19. Adequacy of investment firms and credit institutions

PRESIDENT. — The next item is the debate on the recommendation for the second reading (Doc. A3-0349/92) from the Committee on Legal Affairs and Citizens’ Rights (rapporteur: Mr Zavvos) on the common position adopted by the Council on 27 July 1992 (C3-0361/92 — SYN 257) with a view to the adoption of a directive on the capital adequacy of investment firms and credit institutions.

ZAVVOS (PPE), rapporteur. — (GR) Mr President, the aim of the directive we are examining today at its second reading on capital adequacy of investment firms and credit institutions is one of the main measures for the completion of the 1993 Single Market, especially in respect of its monetary and financial dimension, for a whole set of reasons.

Firstly, because without it there can be no money market, an investment market in the Community.

Secondly, because this directive strikes a critical balance between the well-known German universal banking system and the Anglo-Saxon system.

Thirdly, because the directive sets up a model, for the first time, to be used in international markets on the subject of capital adequacy. As we know, at this moment relative negotiations are taking place at international level within the framework of IOSCO. Since these negotiations are not going that well, the Community must approve this directive as quickly as possible to prove that it is confident that the model it proposes will greatly help the international negotiations to reach an agreement in the near future with other major financial partners, especially the United States.

Fourthly, this directive reminds us that we must quickly adopt and complete the directive concerning the liberalisation of investment firms in the Community which is now in the final critical stages of negotiations.

As rapporteur, I am quite satisfied that the Commission and the Council have respected most of the European Parliament’s amendments which were approved some time ago. To be precise, I should like to say that the European Parliament proposed for the first time a basic change as the directive made progress, with the adoption of the so-called building-block approach. The Commission has taken that on board and now the Council has adopted it in its common position.

At the same time there is a set of amendments, the most important of which I shall mention, adopted by the Council. For example, a new definition for the so-called trading-book. Also, the basic principle that market risk must be subject to a single audit. The European Parliament was also listened to concerning the significant increase in the starting capital of investment companies.

At this second reading, the discussions must concentrate on conveying a message and the significance the Parliament gives to the speedy adoption of this directive. We have made just one amendment — a sound, classical amendment — in line with the classical stance taken by the European Parliament in its amendment-making. We think that this will close the circle and will enable the very swift adoption of this highly important directive. It is significant, as I said, for the liberalisation of the financial services of the Community, which is literally the pillar and a vital dimension of cheap funding of European industry. It is also a directive which will give proper protection for European investors and will supply all the necessary rules for strengthening transparency and bolstering stability in the European financial system.

BRU PURÓN (S). — (ES) Mr President, this recommendation on the Council’s common position has been debated at length and Mr Zavvos’ excellent work was apparent during the first and second reading. The Socialist Group is in total agreement and, therefore, we subscribe to what Mr Zavvos proposes, as our vote will reflect.

BRITIAN, Sir Leon, Vice-President of the Commission. — Mr President, I should like first of all to thank the Committee on Legal Affairs and Citizens’ Rights and the rapporteur, Mr Zavvos, for their very valuable work on the important capital adequacy dossier and their favourable response to the common position adopted on 27 July. I listened very carefully to what Mr Zavvos said and I wholeheartedly endorse his very informative comments on the importance of this directive and its history. He is entirely right in this respect.

Fortunately, as a result of the handling of the matter in Parliament and the Council we are left with very little for today. The Legal Affairs Committee, as he has said, adopted a single amendment to the common position. It is a response to the Council’s decision to retain implementing powers for itself at this stage. The Legal Affairs Committee has called for implementing powers to be exercised by the Commission under the procedure 3a arrangements laid down in the Council’s comitology decision of 13 July 1987. The Commission would normally support Parliament’s amendment but in the present case the proposed modification is not necessary since the comitology provisions which are still before the Council will be coming back to Parliament shortly. I can assure Parliament that in the discussion on comitology which has yet to take place in the Council, the Commission will continue to press for a 3a type of committee. For that reason we cannot accept the proposed amendment but we understand and support the spirit in which it has been put forward. However, the Council has made known its readiness to move quickly on the creation of a securities’ markets committee, and the Commission fully supports that. In those discussions the Commission will seek the appropriate implementing powers as supported by Parliament, albeit under the 3a procedure.

PRESIDENT. — The debate is closed.

The vote will take place tomorrow at 5 p.m.

20. Copyright and related rights

PRESIDENT. — The next item is the report (Doc. A3-0348/929 by Mr Bru Purón on behalf of the Committee on Legal Affairs and Citizens’ Rights on the proposal from the Commission to the Council (COM(92)033 final — SYN 395 — C3-0189/92) for a directive harmonizing the term of protection of copyright and certain related rights.

BRU PURÓN (S), rapporteur. — (ES) Mr President, this draft directive is a key element in the work undertaken by the Community in the sphere of intellectual property rights, which is of prime importance in establishing a
single internal market and for two of its main components: freedom of movement of goods and freedom to render services. Likewise, attention should be drawn to the role these measures could play in promoting and disseminating the Community’s cultural heritage through strengthening creative capacity which is a part of its wealth.

This draft complements other recent proposals examined by this Parliament: those concerning the right to hire and to loan and other neighbouring rights (Anastassopoulos report) and those concerning copyright and neighbouring rights in the sphere of radio broadcasting by satellite and cable retransmission (Medina Ortega report).

The purpose of the draft we are examining today is to harmonize terms of protection granted by Member States for copyright and neighbouring rights. Unfortunately, this fundamental consideration is as yet treated in different ways in the various Member States, thus hampering freedom of movement of products and rendering of services and creating distortions in competition.

The terms proposed are today 70 years for copyright and 50 years for what are called “neighbouring rights”. In addition, harmonization requires not only that the same term be established, but also that the event marking initiation of the term is calculated in a standard manner in all Member States, whether it be the death of the author, in the case of rights of natural persons, or the time when a work was legally made available to the public in other cases, that is, in the case of legal persons.

The fact that a relatively long period is established responds both to fundamental reasons — for example, the need to increase protection of creative activity in the Community, general agreement of most of the sectors involved, and a general trend towards an extension of terms of protection, both in States and in international organizations —, and to technical reasons, particularly the need to achieve harmonization based on the longest term in force in any one Member State, to avoid problems during the transition period from one legal system to another. Thus, the Committee on Legal Affairs has unanimously accepted the basic principles of the Community draft since it is agreed that this term of protection should indeed be harmonized.

Let us look now at specific amendments. Some concern the way in which certain types of works are handled, such as those published in volumes, those involving posthumous works, or publication of unpublished works that are in the public domain. In all these cases, the Committee on Legal Affairs has sought to achieve a balance between protection of rightholders and the need to promote public dissemination of protected works.

Amendment 12 dealing with the timeframe for application of the directive is also worthy of note. It is established that its stipulations will come into force immediately, to ensure strictest respect of existing rights. The term of protection will apply to all works and objects that are protected, in accordance with legislation of at least one Member State at the time when the directive comes into force. This aims to avoid legal uncertainty that would arise by extending the term of protection in some States and not in others, as well as possible detrimental consequences for the single market in this connection.

If this amendment is not accepted, harmonization will be considerably delayed. Respect for rights acquired through mechanisms in which publishers’ actions are guaranteed, in keeping with the principle of good faith and compensation to the author’s successors, is assured however.

Another important point dealt with by the Committee on Legal Affairs — Amendment No. 3 — concerns ownership of cinematographic works. It was no whim which led us to tackle this point, Mr President, since it is a matter that is inextricably linked with the establishment of a term of protection. Allow me to point out that, if we are going to harmonize the term of protection, we also have to harmonize the point from which this term is computed. For audiovisual works, the question may be summarized as follows: the calculation of 70 years of protection would begin at different moments for the different copyright holders: death of the last of the natural persons acknowledged as author in any one Member State, and publication of the work by other Member States in which the rightholder is the producer and therefore a legal person.

And it is logical that, if the term of protection begins at different times, then it will also expire at different times, for which reason we find ourselves in a situation in which given works are protected in some States and yet are in the public domain in others. This would lead to extremely serious situations, such as that which arose with regard to the “Patricia” judgement, and could raise a genuine barrier against the movement of certain audiovisual cinematographic or phonographic products between Member States, and even to a form of dumping of production of these cultural products.

The Committee on Legal Affairs has concluded that partial harmonization will not suffice. Criteria for identifying the copyright holder of an audiovisual work must be harmonized. It has been stated that the copyright holder will be the legal person or persons responsible for the intellectual creation of the work, for which reason the period will be computed from the date of death of the last author.

May I point out that this does not exclude the audiovisual producers’ entitlement to a neighbouring right which is of 50 years duration and includes such important and financially remunerative rights as that to lend, loan, reproduce and distribute, without detriment to application of criteria of the Berne Convention — article 14 bis — which assumes assignment of rights in favour of the producer, which has generally occurred.

These apparently minor points of harmonizations are proposed, not in an urge for uniformity, but rather as a result of the needs of a true internal market — which is what we indeed seek to achieve. And I believe that if, as a result of the Treaty of Maastricht, an examination of subsidiarity is one day carried out, that is, the need to legislate in order to harmonize the internal market, then the Commission draft and the additions made by the Committee on Legal Affairs will pass the exam and will do so with an outstanding cum laude at that.

MENDES BOTA (LDR), draftsman of the opinion of the Committee on Culture, Youth, Education and the Mass Media. — (PT) Mr President, the reaction of the Committee for Culture, Youth, Education and the Media to the draft directive on harmonization of the term of copyright
MENDES BOTA

and neighbouring right protection, to be established at 70 years post-mortem autoris and 50 years respectively, is positive on the whole.

This draft falls within the framework of the international agreements of Berne and Rome, among others, assuring respect for rights acquired under national legislations, and does not affect the substance of these rights, as well as leaving Member States with full powers to determine who holds these rights.

The spirit and philosophy of our position tend to an increasing degree of defence of copyright. Authors are the financially most vulnerable group of all, they have no right to strike nor to unemployment benefit, at the same time they are indispensable and cannot be replaced. The fruit of their creative work is frequently their only bequest to their successors. Thus, neighbouring rights, or the interest of other sectors, should be made compatible with and never predominate over copyright, that is, the rights of authors without whose work neither creation nor invention exists.

The existence of different terms of protection, and the different forms this takes, is a real obstacle to implementation of the internal market of literary and artistic works and cultural products and services, such as was recognized, moreover, by the Court of Justice. If a term of less than 70 years were to be established, respect for rights acquired in Member States would only give the single market 70 years de facto after application of this directive. But harmonization of the term of protection is not enough in itself. We also have to harmonize the time from which the term of protection is computed. It is necessary, in addition, to identify the intellectual authors of audiovisual works. The opinion of the Committee for Cultural Affairs includes the producer, the scriptwriter, author of dialogue, adapter and author of musical compositions specifically for incorporation in a given audiovisual work.

In the case of posthumous works — which are unaccountably missing from the draft directive — it would be correct that the right be generated by the dissemination of the work and not the death of the author. It is in the public interest that the legislator promote dissemination of works which were not communicated to the public during the author’s lifetime. The fact that each Member State is free to decide whether or not to offer specific protection for posthumous works is unfortunate, as far as the objective of harmonization is concerned.

We consider that moral rights should be recognized without limitation since this is an enduring and inalienable heritage. These are legitimate interests of an intellectual nature which should survive beyond the expiry of rights of ownership, as already occurs, moreover, in many Member States: France, Belgium, Germany, Spain, Portugal and Italy.

Finally, we appeal to the Council to accept the amendments proposed by this Parliament to the effect that the values in question are not merely rights of a financial nature but are, more particularly, of a cultural nature — and culture cannot be treated as just another commodity.

HOPENSTEDT (PPE), draftsman for the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy. — (DE) Mr President, ladies and gentlemen, on many points I can refer back to what has just been said, particularly the statement by Mr Bru Puron. I should like, on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy, to make three comments.

Anyone involved with this subject, that is all three directives relating to copyright, will see that there was a good reason why the television and radio directive, adopted in 1989, omitted the subject of copyright. We know how difficult it was and is to draft the new directive.

The Committee on Economic and Monetary Affairs and Industrial Policy naturally accepts the arguments that have just been mentioned but considers — and this is a point made by the Commission — that in consequence of the advanced age of those who produce works of art, 70 years after the death of the author should be the upper limit. My committee suggested 50 years — and why? In ten Member States that is the limit which currently applies, and the Committee on Social Affairs, Employment and the Working Environment was also in favour of that limit. This view of the committee applies not only to the protection of copyright but also takes into account, above all, those who have to deal with these works protected by copyright for the purpose of publication or information to the public.

SCHWARTZENBERG (S). — (FR) Mr President, ladies and gentlemen, is the European Community which we are busy building going to respect artistic creativity and cultural truth?

The issue is the recognition and defence of copyright. First of all, how do we define it? Who is the author of a work? Is a book’s author its publisher or the writer? Is the author of a painting the artist or the dealer? Is the author of a tragedy the dramatist or the theatre producer? Likewise, who is the author of a cinema or television film? The director or producer?

We regard it as essential to recognize that the author of a work is the person or persons who devised, conceived, created beings of flesh and blood, who contributed the best thing humanity has to give, namely artistic creation, which dominates the centuries and helps humanity to defeat mortality. Cinema is the art of the 20th century. Far be it from us to despise the producers, to deny them the recognition they deserve. Without the printing presses, without the picture rails in the art galleries, without the cinema studios’ money a work cannot become known and publicized. There is a connection between those with links to manufacturing and industry who give substance to a work, and those who conceive it, create it and breathe the spirit of life into a work. Can they be the same, spirit and substance, a living entity and a business interest?

This report has two aims. Firstly, to harmonize the definition of copyright in Europe in the hope that it will subsequently be recognized worldwide. Secondly, to state a simple moral principle: the author is the author and no one else. My thanks to Mr Bru Purón.

Ladies and gentlemen, a way of life can conquer the world, a way of life based on money. Financial power can dictate certain eating habits, certain dress habits, certain ways of thinking. Let us Europeans be on our guard, let us take care not to let our creative artists, our authors, be crushed by the steamrollers of efficiency and profit. This old Europe of ours might lose its soul. We must make it
SCHWARTZENBERG

possible for authors in all countries of Europe first, and in all countries of the world thereafter, to command respect for the diversity of civilizations. European authors, British authors, American authors, be resolute like us in serving nothing but your art. Your art will make you free.

GARCÍA AMIGO (PPE). — (ES) Mr President, this draft directive arises out of an awareness of a need to harmonize the term of copyright in order to complete the single market. This was stated in a judgement by the Court of Justice in 1989. As a result, the draft directive has the main aim — which is not to say the only aim — of harmonizing the term of copyright. It could have chosen any period of time, but it opted for 70 years. Why? Because, in the first place, this is the longest period, thereby protecting all interests and, secondly, because this is in line with the criteria of two generations after the death of the author, given the increase in life expectancy.

I must say that, overall, my Group supports — and it could not be otherwise, as the Committee on Legal Affairs has already stated — the series of amendments put forward by the Committee, as described by Mr Bru Purón. However, Mr President, amendments 3 and 12 do raise certain problems for some national factions of my Group. Of course, positions will be divided on these two amendments, the first concerning the concept of copyright, and the second the period of transition for application of the directive in respective Member States.

Mr President, with the exception of these two amendments, my Group gives overall support to the amendments by the Committee for Legal Affairs.

ODDY (S). — Mr President, the purpose of this directive is to harmonize copyright duration in the European Community. In EMI and Patricia, the European Court of Justice held that different periods of protection impede free movement of goods and distort competition. This is why the Commission has brought forward this proposal. In a case involving the Commission, the European Court of Justice held that retroactive withdrawal of legal measures which have conferred rights on individuals is contrary to general law. This is why the proposal harmonizes upwards to 70 years, as Germany gives the most generous protection.

However, I am speaking to object to the Schwartzenberg amendment and in favour of my amendment which defines who holds copyright. The original Commission proposal was silent on the definition. The Schwartzenberg amendment is taken from French law, is an exhaustive list and admits the rights of producers. It is in direct conflict with British law and Mr Schwartzenberg has just said that we should respect other civilizations. It takes away existing rights of producers, a practice condemned by the Court of Justice in the above case.

Some of my civil law colleagues have misunderstood British law. We have no concept of neighbouring rights and the producer cannot be assisted by this concept. Further, my amendment has been taken from the text, voted and approved already by this Parliament contained in the rental directive and cable/satellite directive. This definition was also proposed and supported by the political groups. The Commission has already agreed the definition in the rental rights directive last month in Strasbourg. It is a nonsense to have different definitions in the various directives.

It is also rumoured but not true that the British presidency is in favour of the Schwartzenberg amendment. Today I confirmed that this is not true and the British Government is against the Schwartzenberg amendment.

As far as producers are concerned, I go to the theatre regularly. I have seen many plays produced by different producers. I can assure you, Mr Schwartzenberg, that the production I saw of Richard III set in the Nazi period was completely different from other productions. A recent play I have seen: J B Priestley, "An inspector calls", set in the 1920s was a very stark version compared with others I have seen. And I could give many more examples. I love culture. It is the very breath of my life. I could not live without it. Mr Schwartzenberg's amendment is trying to take away the rights of the British to have the very rich cultural life and diversity which we currently enjoy. I deplore this.

INGLEWOOD, The Lord (PPE). — During the last part-session of this Parliament I explained to the House that the establishment of a code of law relating to copyright and neighbouring rights seemed to me to be a very necessary element in the creation of the single market. This codification comes not in one piece of legislation, but in a series of directives which, it has been recognized by this House, the Commission and the Council, all hang together seamlessly. Separate, they are of relatively little value; together they are worth a lot.

It is for that reason that the attempt to alter the definition of 'author' is so deplorable since what is proposed in the amendment from the Committee on Legal Affairs and Citizens' Rights is different from that which Parliament agreed, as did the Commission in the cable and rental directives.

As I explained in this House last month, many compromises are being made to achieve an acceptable outcome: to create this code. The definition of 'author' is one which is not naturally attractive to those of us coming from the Anglo-Saxon tradition but we agreed it as part of a compromise. It is now unacceptable to try to get it altered at this stage because that goes to the heart of the compromises contained in the other directives to which I have already referred and to which we have added our support in good faith.

A failure to reinstate the definition contained in the earlier directive, which is in front of us in Mrs Oddy's amendment is, in my view, tantamount to deliberately wrecking the consensus which has been reached on the whole code.

SCHMIDHUBER, Member of the Commission. — (DE) Mr President, ladies and gentlemen, I should like to thank the House for having dealt so quickly and thoroughly with this proposal, as the Commission attaches great importance to a Council directive harmonizing the term of protection of copyright and other related property rights from two points of view.

First, this proposal is, in terms of the internal market, an essential requirement for the establishment of an internal market in all goods and services which contain an element of creativity. If different terms of protection continue to exist then, in the view of the Court of Justice also, owners of property rights in one Member State could object to the import of goods and services from
INGLEWOOD, The Lord

other Member States in which the term of protection had expired.

For that reason, the Commission is proposing a high level of protection. In the case of copyright, the term of protection should extend 70 years after the death of the author and in the case of ancillary copyright 50 years after performance or publication. The transitional periods required for a longer term would delay the establishment of the internal market in this sector to the middle of the next century.

Second, there is the element of protecting and encouraging creativity. The criticism has often been levelled at the Commission that Community harmonization is always directed towards the lowest common denominator and that no account is taken of the special features of cultural life in this process. With this proposal, the Commission shows the opposite to be the case. The amendments contained in the report show that parliament supports the Commission view. The Commission is therefore able to accept the majority, that is the ten, of the amendments. Amendments Nos 1, 2, 10, 13 and 14 can be accepted as they stand. The Commission wishes generally to keep an open mind on Amendments Nos 3 and 15 to enable to decide its position in the light of vote. Amendments Nos 6, 8, 9, 11 and 12 are also acceptable subject to some rewording and additions. Some have still, however, to be technically adjusted in line with the directive on leasing and hiring rights.

Only three amendments are unable to be accepted. This applies above all to Amendment No 7 which envisages extending the term of protection for posthumous works to 70 years if they have been published before expiry of the normal terms of protection of copyright. A provision of that kind would have the effect of extending the terms of protection of copyright. That proposal must be considered in relation to Amendment No 9 which also provides for protection for posthumous works and which the Commission is prepared to accept.

However, the discussions in the Council have revealed that the combination of measures is not acceptable to the majority of Member States. The extension of the term of protection of copyright per se was criticized, because if the heirs have omitted to published the works left to them within a reasonable period, they should not be rewarded with a longer term of protection.

Amendment No 5 represents a further exception to the term of protection in copyright, but we do not consider this a justified exception, particularly since the objective of the directive is in fact to extend the term of protection in the majority of Member States. It is worth mentioning here that only a minority of Member States apply this kind of derogation. For that reason, it is likely to be very difficult to arrange it for the other Member States.

Amendment No 4 cannot be accepted, as the rule of presumption under Art 1(4) which it is intended to supplement, is being rejected by the majority of Member States. The Commission has therefore to withdraw that provision in its entirety.

Let me conclude by thanking the House for its efforts to improve the protection of those who are creative in the literary, artistic, music and film sectors of the Community economy.

INGLEWOOD, The Lord (PPE). — Mr President, I would just like to ask the Commissioner if I have understood him correctly. The content of Amendment No 3 is acceptable to him, yet this time last month a definition of authorship which is entirely incompatible and inconsistent with this definition of authorship was acceptable to the Commission. I would be grateful if the Commission could explain to the House why there is this inconsistency.

SCHMIDHUBER. — (DE) Mr President, the Commission wishes to decide upon that point after the House has voted and in the light of Parliament’s resolution.

ODDY (S). — Mr President, I should just like to reiterate that point. How come the Commission could accept my amendment last month in Strasbourg and not this month?

SCHWARTZENBERG (S). — (FR) Mr President, I would not have spoken but for the fact that, contrary to custom, Lord Inglewood spoke after the Commission representative. I would just like to say that in the report presented by Mr Anastassopoulos the definition of copyright was identical to this one and that it was approved by the European Parliament.

PRESIDENT. — This will be put on record.

The debate is closed.

The vote will take place tomorrow at 5 p.m.

21. Transit and storage statistics

PRESIDENT. — The next item is the report (Doc. A3-0335/92) by Mr Donnelly on the proposal from the Commission to the Council (COM(92)097 — C3-0209/92 — SYN 407) for a regulation on transit statistics and storage statistics relating to the trading of goods between Member States.

DONNELLY (S), rapporteur. — Mr President, can I just draw the Commission’s attention in particular to Amendment No 2. This matter has been extensively discussed in the Committee on Economic and Monetary Affairs and Industrial Policy. I have received a number of assurances from Vice-President Christophersen about the Commission’s position on some of our amendments and since we have had an extensive discussion and this is largely a technical report to amend an existing communication, I would just formally move it on to the floor of the House.

THYSSEN (PPE). — (NL) Mr President, we all appreciate that intra-Community traffic will undergo changes after 1992 and that the need for transit and storage statistics will increase. But the intrastat regulation bans Member States from gathering these statistics after 1992 unless the Council determines the conditions under which they may continue and that is exactly the point of the Commission proposal. The EPP Group is convinced that the Community must act as a whole and the amendment that reinforces that view in the relevant recital has our full support.

On the conditions referred to in the proposal we welcome the Commission’s determination to cut down on red tape by referring to the already existing information providers. For various reasons the Committee on Economic Affairs has tabled a second amendment to restrict provisionally