

## MEMORANDUM OF UNDERSTANDING

The Commission bancaire et financière  
(hereinafter: "the Belgian authority")

and the

Banco de Portugal  
(hereinafter: "the Portuguese authority"),

(both hereinafter also referred to as "the Belgian and Portuguese authorities"),

determined to supervise the credit and financial institutions transacting cross-border business in Belgium and Portugal in compliance with the legal framework adopted by the European Economic Community, in close collaboration and in the spirit of mutual trust, agree in the light of home country supervision to base their co-operation after the implementation in both countries of the Second Council 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.

The provisions of this memorandum are without prejudice of the rights and competences acknowledged by the Banking Directives to the national monetary authorities.

Where a branch is only a constituent of a single legal entity, the Belgian and Portuguese authorities understand that it would not be justified to have a separate and comprehensive supervision of each branch, whether home or abroad, by the home supervisor 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 such internal controls exist to his satisfaction.

## **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 done 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 mission was accomplished by the Second Directive.

The Second Directive is based on the principle of mutual recognition of banking authorizations and prudential regulations. The authorization and the supervision of a credit institution, including its activities in other Member States through branches and 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 harmonized and home country supervision recognized, an EEC credit institution that intends to branch out into another Member State may do so without an extra permission by the local authorities.

Beyond the responsibility of the host country with regard to the implementation of monetary policy, the host country authorities will retain, pursuant to Article 14 paragraph 2 sentence 1 of the Second Directive, the 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 given legal situation, notably of the duty of close collaboration established as early as 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 recitals as well as by Articles 14 (2 and 3) and 16 of the Second Directive, the Belgian and Portuguese authorities deem it necessary for the purpose of a 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 translate those arrangements into clear directions 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 in the course of their activities from another Member State is absolutely necessary for creating a trusting collaboration between the Belgian and Portuguese authorities. The Belgian and Portuguese authorities will ensure that the obligation of professional secrecy is being observed to the letter and spirit of Article 12 of the First Directive as amended.

**(ii) Allocation of Responsibilities**

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

- a) it is competent for the registration of credit institutions and the granting of authorizations 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 provision of this law and the decrees and regulations taken for the execution of this law;
- c) it is empowered to take exceptional measures which can lead to revoke the registration.

The Commission bancaire et financière is an administrative agency in the meaning of the Belgian regulation on the Council of State.

In Portugal, the Banco de Portugal is responsible for ensuring compliance by credit institutions with the legislative and regulatory requirements applicable to them and for sanctioning observed non-compliance with those requirements.

The Banco de Portugal supervises all credit institutions in Portugal: it examines the way in which they operate and monitors the soundness of their financial situation.

The Banco de Portugal has the power to authorize new institutions other than those which are subsidiaries of third countries institutions or those whose authorization is requested by third countries citizens or companies. In these case the power lays in the Ministry of Finance.

**(iii) Exchange of Information**

The Belgian and Portuguese authorities understand that free flow of information will be of paramount importance to creating a successful co-operation in general, and to avoiding supervisory loopholes in particular.

For the purposes of this memorandum the Belgian authority will function as head office concerning all banking supervisory information to be received from or to be sent to the Portuguese authority unless this memorandum provides otherwise. The same holds valid for the Banco de Portugal vice versa.

The Belgian and Portuguese authorities will closely collaborate. 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, in which representatives of the Belgian and Portuguese authorities participate. Visits for informational purposes will strengthen the mutual ties of co-operation.

The Belgian and Portuguese authorities will notify each other of any substantial change in the domestic supervisory regimes and policies in general. Besides, 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 authority.

In the event that the host learns of any information concerning the branch, which is of significant importance for the supervision of the institution as a whole, he should timely inform the home supervisor.

Over and above that, the Belgian and Portuguese authorities agree that home and host supervisors should inform each other upon request and to the extent reasonable on other prudential issues, as for instance on standardized traded instruments, on rules governing the conduct in the financial market, or, to the extent of their knowledge, conglomerates of borrowers.

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

## II. ESTABLISHMENT OF A BRANCH

### 1- Filing and Communication of the Notification

(Competent Authorities; Language)

#### (i) Credit Institutions

For the establishment of a branch in the host country it shall be proceeded as follows:

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 Commission bancaire et financière, in Portugal the application must be filed with the Banco de Portugal.

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

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 Portuguese 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 authority shall relate the notification to the host country authority within the three-month-period of Article 19 (3) of the Second Directive upon receipt, unless it refuses to do so in accordance with that provision because it has reason to doubt the adequacy of the administrative structure or financial situation of the credit institution for the activities envisaged. The host country authority will supply the home country authority with an acknowledgement of receipt without delay.

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

In Belgium and in Portugal, the financial institutions mentioned in Art. 18 (2) of the Second Directive will have the possibility to move for authorization to establish a branch through the procedure provided for in that provision. Financial institutions choosing that procedure would have to file a notification, in Belgium with the Commission bancaire et financière and in Portugal with the Banco de Portugal, who will verify and confirm that the conditions spelt out in the Directive are satisfied and proceed, when appropriate, with the procedure of notification. A financial institution who is allowed to establish through this procedure would be supervised by the banking supervisory authorities pursuant to Art. 18 (2, subparagraph 3). The practical arrangements agreed in this Memorandum will apply mutatis mutandis to such financial institutions.

**2- Contents of the Notification (Branch Managers, Procedures of Internal Control, etc.); Notification Procedure; Branches not Being Notified of**

**(i) Credit Institutions**

The contents required of the notification will be specified in the domestic regimes of the two countries, in accordance with Article 19 (2) of the Second Directive.

The home country will define the requirements of the programme of operations. The Belgian and Portuguese authorities expect that the respective national provisions will require the programme of operations to list, among others, the activities the credit institution intends to carry on, segregating them into those listed in the Annex to the Second Directive and other activities.

The particulars in the programme of operations concerning the structural organization of the branch and its embedment in the internal controls of the credit institution shall be governed by the home country regime.

The responsibility for the appointment of the branch managers rests with the credit institution. The Belgian and Portuguese authorities are prepared to inform each other - so far as they become aware - of any criminal conviction or other serious facts putting the fitness or properness of a branch manager in doubt, notably of any sentence barring him from banking activities, irrespective of whether that manager has already taken up his post at the branch. The home supervisor will act on such information according to his legal rules on a strictly confidential basis.

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 in one of the languages of the home country. The note shall be accompanied by a translation into the language of the host country if it is requested by the host authority.

If the host country authority comes to know about the establishment of a branch in its territory by a credit institution incorporated in the other Member State the proper notification of which it has not received, it will inform the home country authority without delay. The latter will take the necessary measures to have the credit institution follow the rules, and inform the host country authority.

The procedure in the last paragraph is agreed without prejudice to other measures the host country might consider appropriate.

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

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



### 3- Reply by the Host Country Authorities

Within two months receiving the notification, the host country authority, if necessary, will indicate the conditions the credit institution 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 note shall be drawn up in one of the official languages of the host country. The host country authority shall copy that note to the home country authority no later than to the credit institution.

The reply should also specify if, with regard to the legislation on credit institutions, business activities which are not listed in the Annex are allowed and, if such would be the case, under which conditions.

Any reply given by the supervisory authorities shall be without prejudice to the responsibility of the credit institution to inform herself on 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 through the Branch or by the Headquarters Itself

As for the definition of branch the Belgian and Portuguese authorities refer to the definition spelt out in Article 1 No. 3 of the Second Directive. A credit institution that has established a branch in the host country in accordance with the procedure of Article 19 of the Second Directive will be free to open further "places of business" in the host country. As Article 1 No. 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, would not require further notification pursuant to Article 19 (2) of the Second Directive.

The home country authority 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 would have to answer to the host supervisor and for that purpose shall have authority on the whole of the places of business in the host country.

The host country authority shall have free discretion to require the branch to file 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 Commission bancaire et financière. In Portugal, the managers shall give notice to the Banco de Portugal (Departamento de Supervisão Bancária).

#### **5- Notices of Change**

The notices of change pursuant to Article 19 (6) of the Second Directive, which have to be filed by the credit institution with both the home and host supervisors when important changes in the branch are about to occur, shall be accompanied by a certified translation into one of the languages of the host country.

If the notice refers to a change in the management of the branch, the Belgian and Portuguese 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 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 have commenced their activities in accordance with the provisions in force in the host country before the entry into force of the provisions adopted in implementation of the Second Directive shall

be presumed to have been subject to the procedure laid down in Article 19 (1) to (5) of the Directive (cf. Article 23 (1) of the Directive). Such branches are entitled to continue their business on the hitherto existing scale.

The Belgian and Portuguese authorities understand that both host and home supervisors 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 available, too. They will help each other to update their files on those branches. The home supervisor will 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 supervisor 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 supervisor.

The home supervisors will advise all their domestic credit institutions with branches already existing in the other Member State of the new law, 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.

Applying Article 19 (4) of the Second Directive *mutatis mutandis*, the host supervisor 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 Portuguese authorities understand that Article 23 (1) of the Second Directive does not apply to financial institutions.

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

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

Pursuant to Article 13 of the Second Directive the sole responsibility for the supervision of a credit institution including its branches in other Member States rests with the home supervisor.

Save for the supervision of liquidity, a credit institution with all its branches will be subject only to the supervisory rules of its home country.

The Belgian and Portuguese authorities understand that Article 13 of the Second Directive puts the following matters exclusively under home supervision:

- licensing (issuance and revocation);
- fitness and properness of the management, dismissal of the management of the credit institution;
- administrative and accounting organisation;
- requirements as regards internal controls;
- own funds;
- supervision of solvency;
- supervision of risks arising out of open positions on markets;
- large exposures;
- qualifying holdings;
- owner control;
- all other domestic banking supervision law.

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

##### (i) Market Risks

The Belgian and Portuguese authorities understand that Article 14 (3) of the Second Directive allots the sole responsibility for supervision of market risks to the home supervisor even before the adoption of the Capital Adequacy Directive and its implementation in the domestic supervisory regimes. Consequently, the host supervisor will not impose limits to control those risks.

Article 14 (3) of the Second Directive expressly provides for special collaboration between home and host supervisors where market risks result from transactions carried out on the financial markets of the host country. The Belgian and Portuguese banking supervisors will consult each other for a prudential assessment of market risks if the situation in the financial markets of the host country gives rise to particular concern. They will inform each other on any crisis emerging with the potential to 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 supervisor shall inform to the best of its knowledge the home supervisor of a branch in breach of market rules, if that information is possibly important to the home supervisor. If need be, the home supervisor will inform the host supervisor of the nature of the measures taken upon such information.

**(ii) Liquidity**

The home supervisor shall supervise the liquidity of the institution as a whole including its branches in the host country. Pending further EC coordination, the liquidity of the branch will be, pursuant to Article 14 (2) of the Second Directive, besides home supervision subject to host supervision.

The Belgian and Portuguese authorities will examine whether they could in their function as host supervisors avoid duplication of work in the area of liquidity supervision and narrow their activities in that field down to inform the home authorities of liquidity crunches emerging on their own financial markets.

If the branch fails to commensurate its liquidity with the host country requirements, it shall be proceeded as follows:

1. The host country authorities will ask the credit institution to put an end to that irregular situation.

2. If the institution concerned fails to take the necessary steps to boost its liquidity to the required level the host supervisor shall inform the home supervisor. The latter will take the necessary measures to have the institution concerned commensurate its liquidity with the host country requirements, and will communicate the nature of those measures to the host supervisor.
3. If, however, 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 supervisor to deal with.

Notwithstanding the aforesaid the host country authorities will retain the power to take in such a case, if necessary, appropriate measures towards the branch in accordance with the provisions of Article 21 (4) and (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 supervisor with the implementation of the Second Banking Directive, the host country will retain authority to impose reporting duties on the branch, either in the interest of the general good or in those areas in which it retains the supervisory control (cf. Article 21 (1) of the Second Directive).

The host country may also require this information to be periodically verified by external auditors.

### 4- Statistical Returns

The Belgian and Portuguese authorities understand that according to Article 21 (1), the right of the host country to require statistical returns of all credit institutions having branches within its territory shall not be abridged.

In Belgium, the reporting obligations of the branches of EC-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 the competence of the host country, the branches will have to communicate the same information as these imposed to the national credit institutions. As periodical reporting on the operations carried out in Belgium (Art. 32, par. 1, 1 of the Second Directive), the Commission bancaire et financière will use the information that the branches will transmit to the Banque Nationale de Belgique.

In Portugal, foreign branches shall meet the same statistical return requirements as Portuguese institutions. These returns shall be prepared in accordance with the criteria and principles established by the Banco de Portugal. After the 1 January 1993 it is not expected that the burden in this field, even for branches of EC-credit institutions, will be reduced.

**5- The General Law of the Host Country Prevails; Code of Conduct;  
Priority of the General Good**

The Belgian and Portuguese authorities understand that the branch would have to observe the generally applicable legal provisions of the host country.

The Belgian and Portuguese authorities understand that the conditions which the host 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.

If activities of a branch violate general laws of the host country or offend against legal rules in the meaning of Article 21 (5) of the Second Directive, circumstances allowing, it shall be proceeded as follows:

1. The host country authority points out the irregularity to the branch, advises it of the legal situation and requests abidance by those rules;
2. If the branch does not comply with the request, the host country supervisory authority will advise the home country authority. The latter will take the necessary measures to have the branch management abide by the request and make its activities commensurate with those rules.

Besides, the host country will retain the power to prevent or to punish in accordance with Article 21 (5) of the Second Directive irregularities committed within its territory which are contrary to the rules it has adopted in the interest of the general good.

#### **6- Bank Customer Complaints**

Complaints about a particular branch lodged by customers with the host country authority will be handled by the latter on its own responsibility. It will be free to correspond with the branch directly. It will pass its findings, if need be, on to the home country authority. The host country authority shall be free to hand intricate cases calling for the special expertise and knowledge of the home supervisor over to the home country authority.

Complaints lodged with the home country authority will be handled by the latter. If the particular conditions in the host country are of relevance, the home country authority will consult the host country authority, and eventually inform it of its conclusions.



In Belgium, the Commission bancaire et financière 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" organized by the professional associations of banks and savings banks. The Commission bancaire et financière 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 Portugal, the Banco de Portugal has no legal powers to adopt binding resolutions on complaints made by credit institutions customers that should be lodged with ordinary courts of justice in accordance with applicable court proceedings. However, the Banco de Portugal traditionally receives complaints made by the credit institutions consumers and uses its influence in cases the institutions act in a wrong way.

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

The Commission bancaire et financière and the Banco de Portugal will inform each other, without delay, if they come to know about a crisis looming over particular credit institutions with branches in the other Member State.

The same applies if the crisis is limited to the branch but has the potential to drive the whole institution into insolvency.

In either case shall the host supervisor collaborate with the home supervisor if supervisory countermeasures are to be taken by the home supervisor.

Besides, the host country keeps the right to apply to branches on the brink of bankruptcy its own procedures concerning the reorganization 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- Auditing and Inspection in Belgium and Portugal

###### (i) Belgium

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

Statutory auditors of credit institutions have a double duty : one based on the requirements of company law (control of financial position, annual accounts, abidance with company law and articles of association) and another of collaboration with the Banking and Finance Commission in controlling the reliability of periodical accounting statements and the adequacy of the administrative and accounting organisation and internal control. Their appointment is subject to the prior approval of the Banking and Finance Commission.

On-site inspections also happen by inspectors of the Banking and Finance Commission who, within the framework of a medium term control plan of the credit institution or as part of surveys of an identical particular aspect in various institutions, inspect particular aspects of the activity or the organisation.

###### (ii) Portugal

In Portugal, on-the-spot inspections are carried out by inspectors of Banco de Portugal. Routine inspections are carried out on a regular basis. Besides, inspections can be instituted if the situation of a credit institution requires it.

The external auditors of the credit institutions do not play any role in the field of prudential supervision but they must report to the Banco all serious infractions of the law committed by the credit institutions that come to their knowledge in the exercise of their duties.

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

The Belgian and Portuguese authorities will remain free to determine their own auditing standards, to appoint and send commissioned auditors as well as their own staff of inspectors. Neither the host authorities nor the involved credit institution may object to an inspection instituted by the home supervisor.

The host country authority will retain authority to audit the branch within the bounds of its competence.

The Belgian and Portuguese authorities intend to carry out on-spot inspections, either by their own staff or through commissioned auditors. As host supervisors they do not intend to carry out on-spot inspections on behalf of the home supervisor. Nevertheless they are prepared to assist the auditors of the home country in particular situations, on conditions to be agreed.

According to Article 15 of the Second Directive the home country authority shall notify the host country authority in advance of any inspection of a branch instituted by itself. the notification shall comprise the following information:

- name of the auditor;
- name of the branch;
- objective of the inspection;
- anticipated begin of the inspection;
- expected duration of the inspection;

The home authority shall advise the auditor to pay a visit to the host authority before the commencement of its work. The inspector may contact other supervisors in the host country which could provide supervisory information on the branch. The inspector can be required to do so by the host authority.

When the inspector has concluded the work at the branch, he shall inform the host authority of the conclusion. He shall advise it of his main conclusions upon request.

The inspector shall submit his report to the home country authority. When it is relevant for the host country authority, particularly regarding matters falling into its competence, the home country authority will furnish the host country authority a copy of the report or a summary of the relevant findings. If the credit institution itself, together with its branches, is subject to inspection, the host country authority shall receive a summary on the findings relevant to the branch.

In serious cases meetings may be arranged in the course of an inspection at the request of the auditor or either authorities. Either authorities may request a discussion on the findings.

### 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 Centrale des risques at the Banque Nationale de Belgique 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 Commission bancaire et financière declares that it is prepared to help the auditors of branches of credit institutions established in Portugal to obtain the information they will need when they carry out inspections as mentioned under IV.2. above.

In Portugal, credit institutions and branches of credit institutions incorporated in other countries have to report every month to the Banco de Portugal all loans they extend to entities resident in Portugal. The total amount of reported loans for each debtor concerned is passed on to the reporting credit institution and those credit institutions with a pending credit request without disclosing any information whatsoever on the institutions which have granted the credits.

Subject to what is said at the third paragraph, the Belgian and Portuguese authorities shall not at the time being exchange directly information received from those sources. However, both parties may obtain from the branch such information from these registers as they may need.

The Belgian and Portuguese authorities will revisit 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 the co-operation in the framework of the implementation of the second directive, the Belgian and Portuguese authorities take this opportunity to state their determination to co-operate closely in the supervision of credit institutions on a consolidated basis.

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

For the purposes of this memorandum, the Belgian and Portuguese authorities shall deem as "subsidiary" a credit or financial institution which is a subsidiary of a credit institution. The supervision of a subsidiary will stay in the jurisdiction of the country where it is incorporated (country of incorporation). The authorities of the country of incorporation will be free to consult, whenever necessary, the supervisory authorities of the parent, which will to the extent reasonable provide the information requested to support the supervisory assessment of the situation of the subsidiary. In order to facilitate supervision on a consolidated basis, the authorities of the parent shall have the same consultation and information rights.

The right of the supervisory authorities of the parent to have the subsidiary examined for consolidation purposes shall remain unabridged. The Banco de Portugal will not oppose to the inspections of Portuguese subsidiaries of credit institutions incorporated in Belgium by representatives of the Commission bancaire et financière for consolidation purposes. So will the Commission bancaire et financière concerning Belgian subsidiaries of credit institutions incorporated in Portugal.

The Banco de Portugal declares that it will maintain its sole supervision of Portuguese subsidiaries of credit institutions incorporated in Belgium and, when applicable, the supervision on a sub-consolidated basis of the sub-group formed by these entities with their subsidiaries incorporated in Portugal.

Some credit institutions might try to use dual establishments (subsidiary and branch) for "supervisory arbitrage" (i.e. shifting business to that establishment where it causes the least supervisory burden). Dual establishments through both subsidiary and branch will entail dual competences: the supervision of subsidiaries will remain in the jurisdiction of the authorities of the country of incorporation whereas responsibility in the field of branch supervision will be allocated as set forth in this Memorandum.

The Belgian and Portuguese authorities stress against this background the need for enhanced collaboration in the supervision of dual establishments. They will coordinate, on a case by case basis, inspections of subsidiary and branch, or take appropriate measures, and exchange their assessments of the findings in the course of such inspections.

## 2- Free Provision of Services

### (i) Credit Institutions

As for the taking up of free provision of services, Article 20 of the Second Directive requires only the communication of the notification received by the home country authorities from the credit institution to the host country authorities.

The notification of free provision of services by Belgian credit institutions pursuant to Article 20 of the Second Directive shall be addressed to the Commission bancaire et financière. The notification by Portuguese credit institutions shall be addressed to the Banco de Portugal.

The home country authority will pass on 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 authorities shall have received this notification, the institution may start to provide services.

The supervision of the credit institutions exercising the right under the Second Directive to freely provide services and the power to impose disciplinary sanctions on them will rest with the home country authorities notwithstanding that in many cases the law of the host country will apply.

The host country authority shall inform the home country authority of any violation of the law in the host country by cross-border provision of services and advertising pertaining thereto, if it judges such information as possibly important to home country authority. The latter will take the necessary measures to have the credit institution concerned follow the law, and will report to the host country authority.

Those credit institutions which have already been providing cross-border services in the host country as of 1 January 1993, may carry on such activities subject to the same conditions as before without need to notify the competent authorities pursuant to Article 20 of the Second Directive.

If the host country authority has 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 in the meaning of the Second Directive, it had not been notified of, it shall advise the home country authority. The latter will investigate, take the necessary measures to uphold the law, and inform the host country authority of the result.

The establishment of representative offices, the use 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 being transacted.

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

Both in Belgium and in Portugal, the financial institutions mentioned in Article 18 (2) of the Second Directive will have the possibility to move for authorization to freely provide services through the procedure provided for in that provision. Financial institutions choosing that option would have to file a notification, in Belgium with the Commission bancaire et financière, in Portugal with the Banco de Portugal, who would verify and confirm that the conditions spelt out in the Directive are satisfied and proceed, when appropriate, with the procedure of notification.

The practical arrangements agreed in this Memorandum will apply *mutatis mutandis* to such financial institutions.



The Belgian and Portuguese authorities understand as the underlying notion 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 under Article 20 of the Second Directive or would no longer comply with the requirements of that provision would be subject to the host country regime.

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

(i) The Belgian and Portuguese authorities will consult each other before any authorization referred to in article 7 or any acquisition referred to in article 11 (2) of the Second Directive.

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

**VIII. TECHNICAL ARRANGEMENTS**

**1- Exchange of Lists**

The Belgian and Portuguese authorities shall provide each other with organograms. They shall appoint at least one liaison officer to be available for all concerns. They shall exchange lists of correspondents, in order to facilitate contacts. The lists should indicate the language skills. They will be brought up-to-date regularly.

The Belgian and Portuguese authorities shall, above that, exchange on a regular base the following lists of:

- the credit institutions authorized by them, which transact business within the territory of the other Member State through subsidiary or branch, or by free provision of services under the regime of Article 20 of the Second Directive, with the individual subsidiaries and branches specified;
- the credit institutions, authorized by them, with direct holdings of more than 10% by enterprises incorporated in the other Member State;
- the branches in their respective countries of credit institutions authorized in the other Member State; and
- the credit institutions which they have authorized and which have representative offices in the other Member State.

The lists shall be updated for the annual meeting (see VII 3 below) at the latest.

## **2- Exchange of Staff**

The Belgian and Portuguese authorities will promote their co-operation by visits for informational purposes, and by exchanging staff for training or missions of variable length.

## **3- Regular Meetings**

The Belgian and Portuguese authorities agree that it would be convenient to hold an annual meeting in order to discuss the implementation of this memorandum and the various questions relating to the credit institutions established in both countries and the supervision of which they are in charge. The employees who have a part in the co-operation should convene once a year in such a meeting to discuss

fundamental issues so as to enhance the quality of co-operation. Those meetings shall provide a forum to analyze problematic cases, identify the options and prepare propositions to the decision-making bodies of the Belgian and Portuguese authorities, and to settle disputes between both sides. In the interim ad-hoc meetings shall be arranged if necessary.

The mutual information on the following issues shall be updated for the annual meeting at the latest:

- substantial changes in the domestic supervisory regimes and policies [see I 3 (iii) above];
- provisions upheld in the interest of the general good in the host country [see III 5 above].

#### **4- Exchange of Information in Preparation of the Substitution of Home for Host Supervision**

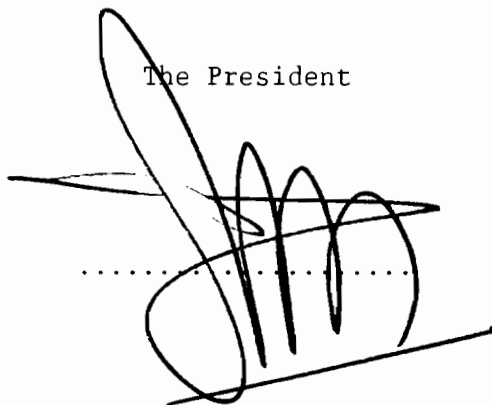
The Belgian and Portuguese authorities will exchange the information they have collected on branches under the host country supervision regime. Representatives of the authority of the other Member State shall have the opportunity to collect information on the records kept in the course of host country supervision of branches of credit institutions incorporated in the other Member State. They shall have free access to those records, and shall be free to request copies of individual documents.

The Belgian and Portuguese authorities agree to hold a meeting in the course of 1993 in order to organize the safe change to home supervision. During the meeting, the Belgian and Portuguese authorities will consider improvements of this memorandum in the light of their discussions with competent authorities of other Member States and following the adoption of their respective national legislative and administrative provisions implementing the Second Directive.

Done at Brussels, 7 July 1993

For the Commission bancaire  
et financière

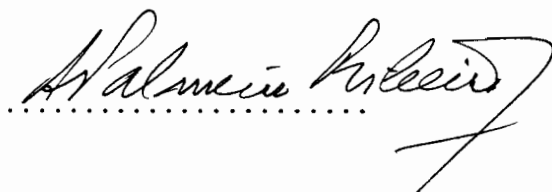
The President

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the left. A dotted horizontal line is drawn across the middle of the signature.

J.-L. Duplat.

For the Banco de Portugal

The Vice Governador

A handwritten signature in black ink, written in a cursive style. A dotted horizontal line is drawn across the middle of the signature.

A. Palmeiro Ribeiro