

Council Directive of 24 June 1988 for the
implementation of Article 67 of the Treaty (88/361/EEC)

COUNCIL DIRECTIVE

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(88/361/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 69 and 70(1) thereof,

Having regard to the proposal from the Commission, submitted following consultation with the Monetary Committee⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Whereas Article 8 a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of capital is ensured, without prejudice to the other provisions of the Treaty;

Whereas Member States should be able to take the requisite measures to regulate bank liquidity; whereas these measures should be restricted to this purpose;

Whereas Member States should, if necessary, be able to take measures to restrict, temporarily and within the framework of appropriate Community procedures, short-term capital movements which, even where there is no appreciable divergence in economic fundamentals, might seriously disrupt the conduct of their monetary and exchange-rate policies;

Whereas, in the interests of transparency, it is advisable to indicate the scope, in accordance with the arrangements laid down in this Directive, of the transitional measures adopted for the benefit of the Kingdom of Spain and the Portuguese Republic by the 1985 Act of Accession in the field of capital movements;

Whereas the Kingdom of Spain and the Portuguese Republic may, under the terms of Articles 61 to 66 and 222 to 232 respectively of the 1985 Act of Accession, postpone the liberalization of certain capital movements in derogation from the obligations set out in the First Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty⁽³⁾, as last amended by Directive 86/566/EEC⁽⁴⁾; whereas Directive 86/566/EEC also provides for transitional arrangements to be applied for the benefit of those two Member States in respect of their obligations to liberalize capital movements; whereas it is appropriate for those two Member States to be able to postpone the application of the new liberalization obligations resulting from this Directive;

Whereas the Hellenic Republic and Ireland are faced, albeit to differing degrees, with difficult balance-of-payments situations and high levels of external indebtedness; whereas the immediate and complete liberalization of capital movements by those two Member States would make it more difficult for them to continue to apply the measures they have taken to improve their external positions and to reinforce the capacity of their financial systems to adapt to the requirements of an integrated financial market in the Community; whereas it is appropriate, in accordance with Article 8c of the Treaty, to grant to those two Member States, in the light of their specific circumstances, further time in which to comply with the obligations arising from this Directive;

Whereas, since the full liberalization of capital movements could in some Member States, and especially in border areas, contribute to difficulties in the market for secondary residences; whereas existing national legislation regulating these purchases should not be affected by the entry into effect of this Directive;

Whereas advantage should be taken of the period adopted for bringing this Directive into effect in order to enable the Commission to submit proposals designed to eliminate or reduce risks of distortion, tax evasion and tax avoidance resulting from the diversity of national systems for taxation and to permit the Council to take a position on such proposals;

Whereas, in accordance with Article 70 (1) of the Treaty, the Community shall endeavour to attain the highest possible degree of liberalization in respect of the movement of capital between its residents and those of third countries;

Whereas large-scale short-term capital movements to or from third countries may seriously disturb the monetary or financial situation of Member States or cause serious stresses on the exchange markets; whereas such developments may prove harmful for the cohesion of the European Monetary System, for the smooth operation of the internal market and for the progressive achievement of economic and monetary union; whereas it is therefore appropriate to create the requisite conditions for concerted action by Member States should this prove necessary;

Whereas this Directive replaces Council Directive 72/156/EEC of 21 March 1972 on regulating international capital flows and neutralizing their undesirable effects on domestic liquidity⁽⁵⁾; whereas Directive 72/156/EEC should accordingly be repealed,

HAS ADOPTED THIS DIRECTIVE:

- (1) OJ No C 26, 1. 2. 1988, p. 1.
- (2) Opinion delivered on 17 June 1988 (not yet published in the Official Journal).
- (3) OJ No 43, 12. 7. 1960, p. 921/60.
- (4) OJ No L 332, 26. 11. 1986, p. 22.
- (5) OJ No L 91, 18. 4. 1972, p. 13.