



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.07.1995

COM(95) 360 final

95/0188 (COD)

Proposal for a

**EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE**

**amending Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions and Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field**

**(presented by the Commission)**

## EXPLANATORY MEMORANDUM

### 1. Purpose of this proposal

This proposal for a directive seeks to amend the Commission proposal setting up a Securities Committee as well as Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions<sup>1</sup> (hereinafter referred to as the "Capital Adequacy Directive") and Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field<sup>2</sup> (hereinafter referred to as the "Investment Services Directive") in order to adapt their provisions so as to set up a Securities Committee, transfer to the Commission, assisted by that Committee, the implementing powers envisaged in Articles 10 and 29 of those Directives, and amend the information and notification arrangements provided for in the Directives.

### 2. Background

The Commission's proposals for the Capital Adequacy<sup>3</sup> and Investment Services Directives<sup>4</sup> envisaged the creation of a committee to assist the Commission in the exercise of certain implementing powers under those directives, mainly with a view to keeping the texts up to date and adapting them to technical progress.

Committees with a similar role exist in the banking sector, the Banking Advisory Committee, and in the insurance sector, the Insurance Committee.

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<sup>1</sup>OJ No L 141, 11.6.1993, p.1.

<sup>2</sup>OJ No L 141, 11.6.1993, p.27.

<sup>3</sup>OJ No C 152, 21.6.1990, p.6 and OJ No C 50, 25.2.1992, p.5.

<sup>4</sup>OJ No C 43, 22.2.1989, p.7 and OJ No C 42, 22.2.1990, p.7.

When the Council adopted common positions on the Capital Adequacy and Investment Services Directives, and subsequently adopted the said Directives definitively, it decided to split the contents of the proposal, putting to one side the provisions of the Commission proposals establishing the committee and to retain for itself on a provisional basis the relevant implementing powers. This was clearly intended to be a temporary arrangement "pending adoption of a further directive". In the meantime the Council and the Commission were agreed that the Commission proposal to set up a Securities Committee remained on the table (pursuant to the doctrine of "splitting").

The Commission considers that its initial proposal to set up a committee to exercise implementing powers under the Capital Adequacy and Investment Services Directives formally remains on the table in accordance with the doctrine of splitting. The Commission nevertheless believes that there are a number of factors which now justify the presentation of a proposal amending, under Article 189A, the proposal on the establishment of the Securities Committee that remains on the table before the Council and the Parliament.

Firstly, it is necessary to adapt the information and notification arrangements on certain technical matters put in place by certain provisions of the Capital Adequacy and Investment Services Directives.

Secondly, this dossier was considered in the past in the context of the cooperation procedure. With the entry into force of the codecision procedure the proposal for a directive setting up the Securities Committee will have to be adopted jointly by Parliament and the Council.

The Capital Adequacy and Investment Services Directives were adopted in 1993 and will enter into force on 1 January 1996. In the interests of clear legal drafting the most appropriate approach is to formally amend those Directives replacing the articles provisionally reserving implementing powers to the Council with new articles establishing the Securities Committee and giving the Commission assisted by the Committee the responsibility for exercising those powers.

Finally, a Modus Vivendi was concluded in December 1994 between the Parliament, the Council and the Commission concerning implementing measures under acts adopted in accordance with the procedure laid down in Article 189B of the Treaty. Following this important inter-institutional agreement both the Commission and the Council are of the view that this is now a favourable moment to seek to make progress on the creation of the Securities Committee.

The Commission proposal is intended to put an end to the temporary arrangements put in place in the Capital Adequacy and Investment Services Directives.

The proposal also gives the new Committee the role of acting as a discussion forum for any question relating to the securities markets directives.

### **3. Comments on individual articles**

#### **Article 1**

Article 1 of the proposal replaces Article 10 of the Capital Adequacy Directive by three new articles (10, 10a and 10b). The new Article 10 lists exactly the same areas in which the Commission will exercise implementing/updating powers as appeared in the former Article 10.

Article 10a, paragraph 1 creates the new Securities Committee to be made up of representatives of the Member States and to be chaired by the Commission. These arrangements are identical to those established, for example in the Insurance Committee.

The comitology procedure set out in paragraph 2 is Procedure III, variant (a) under the 1987 Comitology Decision. This is the form of regulatory committee which the Commission has consistently proposed as being the most appropriate in the area of financial services.

Article 10b is concerned with the Committee's role as a general discussion forum.

#### **Article 2**

Article 2 replaces Article 29 of the Investment Services Directive with three new articles.

These new articles fulfil exactly the same function for the Investment Services Directive as the new articles incorporated in the Capital Adequacy Directive.

The list of areas for the exercise of implementing/updating powers is exactly the same as in the previous Article 29.

The only difference is that in the interests of legislative clarity, the new Article 29a(1) refers back to the fact that the Securities Committee was created in Article 10a of the Capital Adequacy Directive, that Directive being the earlier text.

### **Article 3**

This article amends Article 7(1) of the Investment Services Directive, which is part of Title III of that Directive dealing with relations with third countries.

The corresponding provisions of the banking and insurance directives provide that Member States shall inform the Commission of the creation or the takeover of Community undertakings by third country interests. The Commission in turn informs the relevant Committees.

The Investment Services Directive created a temporary Commission/Council arrangement. However, the Securities Committee that has now been established can, as in the other financial services areas, become the channel for keeping the Member States informed.

### **Article 4**

This article similarly modifies the information notification arrangements on certain technical matters put in place by the Capital Adequacy Directive pending the creation of the Securities Committee.

**Directive .../.../EC of the European Parliament and of the Council  
of .....**

**amending Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions and Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 57(2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Acting in accordance with the procedure referred to in Article 189b of the Treaty<sup>2</sup>

Whereas Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions<sup>3</sup> and Council Directive 93/22/EEC on investment services in the securities field<sup>4</sup> were adopted on 15 March 1993 and 10 May 1993 respectively,

Whereas implementing measures are necessary for the application of Council Directives on securities, securities markets and securities intermediaries, particularly in view of the need to adapt the Directives to new developments in the financial sector;

Whereas in Article 10 of Directive 93/6/EEC and in Article 29 of Directive 93/22/EEC the Council retained for itself the powers to adopt implementing measures pending the adoption of a subsequent act designed to enable the Commission to exercise those powers;

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<sup>1</sup> OJ No C 152, 21.6.1990, p.6 and OJ No C 50, 25.2.1992, p. 5; OJ No C 43, 22.2.1989, p.7 and OJ No C 42, 22.2.1990, p.7; and. ....

<sup>2</sup>

<sup>3</sup> OJ No L 141, 11.6.1993, p.1.

<sup>4</sup> OJ No L 141, 11.6.1993, p.27.

Whereas, in accordance with the provisions of Article 145, third indent of the Treaty, the Council confers on the Commission powers for the implementation of the rules which the Council lays down;

Whereas, on its second reading of the proposals for the directives on capital adequacy and investment services the European Parliament had called for those powers to be conferred on the Commission;

Whereas it is necessary for this purpose to establish a Securities Committee to assist the Commission in these areas;

Whereas it is appropriate that implementing measures shall be taken in accordance with the procedure laid down in Article 2, procedure III, variant (a), of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>5</sup>;

Whereas Directives 93/6/EEC and 93/22/EEC should therefore be amended, the aforementioned Articles 10 and 29 being replaced by new articles establishing the Securities Committee and giving the Commission, assisted by that Committee, responsibility for adapting the said Directives to technical progress;

Whereas the creation of the Securities Committee necessitates a number of other amendments to Directives 93/6/EEC and 93/22/EEC in order to modify certain of their provisions put in place pending the establishment of the said Committee;

Whereas the examination of matters concerning securities, securities markets and securities intermediaries makes the exchange of views between the competent authorities and the Commission desirable; whereas it is appropriate to entrust this task also to the Securities Committee,

HAVE ADOPTED THIS DIRECTIVE:

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<sup>5</sup>OJ No L 197, 18.7.1987, p.33.

## **Article 1**

Article 10 of Directive 93/6/EEC is hereby replaced by the following three articles:

### **"Article 10**

The technical adaptations to be made to this Directive in the following areas shall be adopted in accordance with the procedure laid down in Article 10a:

- clarification of the definitions in Article 2 in order to ensure uniform application of this Directive throughout the Community,
- clarification of the definitions in Article 2 to take account of developments on financial markets,
- alteration of the amounts of initial capital prescribed in Article 3 and the amount referred to in Article 4(6) to take account of developments in the economic and monetary field,
- the alignment of terminology on and the framing of definitions in accordance with subsequent acts on institutions and related matters.

### **Article 10a**

1. The Commission shall be assisted by a Securities Committee, hereinafter in this Article referred to as the 'Committee', composed of representatives of the Member States and chaired by a representative of the Commission.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States in the Committee shall be weighted as laid down in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.



If the measures envisaged are not in accordance with the Committee's opinion or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

#### **Article 10b**

1. The Committee may, at the request of its Chairman or of one of its members, examine any question relating to the application of Community provisions concerning securities, securities markets and securities intermediaries.

2. The Committee shall not consider specific problems relating to individual cases."

#### **Article 2**

Article 29 of Directive 93/22/EEC is hereby replaced by the following three articles:

#### **"Article 29**

The technical adaptations to be made to this Directive in the following areas shall be adopted in accordance with the procedure laid down in Article 29a:

- expansion of the list in Section C of the Annex,
- adaptation of the terminology of the lists in the Annex to take account of developments on financial markets,
- the areas in which the competent authorities must exchange information as listed in Article 23,
- clarification of the definitions in order to ensure uniform application of this Directive in the Community,
- clarification of the definitions in order to take account in the implementation of this Directive of developments on financial markets,
- the alignment of terminology and the framing of definitions in accordance with subsequent measures on investment firms and related matters,
- the other tasks provided for in Article 7(5).

### **Article 29a**

1. The Commission shall be assisted by the Securities Committee established in Article 10a of Directive 93/6/EEC, hereinafter in this Article referred to as "the Committee", composed of representatives of the Member States and chaired by a representative of the Commission.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States in the Committee shall be weighted as laid down in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the Committee's opinion or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

### **Article 29b**

1. The Committee may, at the request of its Chairman or of one of its members, examine any question relating to the application of Community provisions concerning securities, securities markets and securities intermediaries.

2. The Committee shall not consider specific problems relating to individual cases."



### Article 3

Article 7(1) of Directive 93/22/EEC shall be replaced by the following:

"1. The competent authorities of the Member States shall inform the Commission:

- a) of the authorization of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country. The Commission shall inform the Securities Committee accordingly;
- b) whenever such a parent undertaking acquires a holding in a Community investment firm such that the latter would become its subsidiary. The Commission shall inform the Securities Committee accordingly.

When authorization is granted to any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country, the competent authorities shall specify the structure of the group in the notification which they address to the Commission."

### Article 4

1. In Article 2(12), fifth paragraph, Annex III(9) and Annex VI(9) of Directive 93/6/EEC, the words "the Council and" shall be deleted.

2. In Article 7(3) of Directive 93/6/EEC the words "the Council and the Commission" shall be replaced by "the Securities Committee".

### Article 5

This Directive is addressed to the Member States.

Done at Brussels

For the European Parliament

The President

For the Council

The President

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