The Interministerial Committee for Credit and Savings

Having regard to Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions, as amended by Directive 92/16/EEC of 16 March 1992, and Directive 91/633/EEC of 3 December 1991 implementing Directive 89/299/EEC, as well as Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions;

Having regard to Articles 53, paragraph 1, and 67, paragraph 1, of Legislative Decree 385 of l September 1993 (the 1993 Banking Law), which establish that the Bank of Italy, in compliance with the resolutions of the Interministerial Committee for Credit and Savings (the Credit Committee), shall issue general regulations concerning capital adequacy and the limitation of risk in its various forms for banks and banking groups, respectively;

Having regard to Article 65, paragraph 1, of Legislative Decree 385/93, which specifies the persons included within the scope of supervision on a consolidated basis;

Having regard to Article 161, paragraph 2, of Legislative Decree 385/93, which confirms the repeal of Legislative Decree 302 of 10 September 1991 transposing Directive 89/299/EEC - except for the tax provisions of Article 2, paragraph 5 – and Legislative Decree 301 of 10 September 1991 transposing Directive 89/647/EEC;

Having regard to Article 10 of Directive 89/646/EEC, which establishes, inter alia, that a credit institution's own funds may not fall below the amount of initial capital required pursuant to Article 4 of the Directive at the time of its authorization and that the Member States may decide that credit institutions already in existence when the Directive is implemented whose own funds do not reach the levels prescribed for initial capital in Article 4 may continue to carry on their activities;

Having regard to the Decree of the Minister of the Treasury no. 435584 of 2 May 1992 containing provisions concerning the capital aggregate to be used as a reference in the regulations governing unharmonized supervisory instruments regarding capital;

ISSUES

the following Resolution

Article 1

(Scope of application)

1. This Resolution establishes the criteria that the Bank of Italy shall adopt in drafting instructions concerning supervisory capital and the solvency ratio at both the individual and consolidated level of banks authorized in Italy, as identified by Article 1, paragraph 2, subparagraph *d)*, of Legislative Decree 385/93, and the groups of persons subject to supervision on a consolidated basis pursuant to Article 65, paragraph 1, of that Legislative Decree.

Resolution of the Interministerial Committee for Credit and Savings of 12 January 1994 "Determination of the criteria that the Bank of Italy shall adopt in drafting instructions concerning the supervisory capital and solvency ratio of banks and banking groups"; published in the *Gazzetta Ufficiale della Repubblica Italiana* no. 24 of 31 January 1994.

The Italian text alone is authentic.

Section I

Supervisory capital

Article 2

(Composition)

1. Supervisory capital, as determined in compliance with the provisions of Directive 89/299/EEC, shall be used in the application of the supervisory regulations transposing Community legislation governing harmonization. The Bank of Italy shall take account of any technical amendments that may be made at the Community level to such directive in accordance with the procedures provided for in Directive 92/16/EEC.

2. The instructions of the Bank of Italy shall specify the positive and negative aggregates that are to be considered in calculating supervisory capital, having regard to the provisions of Community legislation, and shall also specify the components of each aggregate and their related values on the basis of the regulations governing financial statements laid down by Legislative Decree 87 of 27 January 1992 and the administrative acts specified in Article 5 of that Decree.

3. In order to preserve supervisory capital's function as a guarantee of bank stability and in order to improve the harmonization of the procedures for calculating such capital, the instructions may provide for the exclusion of positive aggregates or components, the inclusion of negative aggregates or components and value adjustments. Positive aggregates or components not permitted under Community directives may not be included in the calculation.

4. Subject to the agreement of the Bank of Italy and within the limits it shall establish, and in any case in the maximum amount of the funds fully paid up, the components of supervisory capital may include non-redeemable liabilities or liabilities that are repayable only with the agreement of the Bank of Italy where the related contract contains the following conditions:

a) in the case of losses that lead to a reduction in paid-up share capital and reserves below the minimum capital level required for authorization to engage in banking, the amounts in respect of such liabilities and the accrued interest may be used to absorb such losses in order to permit the issuing bank to continue operating;

b) in the case of adverse operating performance, payment of interest on the liability may be deferred in the amount necessary to prevent or limit to the greatest possible extent the emergence of losses;

c) in the case of the liquidation of the issuing bank, the debt shall be repaid only after all other creditors not equally subordinated have been satisfied.

5. With the agreement of the Bank of Italy and within more restrictive limits than those established in paragraph 4, supervisory capital may include subordinated liabilities with the characteristics indicated in that paragraph, with the exception of the conditions specified in subparagraphs *a)* and *b)* where the related contract establishes a maturity of five years or a period of notice of at least five years. Any early redemption option shall be exercisable solely by the issuer and shall be subject to approval of the Bank of Italy.

6. Even where the conditions specified in paragraphs 4 and 5 are met, the Bank of Italy may exclude or limit the inclusion of the liabilities envisaged in those paragraphs in the calculation of supervisory capital on the basis of assessments, including on a case-by-case basis, concerning the contractual terms governing the instruments or the inadequate capacity of the issuing bank.

7. The liabilities provided for in the previous paragraphs may also be issued by banks in the form of bonds or similar securities. The securities shall refer to the clause indicated in paragraph 4, subparagraph *a)* where such clause is present in the contract.

8. Banks and banking groups shall calculate their supervisory capital at least every six months. The Bank of Italy shall specify the conditions on which the banks and persons subject to supervision on a consolidated basis may include profits accrued but not yet approved by the general meeting or any other body responsible for such task in their calculation of supervisory capital.

9. In exceptional circumstances, as provided for by Directive 89/299/EEC, the Bank of Italy may authorize, including individually, banks and persons subject to supervision on a consolidated basis to derogate temporarily from the regulations governing supervisory capital.

Article 3

(Minimum level of supervisory capital)

1. Italian banks shall comply with the instructions of the Bank of Italy regarding the minimum level of supervisory capital they shall hold, which may not fall below the amount of initial capital required for authorization to engage in banking.

2. The Bank of Italy may establish that the provisions of the previous paragraph shall also apply to the branches of non-EC banks established in Italy.

Article 4

(Provisions repealed)

1. The decree of the Minister of the Treasury no. 435584 of 2 May 1992 is repealed.

Section II

Solvency ratio

Article 5

(Minimum capital requirements)

1. The Bank of Italy shall issue instructions establishing minimum capital requirements in compliance with the provisions of Directive 89/647/EEC and specifying the procedures for calculating such requirements. Banks and groups of persons subject to supervision on a consolidated basis shall comply with such requirements and maintain the level of their operations within the consequent limits.

2. The banks and groups of persons referred to in the previous paragraph shall submit a report containing the information necessary to ascertain compliance with minimum capital requirements to the Bank of Italy, in the manner established by the latter, at least every six months.

3. In special cases, the Bank of Italy may establish more restrictive requirements than those envisaged on a general basis.

Article 6

(Structure of the solvency ratio)

1. The instructions of the Bank of Italy shall require compliance with a solvency ratio, consisting of the ratio of supervisory capital to assets and off-balance-sheet items, both calculated on the basis of weights determined in relation to the risk of incurring losses owing to borrower default, having regard to the provisions of Directive 89/647/EEC.

2. The valuation of assets and off-balance-sheet items shall be carried out in compliance with the regulations governing the financial statements of banks and other financial institutions. In order to improve the harmonization of the reference data, the Bank of Italy may issue instructions establishing specific calculation methods selected within the framework of the valuation criteria laid down by Legislative Decree 87 of 27 January 1992.

Article 7

(Banks belonging to groups of persons subject to supervision on a consolidated basis)

1. Banks belonging to groups of persons subject to supervision on a consolidated basis may be required by the Bank of Italy to comply with the solvency ratio also on a subconsolidated or individual level. Alternatively, appropriate measures shall be adopted to ensure the adequate allocation of supervisory capital among such persons.

Article 8

(Derogations)

1. The Bank of Italy may establish derogations from the rules for the calculation of the solvency ratio, in compliance with the conditions and restrictions envisaged by Directive 89/647/EEC. The Ministry of the Treasury shall inform the European Commission of the use of such derogations.

Section III

Common provisions concerning supervisory capital and the solvency ratio

Article 9

(Branches of non-EC banks established in Italy)

1. The Bank of Italy may exempt the branches of non-EC banks established in Italy from the provisions of this resolution where their activities are adequately regulated by supervision equivalent to that applied to Italian banks. To this end, the Bank of Italy shall have regard to the existence and effectiveness of supervisory controls exercised by the competent authorities in the home country and to reciprocity. The Bank of Italy may make the exemption conditional on the existence of operational limits on the branches established in Italy, with special regard to forms of fundraising and the acquisition of risks.

2. The capital requirements that the Bank of Italy shall establish for the branches of non-EC banks established in Italy may not be more favourable than the minimum requirements provided for in Directive 89/647/EEC.

Article 10

(Cooperation between authorities)

1. For the purposes of applying capital requirements to banks operating in more than one country, including through branches, the Bank of Italy may conclude agreements with the supervisory authorities of other countries on forms of cooperation and the allocation of specific tasks.