Capital Movements in the European Economic Community [1]

1. Economic Integration and Financial Integration

The Treaty establishing the European Economic Community aims at the integration of all economic sectors in the six Member States not already covered by the special provisions laid down for coal, steel and atomic energy. To attain this objective, the first requirement is that customs duties and quantitative restrictions on trade between the Member States shall be abolished. But the free movement of workers, the abolition of discriminatory restrictions on the right of establishment, and the freedom to supply services are also essential to the development of the common market. Capital, too, will be entitled to move freely with in the Community.

The general objectives of the Treaty are set out in Article 2: " It shall be the aim of the Community, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated rise in the standard of living, and closer relations between its Member States ".

To attain these ends, the Treaty provides for the abolition of the barriers that have till now divided the economies of the Member States. This wide concept of economic integration raises the question whether and how far the maintenance of restrictions on movements of capital might jeopardize the attainment of the objectives set out in the Treaty.

Real economic expansion and a higher standard of living are only possible through increased productivity, and increased productivity in turn depends on the degree to which advantage is taken of the opportunities provided by a wider market, opportunities,

(1) The opinions expressed by the author are entirely his own and do not represent the official standpoint of the Commission of the European Economic Community.

that is to say, of achieving a better division of labour and of applying mass production methods on a rational basis.

The free movement of goods and the freedom of establishment for workers and enterprises are essential if goods are to be produced where conditions are most favourable for specialization and the cost per unit of output is lowest.

Though essential, such freedom is not by itself sufficient. Even if it could be proved that in theory free trade would be enough to produce the best economic structure and to level out the return on the factors of production, this would only be valid in a world without time and without distance. In a situation nearer to reality, integration could not lead to the desired end and would be slowed down by serious difficulties if the factors of production could not move freely. It would then be illogical if the movement of the most mobile factor of all, namely capital, were to be obstructed.

This general reasoning should perhaps be illustrated by practical examples of the relationship between economic integration and financial integration. Within the Common Market the abolition of customs duties and quotas will lead to problems of adjustment the solution of which will require large sums of money. The pattern of production is likely to become increasingly complex as enterprises in one member country set up subsidiaries or branches in another. Such interpenetration, which would prove that there really was a genuine common market, would be much more difficult but for the right to export capital from any of the countries to any other. In particular, those countries with more restrictive systems would be at a disadvantage in the long run, since their enterprises would have less freedom of action. It might, it is true, be argued that such investments abroad could equally well be financed from capital available in the receiving country and that, for this reason, movement of capital between countries is not imperative, but such an attitude would be unrealistic. The financial market of a given country is accessible to firms which are already sufficiently well known and established, but not to all the firms which, adapting themselves to the new conditions brought about by the Common Market, would contemplate for the first time establishing new activities in the country. To a great extent they would therefore have to finance their investments themselves, which means that they must be able to export capital from their own country and

import it into the other country, particularly in the case of risk capital.

Also, certain provisions of the Treaty would be a dead letter and of little practical significance if capital movements between the Member States were to remain subject to substantial restrictions. This is true in particular of Articles 52 to 58, which deal with the abolition of restrictions on the right of establishment within the European Economic Community. Similar considerations apply to the freedom of movement of persons. The workers will be reluctant to take advantage of the increased freedom granted to them to work in one or other country of the Community unless they are able to dispose freely of their savings and remit them to their families. The maintenance of restrictions in this field would therefore hamper the movement of manpower.

On a more general plane, it may be said that freedom to move capital is the very cornerstone of a competitive market: it makes it possible to bring the supply of and demand for capital into line, and it tends to eliminate disparities in the availability of capital which may seriously distort conditions of competition. It is true that there are a variety of factors which prevent the complete equalization of interest rates, but the free movement of capital at least tends to reduce the most marked gaps between such rates within the Community.

It will be recalled that Article 2 of the Treaty refers not only to the improvement of the standard of living, but also to the harmonious development of economic activities *throughout the Community*. If there were no freedom of capital movement, the attainment of the latter objective would be rather seriously handicapped. A large financial market, unified and equally accessible to all interested parties, helps to reduce the inequality of development in the various countries which stems from their differing capacity for capital formation. International movements of capital therefore favour the elimination of the underemployment which characterizes certain areas, and do this without the social and economic disadvantages which would result from transfers of labour.

2. The Provisions of the Treaty Concerning Capital Movements

The Treaty of Rome defines in precise terms the aims to be pursued in connection with freedom of movement for goods, services and labour between Member States, and lays down in detail the procedures which will make gradual progress towards these objectives possible.

On capital movements the provisions found in the Treaty are much vaguer. The basic provision in this field, Article 67, § 1, says that the Member States shall " in the course of the transitional period, and *to the extent necessary for the proper functioning of the common market*, progressively abolish as between themselves restrictions on the movement of capital belonging to persons resident in Member States and also any discriminatory treatment based on the nationality or place of residence of the parties or upon the place in which such capital is invested ". Further details on the limits of such freedom are given only in the case of loans issued by a Member State or its territorial sub-divisions: it is laid down that these loans can be issued or placed in other Member States only when the States concerned have reached agreement in this respect. No precise ruling is given, however, on the pace at which the freeing of capital movements must be carried out or on the limits towards which it should strive.

It may therefore be considered that the appraisal of these factors is entrusted to the institutions of the Community: it rests, in fact, with the Commission to draw up, after consultation with the Monetary Committee, proposals for the implementation of Article 67. On the basis of these proposals, the Council then issues the necessary directives, acting by a unanimous vote during the first two stages of the Treaty and subsequently by a qualified majority vote.

The Treaty also provides for the co-ordination of policies on movements of capital between Member States and non-member countries; this is intended to prevent national regulations in this field being evaded as a result of liberalization within the Community.

According to the Treaty, the Commission must keep a close watch on trends in capital movements between the Member States themselves, and between the Member States and non-member countries; it is also the Commission which may authorize a Member State to take protective measures when its capital market undergoes serious disturbances. This provision, together with others on the adoption of protective measures, deserves special attention, since it gives business enterprises full legal security concerning the regulation of capital movements. In other words, there is much less risk than

in the past that these firms may suddenly find their projects thwarted by the imposition of unexpected government restrictions.

This outline of the Treaty's provisions on movements of capital within the Community would be incomplete without mention of the institution established in order to contribute, " by calling on the capital markets and its own resources, to the balanced and smooth development of the common market in the interest of the Community ", that is to say, the European Investment Bank. By granting loans and guarantees, the Bank facilitates the financing of projects for the modernization or conversion of enterprises, or for creating new activities called for by the progressive establishment of the common market. It also helps in the financing of projects of common interest to several Member States.

The *modus operandi* laid down for the European Bank — recourse to the financial markets of the member countries (and possibly to those of non-member countries) — may lead it to play an important role in capital movements within the Community, obtaining resources where they are available on the best terms and investing them wherever the need becomes apparent.

3. Factors Restricting the Liberalization of Capital Movements

The Treaty arrangements concerning capital movements may at first sight seem vague and in a certain sense even restrictive. This is a problem which calls for further examination. The wording of the Treaty, which limits the liberalization of capital to the " extent necessary for the proper functioning of the common market ", is explained in general terms by the fact that the Member States were unwilling, when forming the Community, to forego entirely and completely their sovereignty in the field of economic policy. They preferred a more flexible method of integration, namely co-ordination of monetary and fiscal policies, which remain subject to the sovereignty of the Member States, while on the other hand policies relating to economic trends and to exchange rates are considered as matters " of common interest ".

In these circumstances certain Member States considered that, if they were to defend the equilibrium of their financial markets and their balance-of-payments situation, they could not afford to relinquish certain restrictions on the movement of capital into and out of the country.

As long as co-operation in the field of economic policy rests on these bases, the solution of any given problem will perforce be a compromise. The limits of the compromise will obviously have to be fixed in the light of the aims set forth in the Treaty itself and of the extent to which capital movements must be liberalized if these aims are to be attained.

While this, then, is the situation at the institutional level and at the level which, for lack of a better word, must be called " political ", the economic problems which underlie the Treaty arrangements must not be overlooked and the possible unfavourable effects of capital movements, which account for the cautious attitude adopted by the authors of the Treaty in this field, call for detailed examination.

It was feared in particular that the abolition of restrictions might lead to erratic movements of capital and that these in turn might jeopardize the equilibrium of the balance of payments. These misgivings were certainly warranted in exceptional periods, for example just after the war. They seem less so at the present juncture, which is characterized by a high level of liberalization for current operations, convertibility and the reconstitution of the reserves of the Member countries. It is true that the return to external convertibility has increased the risk of short-term speculative capital movements, which may in certain circumstances have an unfavourable repercussion on a country's foreign exchange reserves and its monetary situation in general. It may, however, be noted that such movements are carried out mainly through advance payments for imports and delay in bringing home payments made for exports — leads and lags — and that, by comparison with these movements connected with current payments, movements of " financial " capital are of only limited importance.

Other objections to the liberalization of capital movements arise in connection with structural problems: it is feared that capital movements may be channelled mainly to the most developed areas, in order to benefit from the advantages provided by the better infrastructure in these areas, by the presence of highly skilled labour, etc. The risk of increasing the lack of regional balance in the Community must not, it is true, be minimized, but it is reasonable to inquire whether the maintenance of restrictions on capital movements is the right way to avoid such a trend. It would seem more effective to use a policy of direct intervention in order to obtain a balanced regional development within the Community.

Fiscal considerations also provide grounds for opposition to the liberalization of capital movements. It is feared that the diversity of tax systems in the Community might lead to capital movements made not for any genuinely economic reason, but solely to take advantage of more favourable tax conditions. The problem exists, but the differences between the fiscal systems must not be exaggerated; moreover the establishment of the common market will inevitably lead to the progressive harmonization of these systems. What is before us, then, is a particular aspect of a general problem which lies at the very heart of a competitive Common Market.

Lastly, the fear is sometimes expressed that in the countries of the Community the effects of any liberalization of capital movements may be distorted by differences in economic trends, both at home and in the balance of payments. The efforts now being made to co-ordinate developments in this field may be expected to bring about a gradual reduction in the cases of conflict between economic policies and so to forestall the difficulties which might otherwise arise. The problems involved in the co-ordination of economic policies do not come within the scope of this paper. We shall only recall the importance which the Community institutions attach to the development of this co-ordination in their endeavour to secure a steady expansion of the economies whilst maintaining stability of prices and equilibrium in the balances of payments. Consultations are being held both in the Monetary Committee and in the Economic Policy Committee to ensure that unfavourable developments in the economy of any one Community country shall not threaten the progress already made in liberalizing trade and capital movements. The consultations held between the representatives of the Ministries and of the Central Banks in these committees are supplemented by regular discussions at ministerial level. In particular, regular meetings of the Ministers of Finance from the member countries make it possible to air common problems and consider the progress still to be made in co-ordinating economic policies.

4. The Main Points and the Practical Effect of the First Directive on the Liberalization of Capital Movements

When the Commission put forward a first directive on the liberalization of capital movements for adoption by the Council, it bore in mind both the factors which make wide liberalization

necessary and those calling for some degree of caution in the pace of this liberalization.

The directive, which had been drawn up by the Commission in close co-operation with the Monetary Committee, was approved by the Council of Ministers on 11 May 1960 (see Appendix I).

As to the substance of the directive, the method adopted consists in dividing capital movements into four main categories, and the different arrangements made for each of these take account of the special problems affecting the various types of capital movements.

The *first category* comprises capital movements which are to be liberalized irrevocably and unconditionally, subject to recourse in exceptional cases to the general escape clause of the Treaty. The immediate abolition of restrictions on these capital movements is therefore acknowledged as indispensable to the realization of the Common Market.

The operations covered by the first category consist mainly of direct investments, investments in fixed property, capital movements of a personal nature, and short and medium-term credits in connection with commercial transactions.

For capital movements in this category, the Member States undertake to grant all applications for the relevant operations and transfers.

It might be asked why the application formalities have been allowed to subsist at all. The fact is that, as long as certain types of capital movement remain subject to restrictions, some check is still necessary if these remaining restrictions are not to be circumvented. It is however obvious that the application procedure can be used for checking purposes only: the Member States have in fact given up the right to exercise administrative control in this field and the system is practically equivalent to an open general licence.

It should be possible for the financial transactions connected with these capital movements to be carried out at the rate of exchange used for current transactions. However, the directive takes account of the fact that in certain Member States transfers of capital are handled wholly or in part on special markets, on which the exchange rates may vary beyond the limits prescribed for the market where payments for current operations are handled. By and large, the differences between the " official " rates and the " free " rates are small, but the wide variations theoretically possible

for the rates of exchange applied to capital movements could endanger their freedom; the directive consequently requires the Member States to ensure that such rates shall not diverge from "official" rates appreciably and for a substantial period, and it provides a procedure for the regular examination of trends in this field.

The *second category* of capital movements includes operations in stocks and shares traded on stock exchanges. These are securities which are already on the market and for which there have been dealings at least once on a stock exchange in the Common Market. Here too it is laid down that liberalization shall be unconditional: it can only be called into question under the general escape clauses of the Treaty.

However, for transactions in the second category, the directive lays down a procedure which is unlike that for the grant of permits in the first category: here "open general licences" are to be granted. The liberalization of such capital movements cannot be carried out in practice save when the operations connected with them are free of all administrative formalities.

As a transitional measure the directive gives the Member States the right to limit the freedom of residents to deal in foreign securities: these operations may be reserved to financial institutions and to enterprises wishing to acquire the securities of foreign companies pursuing a similar object.

For transfers connected with these transactions, the directive accepts that the exchange rates may fluctuate more widely than for operations in the first category, although it is stipulated that Member States shall endeavour to contain such fluctuations, which are to be kept under close scrutiny by the Commission.

The *third category* of capital movements includes operations consisting mainly of the public issue and placing of securities on the capital markets, of the acquisition of securities not quoted on the stock exchange, and of the granting and the repayment of:

(a) Long-term credits connected with commercial transactions in which a resident is taking part;

(b) Medium and long-term credits connected with commercial transactions in which no resident is taking part;

(c) Medium and long-term loans and credits not connected with commercial operations.

For the third category of capital movements, the directive provides for *conditional* liberalization, in the sense that a Member State will be able to subject these capital movements to certain restrictions, or maintain the restrictions in force, where the movements are such as to hinder the pursuit of its economic policy. In this case, however, the Commission has to be consulted, and it then considers the measures by which the Member States can co-ordinate their economic, financial and monetary policies to resolve the difficulties. According to the directive, the Commission can advise the State concerned to abolish the restrictions.

This procedure makes it possible to make a considerable advance towards the full liberalization of capital movements and yet to retain the necessary latitude for manoeuvre for as long as the co-ordination of economic policies, and in particular that of monetary policies, remains inadequate.

The *fourth category* covers mainly short-term movements of funds (in the form of investments on the money market, of opening and closing current and deposit accounts, of granting and repaying short-term credits not connected with commercial transactions); here the Member States have not committed themselves to any liberalization.

The caution shown on this point is accounted for by the great mobility of this kind of capital and by the risks of speculative operations involved. Progress even in this field may, however, be expected, thanks to the gradual development of the co-ordination of monetary policies and to the consequent scaling down of capital movements likely to impair the equilibrium of the financial markets and of the balances of payments.

5. Conclusions

As has already been observed, the liberalization of capital movements is a process which can only be carried out gradually; the task of the Community institutions, and in particular of the Commission, will be to bring out every opportunity for progress by annual reviews of the level of liberalization reached in the various member countries: these reviews can be followed up by further directives. We should recall, in this connection, the role of the Monetary Committee set up by the Treaty as an advisory

body which studies the monetary and financial situations in the Member States and gives opinions, either at the request of the other Community institutions or on its own initiative. It played a very important part in the preparation of the first directive, and in the future it will undoubtedly contribute to the further liberalization of capital movements within the Community.

Under existing national exchange control laws and regulations, capital movements benefit from a relatively high degree of liberalization, although the levels reached in the various member countries still differ (see Appendix II). The practical effects of the directive approved by the Council also reside, however, in the fact that a considerable part of the liberalization measures adopted independently by the Member States has been consolidated, that is to say, made subject to rules which prevent these States from revoking unilaterally the measures in force.

Considerable progress has also been made in some Member States by the adoption of measures liberalizing direct investments, dealings in securities, investment in fixed property and medium-term credits connected with commercial transactions.

We may ask what at the present stage are the fields in which further liberalization would be desirable and feasible without harmful effects for the countries concerned. While stressing that these are only suggestions that seem *prima facie* reasonable, and that the arguments put forward will need careful checking, the following points would seem worth making.

The present directive excludes from capital movements which must be liberalized dealings in the certificates of open-end investment trusts. Now, it seems clear that open-end trusts provide a particularly effective means of pushing forward the interpenetration of the markets of the various countries; consequently, the possibility of providing more favourable arrangements for them than those at present in force should be studied. In the second place, it should be recalled that the issue of the securities of Common Market enterprises on the financial markets of other Member States is still hampered by certain restrictions. The gradual abolition of such restrictions would facilitate the evening out of one of the most important conditions for competition, providing business enterprises with access to a wider and, to all intents and purposes, unified capital market.

In this connection, it should be pointed out that, though it is true that the first aim of liberalization was the elimination of exchange restrictions, it is also true that other obstacles remain to be overcome, particularly in the fiscal field and among the regulations under which securities may be quoted on the various stock exchanges. Without going into detail, we may recall the present wide divergences between the taxes on transfers or on the issue of new securities.

Lastly, there remains one more general conclusion to be drawn concerning the role that greater integration of the financial markets can play in the formation of a unified economy in Europe. This integration will exert the greatest influence on the co-ordination of national economic policies: these will inevitably take on a new shape once they have been deprived of one of the instruments used, since the disappearance of the gold standard and its automatic regulatory effects, to maintain a strict control over external payments. The free convertibility of currencies and the free movement of capital mean that national autonomy in the field of monetary policy is limited *de facto*, and that the Member States must pursue harmonized economic policies which ensure equilibrium in their balance of payments and protect confidence in their currencies. Any deviation from these guiding principles in the field of economic policy would lead automatically to losses of foreign exchange because of the way holders of capital would react both at home and abroad, and the country concerned would have either to re-establish equilibrium by appropriate measures in accordance with the laws of the market, or, by invoking escape clauses, re-impose the very restrictions which the Treaty of Rome is intended to abolish.

From this angle as well, therefore, a wide liberalization of capital movements accords with the objectives of the Treaty. Without this liberalization, the progressive abolition of restrictions on trade might place a severe strain on the determination of the Member States to co-ordinate their policies, and make it difficult for them to carry out their commitments. On the other hand, co-ordination would be much facilitated if capital movements were free; such freedom will only develop on the basis of stable currencies, but will itself contribute to the maintenance of this stability.

Brussels — Claudio Segré

APPENDIX I

FIRST DIRECTIVE PURSUANT TO ARTICLE 67 OF THE TREATY (*)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY.

Having regard to the Treaty and especially Articles 5, 67 par. (1), 69, 105 par. (2) and 106 par. (2) thereof;

Having noted the proposal of the Commission, which has consulted to this end the Monetary Committee;

Having noted the decision of 11 May 1960 applying to Algeria and the French overseas departments the provisions of the Treaty concerning movements of capital;

Considering that in order to achieve the aims of the Treaty establishing the European Economic Community the greatest possible freedom is required in movements of capital between the Member States and, consequently, the widest and most rapid liberalization of such capital movements,

HAS ADOPTED THE FOLLOWING DIRECTIVE:

Article 1.

1. The Member States shall grant any exchange permit required for the conclusion or execution of transactions and for transfers between residents of the Member States pertaining to the movements of capital described in schedule A of Annex I to this Directive.

2. The Member States shall provide for such capital transfers to take place on the basis of the exchange rates applicable to payments relating to current transactions.

Should these transfers be made on a foreign exchange market on which fluctuations are not kept within official limits, this obligation must be interpreted to mean that the rates applied may not appreciably and for a substantial period diverge from those applying to payments relating to current transactions.

The Monetary Committee shall keep under review trends in the rates applied to such transfers of capital and report to the Commission on the matter.

(*) The present translation is not an official one. Annex II of the directive, a systematic nomenclature of capital movements, has been omitted, except for the explanatory notes.

Should the Commission find that these rates diverge appreciably and for a substantial period from those applied to payments relating to current transactions it shall initiate the procedure laid down in Article 169 of the Treaty.

Article 2.

1. The Member States shall grant an open general licence for the conclusion or execution of transactions and for transfers between residents of the Member States pertaining to the movements of capital described in schedule B of Annex I to this Directive.

2. Where such transfers of capital are made on a foreign exchange market on which fluctuations are not kept within official limits, the Member States shall endeavour to ensure that these transfers are made at rates which do not diverge appreciably and for a substantial period from those applied to payments relating to current transactions.

The Commission may, after consulting the Monetary Committee, address recommendations on this matter to the Member States.

3. Where such transfers are made either on the same foreign exchange market as payments relating to current transactions or on a market on which fluctuations of rates are kept within the limits applied in the aforesaid market, the application of paragraph 1 of this Article to the acquisition of foreign securities by residents may, as an interim measure, be confined to financial establishments and to enterprises acquiring securities of foreign companies having similar objects to their own.

The Commission may, after consulting the Monetary Committee, address recommendations on this matter to the Member States.

Article 3.

1. Subject to the provisions of paragraph 2 of this Article, the Member States shall grant any exchange permit required for the conclusion or execution of transactions and for transfers between residents of the Member States pertaining to the capital movements described in schedule C of Annex I of this Directive.

2. Should the freedom of such movements of capital threaten to impede the attainment of the aims of the economic policy of a Member State, this State may maintain or re-introduce any exchange restrictions on such movements of capital existing at the date of entry into force of this Directive. It shall consult the Commission on the matter.

The Commission shall examine measures for co-ordinating the economic policies of the Member States designed to overcome these difficulties and, after consulting the Monetary Committee, shall recommend their adoption by the Member States.

3. The Commission may recommend to the State concerned that it abolish the exchange restrictions maintained or re-introduced.

Article 4.

The Monetary Committee shall review at least once annually the restrictions on capital movements such as are described in the schedules at Annex I of this Directive. It shall report to the Commission suggesting restrictions which could be abolished.

Article 5.

1. The provisions of this Directive shall not impair the right of the Member States to verify the nature and authenticity of the transactions or transfers or to take any measures necessary to prevent infringements of their laws and regulations.

2. The Members States shall simplify to the utmost the licensing and supervision formalities applicable to the conclusion or execution of transactions and transfers and, where necessary, shall consult with each other with a view to such simplification.

3. Restrictions on capital movements arising from the system of establishment in a Member State shall be abolished by this Directive only inasmuch as the Member States are required to grant freedom of establishment by Articles 52 to 58 of the Treaty.

Article 6.

The Member States shall endeavour to abstain from introducing within the Community any new exchange restrictions affecting movements of capital which are free at the date of entry into force of this Directive and from making existing regulations more stringent.

Article 7.

The Member States shall inform the Commission three months at the latest after the entry into force of this Directive:

(a) Of their laws and regulations on movements of capital at the date of entry into force of this Directive;

(b) Of the provisions adopted in pursuance of this Directive;

(c) Of the manner in which the said provisions are applied.

They shall also inform the Commission, at latest at the time of their entry into force, of any new measures which go further than the obligations laid down in this Directive and also of any amendment to their provisions

governing movements of capital such as are described in schedule D of Annex I hereto.

Article 8.

The provisions of this Directive shall apply to the Member States listed in Article 227 par. (1) of the Treaty, to Algeria and to the French overseas departments as well as to European territories whose external relations are the responsibility of a Member State.

Article 9.

This Directive shall be without prejudice to the provisions of Articles 67 par. (2), 68 par. (3) and 221 of the Treaty.

Article 10.

Schedules A, B, C and D of Annex I and the nomenclature of the movements of capital and the explanatory notes making up Annex II are an integral part of this Directive.

Done at Luxembourg 11 May 1960.

By the Council.

The Secretary-General — Calmes

The President — Eugène Schaus

Annex I

LIST A

Direct investments:

excluding purely financial investments which are only effected in order to secure for the investor, by the creation of an enterprise or participation in an enterprise situated in another country, indirect access to the money or financial market of that country.

Liquidation of direct investments.

Investments in real estate.

Movements of capital of a personal nature:

Gifts and donations;
Dowries;
Inheritances and legacies;

Settlement of debts in their country of origin by emigrants;
Transfers of capital belonging to residents who are emigrating;

— Amounts required for starting up in business.
Transfers of capital belonging to emigrants returning to their country of origin.

— Amounts imported and sums earned in the exercise of an occupation.

Granting and repayment of credits connected with commercial transactions in which a resident participates:

Short-term (less than one year);
Medium-term (from one to five years).

Deposits, other guarantees and pledges and the relative transfers:

connected with short and medium-term credits relating to commercial transactions in which a resident participates;

connected with long-term loans for the purpose of established or maintaining lasting economic links.

Transfers in implementation of insurance contracts:

as and when such contracts are allowed to qualify for the freedom of the circulation of services in implementation of article 59 et seq. of the Treaty.

LIST B

Operations in securities:

Acquisition by non-residents of domestic securities dealt in on the stock exchange and repatriation of the proceeds of liquidation thereof;

Acquisition by residents of foreign securities dealt in on the stock exchange and utilisation of the proceeds of liquidation thereof:

— excluding the acquisition of bonds issued on a foreign market and denominated in the national currency;

— excluding certificates of open-end investment trusts.

Physical transfer of the aforesaid securities.

LIST C

Issue and placing of securities of a domestic enterprise on a foreign capital market.

Issue and placing of securities of a foreign enterprise on the domestic capital market.

Operations in securities:

Acquisition by non-residents of domestic securities not dealt in on the stock exchange and repatriation of the proceeds of liquidation thereof;

Acquisition by residents of foreign securities not dealt in on the stock exchange and utilisation of the proceeds of liquidation thereof;

Acquisition by non-residents of certificates of domestic open-end investment trust dealt in on the stock exchange and repatriation of the proceeds of liquidation thereof;

Acquisition by residents of certificates of foreign open-end investment trusts dealt in on the stock exchange and utilisation of the proceeds of liquidation thereof;

Acquisition by residents of foreign bonds dealt in on the stock exchange and denominated in the national currency;

Physical transfer of the aforesaid securities.

Granting and repayment of credits linked with commercial transactions in which a resident participates:

Long-term.

Granting and repayment of credits linked with commercial transactions in which no resident participates:

Medium and long-term.

Granting and repayment of loans and credits not linked with commercial transactions:

Medium and long-term.

Deposits, other guarantees and pledges and the relative transfers connected with:

Long-term credits relating to commercial transactions in which a resident participates;

Medium and long-term credits relating to commercial transactions in which no resident participates;

Medium and long-term loans and credits not linked with commercial transactions.

LIST D

Short-term investments in Treasury Bills and other securities normally dealt in on the money market.

Constitution and replenishment of current and deposit accounts, repatriation or utilisation of balances on current or deposit accounts at credit institutions.

Granting and repayment of credits linked with commercial transactions in which no resident participates:

Short-term.

Granting and repayment of loans and credits not linked with commercial transactions:

Short-term.

Movements of capital of a personal nature:

Loans.

Deposits, other guarantees and pledges and the relative transfers:

connected with short-term credits relating to commercial transactions in which no resident participates;

connected with short-term loans and credits not linked with commercial transactions;

connected with loans of a personal nature.

Physical import and export of valuables.

Other capital movements.

Explanatory notes.

In the foregoing nomenclature the following definitions apply:

Direct investments:

Investments of all kinds made by individuals or commercial, industrial or financial enterprises and serving to establish or maintain lasting and direct relations between the lender and the head of the enterprise or the enterprise to which the funds are made available for the exercise of an economic activity. This concept is therefore to be understood in the widest sense.

The enterprises referred to in point 1 (*) include enterprises which are legally independent (wholly-owned subsidiaries) and branches.

As regards enterprises referred to in point 2 (*) which have the status of joint stock companies, participation will be in the nature of direct investment when the block of share held by an individual, another enterprise or any other holder, give such shareholders, either by virtue of the provisions of national legislation on joint stock companies or otherwise, the possibility of effectively participating in the management or the control of the company in question.

The long-term loans with the character of participation referred to in point 3 (*) must be understood as loans for a period of more than five years serving to establish or maintain lasting economic connections. The chief examples which may be mentioned are loans granted by a company to its subsidiaries or to companies in which it holds shares as well as loans connected with profit sharing. This category also includes loans granted by financial establishments with a view to creating or maintaining lasting economic connections.

Residents or non-residents.

Individuals and corporations according to the definitions laid down in the foreign exchange regulations in force in each Member State.

Proceeds of realisation (of investments, securities, etc.): Proceeds of sales, redemptions, distraint, etc.

Introduction of shares on the market: The admission of securities, according to a definite procedure for dealings on the stock exchange under official or non-official regulation, and also their admission to public sales.

(*) These references are to the systematic nomenclature of capital movements, which has been omitted.

Securities dealt in on the stock exchange (quoted officially or un-officially): Securities which are dealt in according to rules and quotations for which are regularly published, either by official bodies of the stock exchange (securities quoted officially) or by other bodies connected with the stock exchange, as for instance banking commissions (securities not quoted officially).

Placing of securities: Direct sale of securities by the issuer or sale by the syndicate to which he has entrusted the operation.

Dealings in securities: Any negotiations of securities including the initial sale of certificates by open end investment trusts.

Domestic or foreign securities: According to place where the issuing office is situated.

Stocks and shares: Include prior rights for new issues.

Bonds and debentures (in category IV of the nomenclature): Bonds issued both by private and public bodies.

Real estate investments: Purchases of properties, whether building or land, and the construction of buildings by private persons for gain or personal ends. This category does not include mortgage loans, but covers life interest rights, ground easements and heritable building rights.

Individuals and corporations: As defined in national regulations.

Financial establishments: Banks, savings banks and bodies specializing in the provision of short-, medium- and long-term credit, as well as insurance companies, building and loan associations, investment companies and other establishments of a similar nature.

Credit establishments: Banks, saving banks and bodies offering short-, medium- and long-term credits.

APPENDIX II

SUMMARY OF THE MEASURES TAKEN TO IMPLEMENT THE DIRECTIVE IN THE MEMBER STATES THE DEGREE OF LIBERALIZATION ATTAINED

Before the first directive pursuant to Article 67 of the Treaty was adopted the Member States of EEC were bound by the Code of Liberalization of capital movements in force within OEEC. However, the flexibility of the system based on this Code led to noteworthy differences in the levels of liberalization; these are now gradually disappearing.

It should be noted that, unlike the OEEC Code, the directive does not allow of reservations such as those by which Member States had restricted liberalization in certain fields when the Code was adopted. Under the first directive, restrictions may be re-introduced in fields where there is unconditional liberalization only in the framework of the general safeguard clauses covering balance of payments difficulties (Articles 108 and 109) or disturbances of the capital market (Article 73). Recourse to these escape clauses is, moreover, subject to control by the Commission and the Council. The directive thus represents an important advance on the OEEC Code of Liberalization not only in the substance of its provisions, but also from the point of view of the legal force of obligations assumed.

Belgium, Luxembourg and the Federal Republic of Germany have not had to adopt new liberalization measures, since their existing exchange regulations already went further than the obligations under the directive.

In France the administrative framework existing at the time when the directive was adopted has been retained but the responsible services have been instructed, in implementation of the directive, to grant automatically, and without using their discretionary powers, all permits for transactions in the category which has been unconditionally liberalized. This measure applies not only to E.E.C. countries but also to non-member countries.

In Italy capital movements covered by Article 1 of the directive have been liberalized by means of open general licences whenever they had not been liberalized earlier. This applies however, only to transfers between Italy and other EEC countries. For most transactions with non-member countries residents — but not others — still have to obtain an individual authorization; this is in principle always granted. For operations in securities the Italian Government has taken advantage of Article 2 (3) of the directive under which the acquisition of foreign securities by residents may be temporarily restricted to financial institutions and to enterprises acquiring shares in foreign companies having similar objects to their own. In addition to the measures required to bring the liberalization of these operations to the level indicated, the Italian Government has authorized the purchase by any resident of securities issued by international financial institutions of which Italy is a member. It should also be pointed out that the « free market » through which all capital operations and a good proportion of invisible transactions used to be effected was in practice merged with the official foreign currency market from 1 January 1962.

The Netherlands have also introduced provisions which remove all remaining restrictions from those forms of capital movement covered by Articles 1 and 2 of the directive. In addition, the Netherlands capital market was in 1961 re-opened to foreign enterprises and public authorities for the first time since 1955. All liberalization measures have been extended to non-member countries.

While it must be remembered that the situation is developing steadily, the position which at present (January 1962) results from these measures can be summed up as follows:

1. *Movements of capital for which the directive provides unconditional liberalization.*

(a) Movements of capital covered by Article 1 of the directive.

Direct investments and the liquidation thereof.

In Germany, Belgium, Luxembourg and Italy these operations are liberalized by means of an open general licence.

In France and the Netherlands the system of individual authorization continues but, as pointed out, the Governments of these countries have undertaken to grant this authorization in every case.

For foreign exchange transfers in connection with these transactions, a « free market » system operates in Belgium and Luxembourg. However, as is known, the maintenance of this system is subject to the understanding that there shall be no noteworthy and lasting divergence between rates on the free market and those applied to payments in connection with current transactions.

Investments in real estate.

Irrespective of their purpose these operations are liberalized by open general licence in all the Member States except France, where for residents they remain subject to the system of « individual authorization always issued ».

In Belgium and Luxembourg the same « free market » system applies to these investments as to direct investments.

Movements of personal capital.

(Gifts and donations — dowries, inheritances and legacies — settlements by emigrants of debts incurred in their country of origin — transfers of capital belonging to residents emigrating — transfers of capital belonging to emigrants returning to their country of origin).

Operations in connection with these movements are liberalized by open general licence in Germany, Belgium, Luxembourg, Italy and the Netherlands.

In France, on the other hand, the dealings in question continue to be subject to an individual authorization, which is always granted.

In Belgium and Luxembourg the same « free market » system applies to these transactions as to direct investments

Granting and repayment of credits connected with commercial transactions in which a resident participates (short-term or medium-term); *deposits, other guarantees and pledges and the transfers applying thereto.*

These dealings are liberalized by open general licence in all the Member States except France, where they still require an individual authorization, which is always granted.

(b) Movements of capital covered by Article 2 of the directive.

Security dealings.

This category of capital movements includes securities dealt in on a stock exchange, with the exception of certificates of open end investment trusts. Under the directive all these operations are covered by an open general licence; as regards the rate of exchange applicable to them, the directive lays down that the Member States « shall endeavour to prevent any noteworthy and lasting divergence from those applied to payments in connection with current transactions ».

In Germany all dealings in securities are carried out on the official exchange market. In France non-residents may use the official exchange market, whereas residents can buy foreign securities only by using « devises-titre ». In the Netherlands, transfers connected with security dealings are made through free markets: non-residents use « K-accounts » and residents « re-investment accounts » which may, however, be the subject of arbitrage transactions. In Belgium and Luxembourg non-residents have a choice on entry between the free market and the official market, whereas residents — and non-residents for exit only — must use the free market for these operations.

In Italy, as a result of the measures taken to implement Article 2, and on the basis of the provisions of paragraph 3 of that Article, institutes and bodies specializing in medium and long-term credits and financial institutions have been authorized to acquire foreign securities. Furthermore, any enterprise may purchase shares or bonds of foreign enterprises with objects similar to its own, and all the companies mentioned, as well as natural persons, are entitled to purchase bonds issued by any international financial institution of which Italy is a member.

2. *Movements of capital for which the directive provides conditional liberalization.*

Movements of capital covered by Article 3 of the directive.

This category comprises in particular issues by foreign enterprises on domestic capital markets and conversely issues by domestic enterprises on foreign capital markets, medium-term and long-term loans and credits of a purely financial nature, and transactions in securities not quoted on the stock exchanges.

Although the directive provides for conditional liberalization only, the capital movements covered by Article 3 are completely liberalized by open general licence in Germany, Belgium and Luxembourg.

With respect to these forms of capital movement France, Italy and the Netherlands make use of the clause in Article 3 which allows them to maintain

or re-introduce foreign exchange restrictions on such movements of capital if liberalization threatens to impede the achievement of the objectives of their economic policy. In practice, however, these countries have shown a liberal attitude towards foreign issues: the Netherlands have authorized issues by foreign enterprises and public authorities up to specific ceilings, and Italy has allowed two issues on its market, one by the World Bank and one by the European Investment Bank.

3. *Capital movements to which no rule of liberalization yet applies. Forms of capital movement covered by Article 4 of the directive.*

This category includes in particular short-term capital movements, the opening of current and deposit accounts and payments into these accounts. Liberalization of these forms of capital movement is complete only in Belgium, Luxembourg and Germany.

In Germany, however, this does not include operations in connection with the sale by residents to non-residents of securities dealt in on the money market.

In the other member countries the provisions in force enable non-residents to carry out most of these operations on the basis of an open general licence. However, certain restrictions are maintained on transactions of this kind carried out by residents.

C. S.