DIRECTIVE 98/32/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 June 1998

amending, as regards in particular mortgages, Council Directive 89/647/EEC on a solvency ratio for credit institutions

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 57(2) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [3],

(1) Whereas it is appropriate to treat mortgage-backed securities as loans referred to in Article 6(1)(c)(1) and Article 11(4) of Council Directive 89/647/EEC [4] if the competent authorities consider that they are equivalent in the light of the credit risk; whereas the market for securitisation is undergoing rapid development; whereas it is therefore desirable that the Commission should examine with the Member States the prudential treatment of asset-backed securities and put forward, within a year from the adoption of this Directive, proposals aimed at adapting existing legislation in order to define an appropriate prudential treatment for asset-backed securities;

(2) Whereas Article 11(4) of Directive 89/647/EEC provides for a derogation from Article 6(1)(c)(1), on certain conditions, for four Member States as regards the weighting to be applied to assets secured by mortgages on offices or on multi-purpose commercial premises; whereas this derogation expired on 1 January 1996;

(3) Whereas when Directive 89/647/EEC was adopted, the Commission undertook to examine this derogation to determine whether, in the light of its findings and of international developments and in view of the need to avoid distortions of competition, there was a case for amending this provision and, if so, to put forward appropriate proposals; whereas the results of the study relating to this provision, although not absolutely conclusive, show that there is no significant difference between the rates of losses recorded in the Member States covered by the derogation and in those not covered; whereas, therefore, this derogation can be extended to all Member States which so wish until 31 December 2006;

(4) Whereas the property to which the mortgage relates must be subject to rigorous assessment criteria and regular revaluation to take account of the developments in the commercial property market; whereas the property must be either occupied or let by the owner; whereas loans for property development are excluded from this provision;

(5) Whereas this Directive is the most appropriate means for attaining the objectives sought and does not go beyond what is necessary to achieve these objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/647/EEC is amended as follows:

1. In Article 6(1)(c)(1) the following subparagraph shall be added:

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(1) OJ C 114, 19.4.1996, p. 9.
(2) OJ C 30, 30.1.1997, p. 99.
(3) Opinion of the European Parliament of 17 September 1996 (OJ C 320, 28.10.1996, p. 26), Council common position of 9 March 1998 (OJ C 135, 30.4.1998, p.1) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Council Decision of 19 May 1998.
(4) OJ L 386, 30.12.1989, p. 14. Directive as last amended by Directive 96/10/EC (OJ L 85, 3.4.1996, p. 17).

'"mortgage-backed securities" which may be treated as loans referred to in the first subparagraph or in Article 11(4), if the competent authorities consider, having regard to the legal framework in force in each Member State, that they are equivalent in the light of the credit risk. Without prejudice to the types of securities which may be included in and are capable of fulfilling the conditions in this point 1, "mortgage-backed securities" may include instruments within the meaning of Section B(1)(a) and (b) of the Annex to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (*). The competent authorities must in particular be satisfied that:

(i) such securities are fully and directly backed by a pool of mortgages which are of the same nature as those defined in the first subparagraph or in Article 11(4) and are fully performing when the mortgage-backed securities are created;

(ii) an acceptable high-priority charge on the underlying mortgage asset items is held either directly by investors in mortgage-backed securities or on their behalf by a trustee or mandated representative in the same proportion to the securities which they hold.

(*) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7)'.

2. Article 11(4) is replaced by the following:

'4. Until 31 December 2006, the competent authorities of the Member States may authorise their credit institutions to apply a 50 % risk weighting to loans fully and completely secured to their satisfaction by mortgages on offices or on multi-purpose commercial premises situated within the territory of those Member States that allow the 50 % risk weighting, subject to the following conditions:

(i) the 50 % risk weighting applies to the part of the loan that does not exceed a limit calculated according to either (a) or (b):

(a) 50 % of the market value of the property in question.

The market value of the property must be calculated by two independent valuers making independent assessments at the time the loan is made. The loan must be based on the lower of the two valuations.

The property shall be revalued at least once a year by one valuer. For loans not exceeding ECU 1 million and 5 % of the own funds of the credit institution, the property shall be revalued at least every three years by one valuer;

(b) 50 % of the market value of the property or 60 % of the mortgage lending value, whichever is lower, in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions.

The mortgage lending value shall mean the value of the property as determined by a valuer making a prudent assessment of the future marketability of the property by taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property. Speculative elements shall not be taken into account in the assessment of the mortgage lending value. The mortgage lending value shall be documented in a transparent and clear manner.

At least every three years or if the market falls by more than 10 %, the mortgage lending value and in particular the underlying assumptions concerning the development of the relevant market, shall be reassessed.

In both (a) and (b) "market value" shall mean the price at which the property could be sold under private contract between a willing seller and an arm's length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale;

(ii) the 100 % risk weighting applies to the part of the loan that exceeds the limits set out in (i);

(iii) the property must be either used or let by the owner.

The first subparagraph shall not prevent the competent authorities of a Member State, which applies a higher risk weighting in its territory, from allowing, under the conditions defined above, the 50 % risk weighting to apply for this type of lending in the territories of those Member States that allow the 50 % risk weighting.

The competent authorities of the Member States may allow their credit institutions to apply a 50 % risk weighting to the loans outstanding on 21 July 2000 provided that the conditions listed in this paragraph are fulfilled. In this case the property shall be valued according to the assessment criteria laid down above not later than 21 July 2003.

For loans granted before 31 December 2006, the 50 % risk weighting remains applicable until their maturity, if the credit institution is bound to observe the contractual terms.

Until 31 December 2006, the competent authorities of the Member State may also authorise their credit institutions to apply a 50 % risk weighting to the part of the loans fully and completely secured to their satisfaction by shares in Finnish housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, provided that the conditions laid down in this paragraph are fulfilled.

Member States shall inform the Commission of the use they make of this paragraph.'

3. Article 11(5) shall be replaced by the following:

'5. Member States may apply a 50 % risk weighting to property leasing transactions concluded before 31 December 2006 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. Member States shall inform the Commission of the use they make of this paragraph'.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 months after its entry into force. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the filed governed by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	J. CUNNINGHAM