II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 17 November 1986

amending the First Directive of 11 May 1960 for the implementation of Article 67 of the Treaty

(86/566/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 69 thereof,

Having regard to the proposal from the Commission, submitted after consultation of the Monetary Committee (1),

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

Whereas the Directive of 11 May 1960 (3), as last amended by Directive 85/583/EEC (4), laid down the Member States' obligations in respect of the liberalization of capital movements; whereas the degree of liberalization differs according to the categories of capital movements in question;

Whereas if the objectives of the Treaty and, in particular, completion of the internal market and the Community's greater financial integration are to be attained, gradual progress must be made towards the liberalization of capital movements; whereas it is important that such progress be made jointly with that made towards the increased convergence of the economic policies of the Member States, greater monetary stability and the development of the European Monetary System (EMS);

Whereas the reclassification of the operations on List B of Annex I to the Directive of 11 May 1960 so that the liberalization rules applying to operations on List A of the same Annex apply to them also must not make the procedures for granting the requisite authorizations more difficult for such operations;

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 of the Directive of 11 May 1960; whereas those two Member States should be able to postpone the application of the new liberalization obligations resulting from this Directive for periods similar to those laid down in the Act of Accession and for the same economic reasons,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Directive of 11 May 1960 is hereby amended as follows:

1. Article 2 is hereby repealed.

2. In Article 3 (1), 'List C of Annex I' is replaced by 'List B of Annex I'.

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

'2. The Member States shall undertake not to render more difficult the autorization procedures required on the date of entry into force of this Directive. They shall simplify as far as possible the authorization and control formalities applicable to the conclusion and performance of transactions and transfers and shall where necessary consult one another with a view to such simplification.'

(1) OJ No C 229, 10. 11. 1986, p. 3.
(2) OJ No C 297, 24. 11. 1986.
(3) OJ No 43, 12. 7. 1960, p. 921/60.
(4) OJ No L 372, 31. 12. 1985, p. 39.

4. In The second subparagraph of Article 7, 'List D of Annex I' is replaced by 'List C of Annex I'.

5. In Article 10, 'Lists A, B, C and D contained in Annex I' is replaced by 'Lists A, B and C of Annex I'.

6. Annex I is replaced by the Annex to this Directive.

7. Annex II is hereby amended as follows:

'— The Nomenclature of Capital Movements is hereby amended as follows:

(a) The following heading is added to items III A 1, III A 2, III B 1 and III B 2:

units of collective investment undertakings';

(b) The following two headings are added to items IV A and IV C:

'5. Acquisition of units of collective investment undertakings,

6. Repatriation of the proceeds of the liquidation of units of collective investment undertakings';

(c) The following two headings are added to items IV B and IV D:

'5. Acquisition of units of collective investment undertakings,

6. Use of the proceeds of the liquidation of units of collective investment undertakings';

(d) The titles of items IV B and IV D are hereby amended as follows:

'B. *Acquisition by residents of foreign securities dealt in on a stock exchange, or of domestic securities issued on a foreign market and dealt in on a stock exchange, and use of the proceeds of the liquidation thereof,*

'D. *Acquisition by residents of foreign securities not dealt in on a stock exchange, or of domestic securities issued on a foreign market but not dealt in on a stock exchange, and use of the proceeds of the liquidation thereof';*

— The Explanatory Notes are hereby amended as follows:

(a) The definition of undertakings for collective investment in transferable securities (UCITS) is replaced by the following:

'— *Collective investment undertakings*

Undertakings:

— the object of which is the collective investment in transferable securities or other assets of the capital they raise and which operate on the principle of risk-spreading, and

— the units of which are, at the request of holders, under the legal, contractual or statutory conditions governing them, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a collective investment undertaking to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

Such undertakings may be constituted according to law either under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies).

For the purposes of this Directive "common funds" shall also include unit trusts.';

(b) The definition of the term 'bonds' is replaced by the following:

'— *Bonds*

Negotiable securities with a maturity of two years or more from issue for which the interest rate and the terms for the repayment of the principal and the payment of interest are determined at the time of issue. The bonds referred to in category IV of the Nomenclature are those issued by both public and private bodies.'

Article 2

1. The Member States shall take the measures necessary for them to comply with this Directive no later than 28 February 1987. They shall forthwith inform the Commission thereof.

2. Without prejudice to Articles 61 to 66 and 222 to 232 of the 1985 Act of Accession, the Kingdom of Spain and the Portuguese Republic may continue to apply Article 3 of the Directive of 11 May 1960 to the following operations referred to in the Nomenclature of Capital Movements:

A. until 1 October 1989 for the Kingdom of Spain and until 31 December 1990 for the Portuguese Republic:

— operations under headings IV B 5 and IV B 6 relating to the acquisition by residents of units in foreign undertakings for collective investment subject to Directive 85/611/EEC [1] and taking the form of common funds,

— operations under headings IV D 5 and IV D 6 relating to the acquisition by residents of units in foreign undertakings for collective investment subject to Directive 85/611/EEC,

and use of the proceeds of the liquidation thereof;

[1] OJ No L 375, 31. 12. 1985, p. 3.

B. until 31 December 1990 for the Kingdom of Spain and until 31 December 1992 for the Portuguese Republic :

— operations under headings III A 1, III A 2, III B 1 and III B 2, (a) and (b), in List A annexed to this Directive,

— operations under heading IV B relating to the acquisition by residents of the following securities dealt in on a stock exchange, and to use of the proceeds of the liquidation thereof :

(a) units in foreign collective investment undertakings not subject to Directive 85/611/EEC and taking the form of common funds ;

(b) foreign bonds issued on a foreign market and denominated in national currency ;

(c) domestic securities issued on a foreign market,

— operations under heading IV C and IV D, other than those relating to units in collective investment undertakings subject to Directive 85/611/EEC, and

— operations under headings VII A 1 and VII B 1 (iii).

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 17 November 1986.

For the Council

The President

N. LAWSON

ANNEX

'ANNEX I

LIST A

Capital movements referred to in Article 1 of the Directive

	Heading
Direct investments	I
excluding purely financial investments made with a view only to giving the persons providing the capital indirect access to the money or capital market of another country, through the creation of an undertaking or participation in an existing undertaking in that country	
Liquidation of direct investments	II
Admission of an undertaking's securities to the capital market	III A 1 and 2 III B 1 and 2
— Shares and other securities of a participating nature, dealt in on or in the process of introduction to a stock exchange in a Member State	
— Bonds dealt in on or in the process of introduction to a stock exchange in a Member State	
— Units of undertakings for collective investment in transferable securities covered by Directive 85/611/EEC (1), without prejudice to the provisions of that Directive relating to the marketing of UCITS units (Section VIII)	
Operations in securities	IV
— shares and other securities of a participating nature	
— bonds	
— units of collective investment undertakings	
— units of collective investment undertakings dealt in on a stock exchange	
— units not dealt in on a stock exchange	
— of undertakings for collective investment in transferable securities covered by Directive 85/611/EEC	
— of other collective investment undertakings the sole object of which is investment in transferable securities or other assets the acquisition of which has been liberalized	
Investments in real estate	V
Grant and repayment of credits in connection with commercial transactions or the provision of services in which a resident is participating	VII 1 A and B
Personal capital movements	
Gifts and endowments	X B
Dowries	X C
Inheritances	X D
Settlement of debts in their countries of origin by immigrants	X E
Transfers	X F
Transfers of capital belonging to emigrants returning to their countries of origin	X G
Transfers of workers' savings during their periods of stay	X H
Transfers by instalments of blocked funds belonging to non-residents by the holders of such funds in case of special hardship	X I
Annual transfers of blocked funds to another Member State by a non-resident account holder, up to an amount or proportion of the total assets, fixed uniformly by the Member States concerned for all applicants	X L
Transfers abroad of minor amounts	X M
Transfers in performance of insurance contracts	XI
as and when freedom of movement in respect of services is extended to those contracts in implementation of Articles 59 *et seq.* of the Treaty	

(1) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). OJ No L 375, 31. 12. 1985, p. 3.

	Heading
Sureties, other guarantees and rights of pledge and transfers connected with them relating to	
credits in connection with commercial transactions or the provision of services in which a resident is participating	XII A and B in conjunction with VII 1 A and B
long-term loans with a view to establishing or maintaining lasting economic links	XII A and B in conjunction with I A 3 B 3
Other capital movements	
Death duties	XIV A
Damages (where these can be considered as capital)	XIV B
Refunds in cases of the cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)	XIV C
Authors' royalties	
Patents, designs, trade marks and inventions (assignment and transfers arising out of such assignments)	XIV D
Transfers of the moneys required for the provision of services	XIV E

The use of the proceeds of the liquidation of assets abroad belonging to residents must be permitted at least within the limits of the obligations as regards liberalization accepted by Member States.

LIST B

Capital movements referred to in Article 3 of the Directive

	Heading
Admission of an undertaking's securities to the capital market	III A 1 and 2 III B 1 and 2
Shares and other securities of a participating nature, not dealt in on or in the process of introduction to a stock exchange in a Member State	
Bonds not dealt in on or in the process of introduction to a stock exchange in a Member State	
Units of collective investment undertakings not covered by Directive 85/611/EEC	
Operations in securities	
Units, not dealt in on a stock exchange, of collective investment undertakings not covered by Directive 85/611/EEC, the sole object of which is not investment in transferable securities or other assets the acquisition of which has been liberalized	IV
Grant and repayment of medium- and long-term credits in connection with commercial transactions or the provision of services in which no resident is participating	VII 2 A (ii) and (iii) B (ii) and (iii)
Grant and repayment of medium- and long-term loans and credits not in connection with commercial transactions or the provision of services	VIII A (ii) and (iii) B (ii) and (iii)
Sureties, other guarantees and rights of pledge and transfers connected with them and relating to :	
medium- and long-term credits in connection with commercial transactions or the provision of services in which no resident is participating	XII A and B in conjunction with VII 2 A (ii) and (iii) B (ii) and (iii)
medium- and long-term loans and credits not in connection with commercial transactions or the provision of services	XII A and B in conjunction with VIII A (ii) and (iii) B (ii) and (iii)

The use of the proceeds of the liquidation of assets abroad belonging to residents must be permitted at least within the limits of the obligations as regards liberalization accepted by Member States.

LIST C

Capital movements referred to in Article 4 of the Directive

	Heading
Short-term investments in treasury bills and other securities normally dealt in on the money market	VI
Opening and placing of funds on current or deposit accounts, repatriation or use of balances on current or deposit accounts with credit institutions	IX
Grant and repayment of short-term credits in connection with commercial transactions or the provision of services in which no resident is participating	VII 2 A (i) B (i)
Grant and repayment of short-term loans and credits not in connection with commercial transactions or the provision of services	VIII A (i) B (i)
Personal capital movements	
loans	XA
Sureties, other guarantees and rights of pledge and transfers connected with them relating to	
short-term credits in connection with commercial transactions or the provision of services in which no resident is participating	XII A and B in conjunction with VII 2 A (i) B (i)
short-term loans and credits not in connection with commercial transactions or the provision of services	XII A and B in conjunction with VIII A (i) B (i)
private loans	XII A and B in conjunction with XA
Physical import and export of financial assets	XIII
Other capital movements : Miscellaneous	XIV F'