

MEMORANDUM OF UNDERSTANDING

**THE BANKING AND FINANCE COMMISSION**

(HEREINAFTER : "THE BELGIAN AUTHORITY")

AND THE

**CENTRAL BANK OF IRELAND**

(HEREINAFTER : "THE IRISH AUTHORITY")

(BOTH HEREINAFTER ALSO REFERRED TO AS  
"THE BELGIAN AND IRISH AUTHORITIES")

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agree to base their co-operation in the field of banking supervision after the implementation in both countries of the Second Banking Coordination Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC, hereinafter referred to as "the Second Directive", on the principles and procedures laid down in this memorandum.

The terminology of this memorandum shall be construed in accordance with the definitions and provisions laid down in the Second and other Banking Directives of the European Communities.

Knowing that a branch is only a constituent of a single legal entity, the Belgian and Irish authorities understand that it would not be justified to have a separate and comprehensive supervision of each branch, whether home or abroad, over and above the global supervision of the whole credit institution. Nevertheless, branches in other Member States are expected to be subject to appropriate supervision by their headquarters and, accordingly the home supervisor will have to ensure that adequate internal controls exist to its satisfaction.

The provisions of this Memorandum are without prejudice to the rights and competences, acknowledged by the banking Directives, of the national monetary authorities.

**I. GENERAL PROVISIONS**

**1 - General Framework (Main Provisions of the Second Banking Directive : Single Licence ; Home-Country Supervision)**

The Single European Act of 1986 provides that "the Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992". In the banking field, the internal market requires, on one hand, to ensure the freedom of capital movements (which was effected by Directive 88/361/EEC of 24 June 1988), and, on the other hand, to realize the broadest implementation of the freedom of establishment and services possible. The latter objective was accomplished by the Second Directive.

The Second Directive is based on the principle of mutual recognition of banking authorisations and prudential regulations. The authorisation and the supervision of a credit institution, including its activities in other Member States through branches and by way of the free provision of services, will rest with the competent authorities of the home Member State subject to the provisions laid down in the Second Directive. With the fundamental rules on banking supervision harmonised and home-country supervision recognised, an EC credit institution that intends to branch into another Member State may do so without an extra authorisation from the host authorities.

Beyond the responsibility of the host-country with regard to monetary policy it will retain, pursuant to Article 14 paragraph 2 sentence 1 of the Second Directive, responsibility for the supervision of the liquidity of the branch. In the supervision of market risk the host supervisor shall collaborate, pursuant to Article 14 (3) of the Second Directive, with the home supervisor, in so far as such risks result from transactions on the financial markets of the host-country.

2 - **Reasons for an Agreement on Co-operation**

In the light of the duty of close collaboration established by Article 7 (1) of the First Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions, hereinafter referred to as "the First Directive" and as further elaborated and reinforced by the twenty-first and twenty-second considerations as well as by Articles 14 (2 and 3) and 16 of the Second Directive, the Belgian and Irish authorities deem it necessary for the purpose of fruitful co-operation to define commonly the practical arrangements regarding the procedures laid down in the Second Directive, especially those in Articles 14, 15 and 18 through 21, and to communicate those arrangements to their employees.

3 - **Form and Extent of Co-operation**

(i) **Professional Secrecy**

Compliance with the obligation of professional secrecy by all employees who receive classified information from another Member State in the course of their activities is a necessary condition for successful cooperation between the Belgian and Irish authorities. The Belgian and Irish authorities will seek to ensure compliance with the letter and spirit of Article 12 of the First Directive as amended.

(ii) **Allocation of Responsibilities**

In Belgium, the Banking and Finance Commission is in charge of the supervision of credit institutions. In this capacity and in order to protect public savings and the good running of the credit system,

- (a) it is responsible for the registration of credit institutions and the granting of authorisations and derogations in application of the law on the status and the supervision of credit institutions and of the decrees and regulations taken for the execution of this law;
- (b) it supervises credit institutions with regard to their running in accordance with the provisions of the law and the decrees and regulations taken for the execution of the law;
- (c) it is empowered to take exceptional measures which can lead to revoke the registration.

The Banking and Finance Commission is an administrative agency in the meaning of the Belgian regulation of the Council of State.

In Ireland the Central Bank of Ireland is responsible for the authorisation and ongoing prudential supervision of all credit institutions as defined under the First Banking Directive.

(iii) **Exchange of Information**

The Belgian and Irish authorities understand that the free flow of information between them will be of paramount importance in creating a successful cooperation in general, and in avoiding supervisory loopholes in particular.

For the purposes of this memorandum the Central Bank of Ireland will function as head office concerning all banking supervisory information to be received from or to be sent to the Belgian authority. The Banking and Finance Commission will function as head office on the Belgian side.

The functions of the host supervisor will include duties to inform on a timely basis the home supervisor of any event concerning the branch which comes to his knowledge and when they estimate that the event is of significant importance for the supervision of the institution as a whole.

The Belgian and Irish authorities will closely collaborate both on a regular basis and whenever it is called for by a particular case. Persons entrusted with home or host supervisory functions may at all times seek advice from their peers in the other Member State. If particular supervisory issues call for clarification, ad-hoc meetings will be arranged, at which representatives of the Irish and Belgian authorities will participate. Visits for informational purposes will strengthen the mutual ties of co-operation.

The Belgian and Irish authorities will notify each other of any substantial change in their respective domestic supervisory regimes and policies in general. They will inform each other of administrative penalties imposed or other actions taken on a branch or an institution as a whole if they judge such information as possibly important to the partner authorities.

Over and above that, the Belgian and Irish authorities agree that home and host supervisors should inform each other upon request and to the extent reasonable on other prudential issues, for example, on standardized traded instruments, on rules governing conduct in the financial markets.

The Belgian and Irish authorities will keep each other up-to-date with postal addresses, relevant fax and phone-numbers.

II. **ESTABLISHMENT OF A BRANCH / NOTIFICATION**

1 - **Filing and Communication of the Notification (Competent Authorities ; Language)**

(i) **Credit Institutions**

A credit institution wishing to establish a branch within the territory of the other Member State must file a notification in its home-country ; in Belgium the notification has to be filed with the Banking and Finance Commission, in Ireland with the Central Bank of Ireland.

The Belgian and Irish authorities will have such notification filed along with a certified translation of same into one of the official languages of the host-country.

Upon receipt of such notification the home supervisor shall inform the host supervisor that a procedure aiming at the establishment of a branch in the territory of the latter has been instituted. The Belgian and Irish authorities will use the three-month period provided for in Article 19 (3) of the Second Directive to exchange any relevant information concerning the establishment of the branch.

The home-country authorities shall officially communicate the notification to the host-country authorities within the three month period of Article 19 (3) of the Second Directive, unless they have reason to doubt the adequacy of the administrative structure or financial situation of the credit institution for the activities envisaged. The host-country authorities shall acknowledge receipt of the communication without delay.

(ii) **Financial Institutions under Article 18**

In Belgium and Ireland, the financial institutions mentioned in Art. 18(2) of the Second Directive will have the possibility to move for authorisation to establish a branch through the procedure provided for in that provision. When financial institutions make use of this possibility the required notification has to be filed with the Belgian or Irish authority as appropriate, which will have to verify and confirm that the conditions provided for in the Directive are met. Such financial institution will be subject to the supervision of the Belgian or Irish authority as appropriate according to Art. 18, Par. 2(3) of the Second Directive. The practical arrangements agreed in this memorandum will apply mutatis mutandis.

2 - **Contents of the Notification (Branch Managers, Procedures of Internal Control, etc.) ; Notification Procedure ; Branches established prior to 1993.**

(i) **Credit Institutions**

The information required for the notification will be specified in the national regulations of the two countries in accordance with Article 19 (2) of the Second Directive.

The home-country will determine what needs to be covered by the programme of operations, including the structural organisation of the branch. The programme of operations will include details of the listed activities which the credit institution intends to undertake and will show separately the activities which are not listed in the Annex to the Second Directive.

The responsibility for the appointment of the branch managers rests with the individual credit institution. The Belgian and Irish authorities will - so far as they become aware - inform each other of the criminal conviction of a branch manager, with special reference to any sentence barring him from banking activities, and of other facts putting his fitness or properness in doubt, irrespective of whether he has already taken up his post at the branch. The home-country authority will act on such information in accordance with its national regulations.

The amount of own funds and the solvency ratio of the credit institution as well as the details on the deposit-guarantee system in the home-country (cf. Article 19 (3, subparagraph 2) of the Second Directive) shall be communicated to the host-country authorities.

If, before receiving proper notification, the host-country authority learns of the establishment of a branch in its territory by a credit institution incorporated in another Member State, it will inform the home-country authorities without delay. The latter will take the necessary measures to make the credit institution comply with the regulations and inform the host-country authority.

The provisions of the last paragraph are without prejudice to other measures the host-country may consider appropriate.

(ii) **Financial Institutions under Article 18**

The Belgian and Irish authorities will specify the contents required of the notification in accordance with Article 19 (2) of the Second Directive. The practical arrangements agreed in this Memorandum will apply mutatis mutandis to such financial institutions.

3 - **Reply by the Host-Country Authority**

The host-country authority will, within two months of receipt of the notification advise, pursuant to Article 19 (4) of the Second Directive, the credit institution of the conditions it must observe in the interest of the general good in carrying out in the host-country the activities listed in the Annex to the Directive. The advice shall be drawn up in one of the official languages of the host-country.

The host-country authority will provide the home-country authority with a copy of any advice given to the credit institution. The reply will also specify if, with regard to the legislation on credit institutions, activities which are not listed in the Annex of the Directive are allowed and, if such should be the case, under what conditions.

Any advice given by the supervisory authorities shall be without prejudice to the responsibility of the credit institution to comply with the legal provisions valid in the host state, and applicable to its establishment and its operation.

4 - **Setting up of Further Places of Business in the Host-Country by a branch or by the Head Office of a Credit Institution incorporated in the Home-Country**

A credit institution that has established a branch in the host-country in accordance with the provisions of Article 19 of the Second Directive may open further "places of business" in the host-country. As Article 1 (3) of the Second Directive stipulates that any number of places of business set up in the same Member State shall be deemed to be one branch, the opening of another place of business in the host-country, irrespective of whether it is to report to the headquarters direct or to a branch inside or outside the host-country, is exempt from the notification requirement of Article 19 (2) of the Second Directive.

The home-country authorities will see that a credit institution with several places of business established in the host-country specifies one place of business as the head branch, the managers of which shall answer to the host-country authority and for that purpose shall have the necessary powers and responsibilities on the whole of the places of business in the host-country.



The host-country authority may require the branch to give written notice of any place of business established or to be established in its territory. In Belgium, the managers of the branch shall give notice to the Banking and Finance Commission, in Ireland, to the Central Bank of Ireland.

5 - **Notices of Change**

Notices of change shall be filed with both the home and host-country authorities in accordance with Article 19(6) of the Second Directive. The notices shall be drawn up in one of the official languages of the home-country and be accompanied by a certified translation into one of the official languages of the host-country.

Where a change concerns the management of the branch, the Belgian and Irish authorities will use the one-month interim period between the notice and the occurrence of the change provided for in Article 19 (6) to exchange information, of which they are aware, on the fitness and properness of the designated manager of the branch.

6 - **Branches Established Prior to 1993**

(i) **Branches of Credit Institutions**

Branches which engaged in activities in accordance with the provisions in force in the host-country before the entry into force of the provisions implementating the Second Directive shall be presumed to have been subject to the procedure laid down in Article 19 (1 through 5) of the Directive (cf. Article 23 (1) of the Directive) and may continue to engage in such activities.

The Belgian and Irish authorities understand that both the host and home-country authorities should have the information required in Article 19 (2 b through d) of the Second Directive up-to-date on branches established in the host-country prior to 1993. They will help each other to update their files on such branches. The home-country authority may require the credit institution to furnish any extra data needed for that purpose.

Applying Article 19 (3, subparagraph 2) of the Second Directive *mutatis mutandis*, the home-country authority will communicate the latest information available as of 1 January 1993 on the amount of own funds and the solvency ratio of the credit institution as well as the details on the deposit guarantee system which is intended to ensure the protection of depositors in the branch to the host-country authority.

Furthermore, the home-country authority will advise all their domestic credit institutions with branches already established in the other Member State of the new requirements, and will, in particular, stress the duty under Article 19 (6) of the Second Directive to give written notice of any relevant changes in the particulars set forth in that provision.

The host-country authority will inform the relevant credit institutions incorporated in the other Member State of the rules they have to observe in the interest of the general good in the host-country. Such information shall be copied to the home supervisor.

(ii) **Branches of Financial Institutions under Article 18**

The Belgian and Irish authorities understand that Article 23 (1) of the Second Directive does not apply to financial institutions. Financial institutions incorporated in Belgium or in Ireland and doing business through branches in Ireland or in Belgium respectively, may either apply for a certificate of compliance and complete the notification procedure as provided for in Articles 18 and 19 of the Directive or continue to do business under the host-country regime.

III. **CO-OPERATION IN THE FIELD OF SUPERVISION**

1 - **Sole Responsibility of the Home Country**

Pursuant to Article 13 of the Second Directive, responsibility for the prudential supervision of a credit institution including its branches in other Member States rests with the home-country authority.

Save for the supervision of liquidity, credit institutions with all their branches will be subject only to the prudential supervisory rules of their home-country.

2 - **Co-operation in Special Fields of Supervision**

(i) **Market Risks**

The Belgian and Irish authorities understand that Article 14 (3) of the Second Directive assigns responsibility for the supervision of market risks to the home-country authority, even before the adoption of the Capital Adequacy Directive and its implementation in the domestic supervisory regimes.

Article 14 (3) of the Second Directive expressly provides for special collaboration between the home and host-country authorities where market risks result from transactions carried out on the financial markets of the host-country. The Belgian and Irish authorities will assist each other in the prudential assessment of market risks in their respective markets. They will also inform each other on any crisis emerging which could affect the domestic financial market as a whole (e.g. such as requiring the closing down of stock exchanges or a general moratorium on the banking industry), as soon as and to the extent legally possible.

The host-country authority shall inform the home-country authority of a branch that is in breach of market rules, if such information could be important for the home supervisor. If necessary, the home-country authority will inform the host-country authority of any measures adopted on the basis of such information.

(ii) **Liquidity**

The home-country authority shall supervise the overall liquidity of credit institutions including that of their branches in the host-country. Pending further EC coordination, Article 14(2) of the Second Directive provides for the liquidity of such branches to be supervised by the host-country authority in cooperation with the home-country authority. The home and host-country authorities will coordinate their activities, where necessary, to ensure that branches observe local liquidity requirements. If the host-country authority establishes that the branch has problems in complying with the host-country's liquidity requirements, the host-country authority shall inform the home-country authority.

In case of non compliance, the procedures provided for in Article 21 (2 to 4) will apply. If, despite the freedom of capital movements, the liquidity problem of the branch cannot be solved, it shall be assumed that the credit institution as a whole faces a problem, which is for the home-country authority to deal with. The host-country authority will nonetheless retain the power to take appropriate measures towards the branch in accordance with the provisions of Articles 21(4) and 21(7) of the Second Directive.

3 - **Reporting Duties ; Supervisory Returns**

Notwithstanding that the principal jurisdiction as regards reporting duties and supervisory returns will shift to the home-country authority with the implementation of the Second Directive, the host-country authority will retain the right to impose reporting duties on branches of credit institutions of the other Member States, either in the interest of the general good or with regard to matters for which it retains supervisory control or for statistical purposes.

4 - **Statistical Returns**

In Belgium, the reporting obligations of the branches of EEC Credit institutions have been redefined as part of a global redefinition of the reporting obligations of credit institutions, with effect from 1st January 1993. For the matters remaining within the competence of the host country, the branches will have to communicate the same information as those imposed on the national credit institutions. As periodical reporting on the operations carried out in Belgium (Art. 21(1) of the Second Directive), the Banking and Finance Commission will use the information that the branches will transmit to the National Bank of Belgium.

In Ireland the reporting requirements have been notified to the branches involved before 1 January 1993.

5 - **Interest of the general good/general law of the host-country**

The Belgian and Irish authorities understand that the conditions which the host-country supervisory authorities should indicate according to Article 19 (4) of the Second Directive, i.e. the conditions under which, in the interest of the general good, the branch must carry on its activities in the host-country, would only comprise the provisions which directly affect the carrying out of activities listed in the Annex to the Second Directive.

The host-country supervisor declares its intention to keep the home-country supervisor informed of the provisions adopted or upheld in the area of banking regulation. The Belgian and Irish authorities will endeavour to identify any double constraints.

The Belgian and Irish authorities will cooperate if they become aware that the activities of a branch violate general law of the host-country or legal rules in the meaning of Article 21(5) of the Second Directive. The home-country authority will, if necessary, draw the attention of the management of the credit institution to that issue.

6 - **Customer Complaints**

If a complaint about a particular branch is lodged by a customer with either the home or the host-country authorities, the relevant authority will act according to its legal rules or customary practice. It may consult the authorities of the other Member State whenever an intricate case calls for special expertise and knowledge of the latter.

In Belgium, the Banking and Finance Commission is not empowered to settle the disputes with customers. The settlement of these disputes are the competence of the courts but private customers have the possibility to recourse to a service of "ombudsman" organised by the professional associations of banks and savings banks. The Banking and Finance Commission only handles complaints of customers with regard to its concern on its supervision mission, in particular the quality of management and of the financial position of credit institutions and the adequacy of their organisation.

In Ireland, a Credit Institutions' Ombudsman Scheme was established in June 1990. It is a voluntary scheme and was set up to provide a completely independent and impartial system of arbitration in respect of unresolved complaints between credit institutions and their customers. Complaints that do not fall within the terms of reference of the Ombudsman scheme may be referred to the Central Bank or processed through the legal system.

7 - **Crisis ; Bankruptcy ; Winding-up**

The Banking and Finance Commission and the Central Bank of Ireland will inform each other, without delay, if they learn of any development which could critically affect credit institutions with branches in the other Member State. The same applies if such development is limited to the branch of the credit institution established in the other Member State but could result in the whole institution becoming insolvent.

In both cases the host-country authority will collaborate with the home-country authority if the home-country authority adopts supervisory counter-measures.

The host-country authority retains the right to apply to branches its own procedures concerning the reorganisation and winding up of credit institutions as a directive or a convention dealing with this field has not been adopted yet.

IV **CO-OPERATION IN THE FIELD OF ON-SITE-INSPECTIONS**

1 - **Inspections by home and host-country authorities**

(i) **Belgium**

In Belgium, the on-site inspections in the credit institutions are carried out by the statutory auditors and the inspectors of the Banking and Finance Commission.

The statutory auditor of the credit institution is in charge of the control of the financial positions, the annual accounts and the regularity of the operations with regard to the company law and the articles of association. However, he has to collaborate to the supervision carried out by the Banking and Finance Commission. For that reason, the credit institutions can only appoint a statutory auditor who is an auditor agreed by the Banking and Finance Commission. Moreover, their appointment is subject to the prior approval of the Banking and Finance Commission. Their collaboration to banking supervision consists in controlling the reliability of periodical accounting statements and the adequacy of the administrative and accounting organisation and the internal control. Periodically (in principle every six months) they report to the Banking and Finance Commission and transmit a copy of their report to the managers of the credit institution. They collaborate on their own and exclusive

responsibility - also concerning their working program - and in accordance with the rules of the profession and the general instructions of the Banking and Finance Commission. Their collaboration can also take the form of a warning (special reports) when they are aware of decisions, facts or evolutions which can influence significantly the financial position of a credit institution, its administrative or accounting organisation or its internal control or which can be violation of the company law or the law on the supervision of credit institutions and decrees and regulations taken for the execution of this law. The Banking and Finance Commission can ask them to submit special reports on the organisation, the activities and the financial structure of the credit institutions.

As to the on-site supervision by the inspectors of the Banking and Finance Commission, the mission orders are in principle limited to one or more particular aspects of the activity of the organisation. These inspections are carried as part of a medium term control plan of the credit institutions or as a part of horizontal surveys (survey of an identical particular aspect in various institutions). The report of the inspectors of the Banking and Finance Commission is transmitted to the managers of the credit institutions who are invited to communicate the measures they intend to take in order to meet the remarks formulated in the report.

(ii) **Ireland**

The Central Bank of Ireland conducts routine on-site inspections of the credit institutions under its supervision. Reports are completed following inspections. While the findings of the inspections are discussed with the senior management of the institutions concerned, the reports are not forwarded to the relevant institutions. Following discussions with senior management, a letter is issued to the Chairman of the Board of Directors of the relevant institution outlining the findings of the inspection.

Credit institutions in Ireland are also subject to annual audit by external auditors for verification of published accounts purposes. The Central Bank may oppose the appointment of external auditors and it may also request external auditors to furnish it with a report on whether, in their opinion, a credit institution has complied with relevant legislative and/or prudential requirements.

2 - **Support of Home Country Inspectors by the Host Country Authorities**

As home-country authorities, the Belgian and Irish authorities will remain free to determine their own auditing requirements and to appoint their own staff of inspectors as well as commissioned auditors/examiners to review credit institutions. Neither the host authorities nor the relevant credit institution may object to an inspection instituted by the home-country authority.

The host-country authorities will retain authority to inspect the branch within the bounds of their competence.

The Belgian and Irish authorities intend to carry out on-site inspections, either by their own staff or through commissioned auditors/examiners. As host-country supervisors they do not intend to carry out on-site inspections on behalf of the home-country authority. Nevertheless, they are prepared to give technical assistance to the auditor/examiner, on request, to the extent reasonable and on conditions to be agreed.

Pursuant to the provisions of Article 15 of the Second Directive the home-country authority will notify the host-country authority in advance of its intention to inspect a branch in the other Member State. The notification will contain the following information :

- name of the auditor/examiner ;
- name of the branch ;
- nature of the audit/inspection ;
- anticipated date of commencement of the audit/inspection ;
- expected duration of the audit/inspection.

The home authorities shall advise the auditor/examiner to pay a visit to the host authorities concerned before the commencement of the audit/inspection. The auditor/examiner may contact other supervisors in the host-country to obtain supervisory information concerning the branch. When it is relevant for the host-country authority, particularly with regard to matters falling into its competence, the host-country will be informed either by a copy of the report or a summary of the relevant findings of the audit/inspection.

### 3 - **Access to Information on Credit Risk (Credit Registers)**

In Belgium credit institutions and the branches of credit institutions of other countries, must notify at least monthly to the Risiconcentrale at the National Bank of Belgium the granted credits which for an individual borrower amount to 1 million BEF.

The total of risks identified for an individual borrower, splitted up by credit category, is transmitted to the credit institution and to those to whom a credit is asked.

The Banking and Finance Commission declares it is prepared to help the examiners/auditors of branches of credit institutions established in Ireland to obtain the information they will need when they carry out inspections as mentioned under IV.2 above.

In Ireland, there is no system in place similar to that operating in Belgium in relation to Credit Registers.

The Belgian and Irish authorities will review this issue after the conclusion of international agreements or after the entry into force of an EC Directive on loan reports.

## V. **CO-OPERATION AS REGARDS SUBSIDIARIES AND FREE PROVISION OF SERVICES**

### 1 - **Subsidiaries ; Dual Establishments (Subsidiary and Branch)**

Although this memorandum deals only with co-operation in the framework of the implementation of the Second Directive, the Belgian and Irish authorities take this opportunity to affirm their determination to co-operate closely in the supervision of credit institutions on a consolidated basis.

Once Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis comes into force, the Belgian and Irish authorities will define the procedures for their co-operation in that field.

In the meantime, the Belgian authorities do not have the authority to give up their supervision of Belgian subsidiaries of credit institutions incorporated in Ireland. The same applies, conversely, to the supervision by the Irish authorities of subsidiaries of credit institutions incorporated in Belgium. Both authorities shall not object to on-site examinations of subsidiaries by examiners/auditors of the supervisory authority responsible for consolidated supervision. Moreover, the Belgian and Irish authorities stress the need for enhanced collaboration in the supervision of subsidiaries and dual establishments. They will in particular coordinate inspections of such subsidiaries and branches, and exchange their assessments of the findings in the course of such inspections. Especially the effectiveness of supervision of both subsidiary and branch will be reviewed, as activities may be shifted from one establishment to the other.

2 - **Free Provision of Services**

(i) **Credit Institutions**

As for the exercise of the freedom to provide services, Article 20 of the Second Directive only requires the communication of the notification received by the home-country authorities from the credit institution to the host-country authorities.

In Belgium the notification will be addressed to the Banking and Finance Commission as home-country authority, in Ireland to the Central Bank of Ireland.

The home-country authorities will communicate the notification to the host-country authority, along with a certified translation into one of the official languages of the host-country. Once the host-country authority has received the notification, the institution may start to provide services.

The host-country authorities shall inform the home-country authorities of any violation of the law in the host-country by cross-border provision of services and related advertising, if they judge such information may be important for the home-country authority. The latter authorities will take the necessary steps to make the credit institution concerned comply with the law, and will report to the host-country authorities.

Credit institutions which provided cross-border services in the host-country before 1 January 1993, and continue to provide services after 1 January 1993, will not be obliged to complete the notification procedure of Article 20 of the Second Directive.

If the host-country authorities have reason to believe that a credit institution incorporated in the other Member State is transacting business in its territory, which, albeit qualifying as provision of services within the meaning of the Second Directive, they had not been notified of, they shall advise the home-country authorities. The latter will investigate, take the necessary measures to obtain compliance with the law, and inform the host-country authorities of the result.

The establishment of representative offices, the employment of intermediaries, or advertising activities in the territory of the host-country by a credit institution incorporated in the other Member State would suggest that cross-border provision of services is taking place.

(ii) **Financial Institutions under Article 18**

In Belgium and Ireland, financial institutions wishing to avail of the freedom to provide cross-border services under the Second Directive will be required to satisfy the relevant provisions of the Directive. They will have to file the required notification with their home-country authority, which will have to verify and confirm that the conditions provided for in the Directive are met. The practical arrangements agreed in this memorandum will apply mutatis mutandis to such financial institutions.

The Belgian and Irish authorities understand the underlying intention of Article 18 (2, subparagraph 6) of the Second Directive that cross-border provision of services by a financial institution that has not undergone the procedure laid down in Article 20 of the Second Directive or that would no longer comply with the requirements of that provision would be subject to the legislation of the host-country.

VI. **CO-OPERATION CONCERNING THE PROCEDURES PROVIDED FOR IN ARTICLES 7 AND 11, AND CONCERNING OWNER CONTROL**

- (i) The Second Directive requires prior consultation before any authorisation referred to in Article 7 is granted or any acquisition referred to in Article 11 (2) is permitted.

The Banking and Finance Commission will consult the Central Bank of Ireland; the Central Bank of Ireland will consult the Banking and Finance Commission regarding the issues referred to in Articles 7 and 11(2) of the Second Directive.

- (ii) The Belgian and Irish authorities will inform each other - upon request and to the extent reasonable - of domestic enterprises which own one or more credit institutions incorporated in the other Member State. The information shall include all relevant facts regarding the shareholding enterprise itself and the ownership structure as a whole.

VII. **TECHNICAL ARRANGEMENTS**

1 - **Exchange of Lists**

The Belgian and Irish authorities shall provide each other with organograms. They shall exchange lists of correspondents, in order to facilitate contacts and will keep each other up-to-date with postal addresses and relevant fax and phone numbers.

The Belgian and Irish authorities shall also exchange on a regular basis the following lists of :

- the credit institutions which they have authorised and which transact business within the territory of the other Member State through subsidiaries or branches, or by provision of services pursuant to Article 20 of the Second Directive with the individual subsidiaries and branches specified;
- the credit institutions which they have authorised and in which enterprises incorporated in the other Member State have direct holdings of more than 10 per cent;



- the branches in their respective countries of credit institutions authorised in the other Member State; and
- the credit institutions which they have authorised and which have representative offices in the other Member State.

2 - **Regular Meetings**

The Belgian and Irish authorities agree that it would be desirable to hold regular meetings to discuss various questions relating to the credit institutions established in both countries and their supervision. The Belgian and Irish authorities will consider once a year whether such a meeting is needed. At these meetings any improvements to this Memorandum will be considered.

3 - **Exchange of information in preparation for the substitution of home for host-country supervision**

The Belgian and Irish authorities are prepared to make the information they have collected as host supervisors in respect of branches of credit institutions incorporated in the other Member State available on request to each other.

Done in the English language in Dublin on *7 July* 1993 and in  
Brussels on *19 July* 1993.

For the Banking and Finance  
Commission  
*J.L. Duplat*  
Chairman

For the Central Bank of Ireland  
*W.A. Barron*  
Assistant General Manager