entirely and completely secured to the satisfaction of the competent authorities concerned, by mortgages on completed residential property, on offices or on multi-purpose commercial premises, situation within the territories of those three Member States, provided that the sum borrowed does not exceed 60% of the value of the property in question, calculated on the basis of rigorous assessment criteria laid down in statutory or regulatory provisions.

The Commission shall adopt measures which shall be immediately applicable. However, where they do not conform with the opinion of the Committee, the Commission shall without delay communicate them to the Council.

In this event the Commission shall defer application of the measures it has adopted for a time-limit which may in no case exceed three months from the date of the communication.

The Council, acting by a qualified majority, may take a different decision within the time-limit laid down in the preceding paragraph.

(Amendment No. 3)

Article 11(4)

4. By derogation from Article 6(1)(c)(1), until 1 January 2001 Member States may apply a weighting of 50% to assets which are entirely and completely secured to the satisfaction of the competent authorities concerned, by mortgages on offices or on multi-purpose commercial premises, situation within the territory of the European Community, provided that the sum borrowed does not exceed 60% of the value of the property in question, calculated on the basis of rigorous assessment criteria laid down in statutory or regulatory provisions, and provided that the holder of the mortgage ranks before any other creditor in respect of the mortgaged property.