



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.06.1996
COM(96) 292 final

95/0188 (COD)

Amended 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 pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

On 9 May 1996 the European Parliament approved on first reading the proposal for a directive setting up the Securities Committee¹.

The European Parliament voted in favour of four amendments. Three of these amendments were concerned with changing the committee procedure from procedure III variant (a) to procedure II variant (b) as set out in the relevant Council Decision².

The other amendment added a recital referring to an agreement ("modus vivendi")³ between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in article 189b of the EC Treaty.

The Commission indicated to Parliament that it could accept the addition of the recital relating to the "modus vivendi". However it stated that it could not accept the proposed change in committee procedure, and therefore rejected the three amendments in question.

The aim of this amended proposal is therefore to add the relevant recital to the text of the original proposal. The recital which has been so added is underlined.

¹ 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, OJ No C 253, 29.9.95, p. 19.

² Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ No L 197, 18.7.1987, p. 33.

³ OJ No C 293, 8.11.1995, p. 1.

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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 Commission¹,

Acting in accordance with the procedure referred to in Article 189b of the Treaty²

Whereas Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions³ and Council Directive 93/22/EEC on investment services in the securities field⁴ 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;

¹ 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.

²

³ OJ No L 141, 11.6.1993,p.1.

⁴ 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 Commission⁵;

Whereas an agreement on a *modus vivendi*⁶ between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the EC Treaty was reached on 20 December 1994;

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:

⁵OJ No L 197, 18.7.1987, p.33.

⁶OJ No C 293, 8.11.1995, p.1

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.

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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.

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