

OPINION OF THE EUROPEAN MONETARY INSTITUTE

on a consultation from the Council of the European Union under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI;

on a Commission proposal for a European Parliament and Council Directive amending:

Article 12 of Council Directive 77/780/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions;

Articles 2, 6, 7 and 8 and Annexes II and III of Council Directive 89/647/EEC on a solvency ratio for credit institutions; and,

Article 2 and Annex II of Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions.

CON/96/08

1. The present consultation was initiated by means of a letter sent on behalf of the Secretary General of the Council of the European Union, addressed to the President of the EMI and received on 15th July 1996, and relates to the proposal for a directive, prepared by the Commission (reference COM (96) 183 final/2) and communicated to the Council of the European Union by means of a letter dated 30th April 1996.

References in this opinion to the text of the proposal refer to document reference COM (96) 183 final/2.

2. The purposes of the proposal are to introduce a number of amendments to Council Directives 77/780/EEC, 89/647/EEC and 93/6/EEC, either to take account of recent developments or to remedy perceived shortcomings to those Directives, and to reflect refinements of the supervisory treatment of over-the-counter derivative instruments already contemplated by the Basle Committee on Banking Supervision.
3. The EMI considers that it is competent to give an opinion in relation to the proposal. Article 109f (6) of the Treaty and Article 5.3 of the EMI Statute provide for consultation of the EMI by the Council on any proposed Community act within the field of competence of the EMI. The

present proposal relates to the field of competence of the EMI: it concerns the supervision of credit institutions, being an area which falls within the competence of a number of national central banks, and it will have a potential impact upon the stability of financial institutions and the financial markets (Article 4.1, fourth indent of the EMI Statute).

4. The EMI welcomes, in broad terms, the package of proposals contained in this draft directive. There follow a number of comments on specific provisions in the proposal. No comments will be offered on Articles 2, 3, 7, or 10 to 14 as these are either very technical in nature or only relate to very minor changes in relevant provisions of the Directives to be amended.
5. The EMI welcomes Article 1 of the proposal, representing an amendment to Article 12(3) of Directive 77/780/EEC. This amendment will allow Member States to conclude agreements for the exchange of information with non-banking supervisory authorities of third countries. As currently drafted, Article 12(3) only allows for such agreements to be concluded with banking supervisory authorities of third countries.

The EMI considers that effective lines of communication between competent authorities on an international level are highly desirable and that an extension of the scope of Article 12(3) to cover co-operation agreements with non-banking supervisory authorities is a further welcome development in this area. Additionally, the EMI notes that a number of parallel articles exist in other directives which also deal with the topic of arrangements with supervisory authorities in third countries (e.g. Article 25 (3) of Council Directive 93/22/EEC on investment services in the securities field, Article 16 (3) of Council Directive 92/29/EEC (third non-life insurance Directive), Article 15 (3) of Council Directive 92/96/EEC (third life assurance Directive) and Article 50 (4) of Council Directive 85/611/EEC relating to UCITS) and assumes that care is taken to ensure consistency and clarity of approach when new provisions are adopted in this area, noting that this is likely to prove helpful, particularly in the field of supervision of financial conglomerates, in relation to which, several of these provisions may be relevant.

6. The EMI notes that Article 4 of the draft directive allows for the weighting of the unpaid portion of capital subscribed to the European Investment Fund at 20%. The EMI assumes that this allowance is considered appropriate on the basis of the unique character and structure of the European Investment Fund.
7. The provisions in Articles 5 and 9 relating to determining the scope of the credit risk treatment for off-balance sheet contracts are welcomed by the EMI. The new Annex III to the SRD, which is proposed by Article 9, would allow for a wider range of derivative contracts to be included within the treatment set out in Annex II of Council Directive 89/647/EEC. The EMI in particular notes with approval that, by allowing for the inclusion of contracts which relate to

additional reference items (e.g. equities and commodities), rather than, as hitherto, limiting the scope of these provisions to an exclusive lists of types of contracts the proposed amendment would allow for a more flexible approach, in particular allowing for account to be taken of innovation through new derivative products.

8. With reference to Article 6 of the proposal, the EMI notes that the Article of Council Directive 89/647/EEC to be amended (Article 6) is also to be amended by Article 1 of the proposal for an amendment of Council Directive 89/647/EEC relating to mortgage backed lending and securities (reference COM (95) 709 final - see EMI CON/96/07). For the avoidance of doubt the reference in the proposed amendment to Article 6 (4) of Council Directive 89/647/EEC to Article 6 (1) (c) (1) of the same directive should clarify whether reference is only being made to loans covered by mortgage or to both these loans and to mortgage backed assets, as included within the other proposal for amendment to Council Directive 89/647/EEC.

9. The amendments to Annex II of Council Directive 89/647/EEC, as contemplated by Article 8 of the proposal, are welcomed by the EMI. The EMI notes that, following these amendments, EU legislation will reflect amendments to the Basle Accord which have already been adopted by the Basle Committee on Banking Supervision and which became effective by the end of 1995. The EMI considers that the measures introduced through Article 8 represent a positive effort to improve the supervisory treatment of over the counter derivatives and, in particular, the EMI welcomes the following features of the proposals for amendment of Annex II:
 - the expansion of the table of multiplication factors (table 1) and also the tightening of the provisions whereby those contracts not falling within one of the specified categories would be accorded the most rigid calculation factors;

 - the obligation for larger institutions to use method 1, the so-called current exposure method;

 - the fact that the proposal aims at according to credit institutions which have their head office and registered office in the EU an equally favourable treatment with respect to the risk reduction effects of netting on the calculation of the potential future exposure in comparison to third country institutions covered by the Basle Accord.

10. The EMI agrees that this opinion may be made public by the consulting authority.

24th September 1996