

Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (repealed)

TITLE V

**FINAL PROVISIONS**

*Article 64*

**Committee procedure**

1 The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC<sup>(1)</sup> (hereinafter referred to as ‘the Committee’).

[<sup>F12</sup> Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.]

[<sup>F2a</sup> None of the implementing measures enacted may change the essential provisions of this Directive.]

[<sup>F13</sup> Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.]

[<sup>F34</sup> By 31 December 2010, and, thereafter, at least every three years, the Commission shall review the provisions concerning its implementing powers and present a report to the European Parliament and to the Council on the functioning of those powers. The report shall examine, in particular, the need for the Commission to propose amendments to this Directive in order to ensure the appropriate scope of the implementing powers conferred on the Commission. The conclusion as to whether or not amendment is necessary shall be accompanied by a detailed statement of reasons. If necessary, the report shall be accompanied by a legislative proposal to amend the provisions conferring implementing powers on the Commission.]

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**Textual Amendments**

- F1** Substituted by [Directive 2008/10/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2004/39/EC on markets in financial instruments, as regards the implementing powers conferred on the Commission.](#)
- F2** Inserted by [Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending directive 2004/39/EC on markets in financial instruments, as regards certain deadlines \(Text with EEA relevance\).](#)
- F3** Inserted by [Directive 2008/10/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2004/39/EC on markets in financial instruments, as regards the implementing powers conferred on the Commission.](#)

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### *[<sup>F4</sup>Article 64a*

#### **Sunset clause**

By 1 December 2011 the Commission shall review Articles 2, 4, 10b, 13, 15, 18, 19, 21, 22, 24 and 25, Articles 27 to 30, and Articles 40, 44, 45, 56 and 58 and present any appropriate legislative proposal in order to allow the full application of the delegated acts under Article 290 TFEU and implementing acts under Article 291 TFEU in respect of this Directive. Without prejudice to implementing measures already adopted, the powers conferred on the Commission in Article 64 to adopt implementing measures that remain after the entry into force of the Lisbon Treaty on 1 December 2009 shall cease to apply on 1 December 2012.]

#### **Textual Amendments**

- F4** Inserted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

### *[<sup>F5</sup>Article 65*

#### **Reports and review**

1 By 31 October 2007, the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and to the Council on the possible extension of the scope of the provisions of this Directive concerning pre and post-trade transparency obligations to transactions in classes of financial instruments other than shares.

2 By 31 October 2008, the Commission shall present the European Parliament and the Council with a report on the application of Article 27.

3 By 30 April 2008, the Commission shall, on the basis of public consultations and in the light of discussions with competent authorities, report to the European Parliament and to the Council on:

- a the continued appropriateness of the exemption provided for in Article 2(1)(k) for undertakings whose main business is dealing on own account in commodity derivatives;
- b the content and form of proportionate requirements for the authorisation and supervision of such undertakings as investment firms within the meaning of this Directive;
- c the appropriateness of rules concerning the appointment of tied agents in performing investment services and/or activities, in particular with respect to the supervision of them;
- d the continued appropriateness of the exemption provided for in Article 2(1)(i).

4 By 30 April 2008, the Commission shall present the European Parliament and the Council with a report on the state of the removal of the obstacles which may prevent the consolidation at European level of the information that trading venues are required to publish.

5 On the basis of the reports referred to in paragraphs 1 to 4, the Commission may submit proposals for related amendments to this Directive.

6 By 31 October 2006, the Commission shall, in the light of discussions with competent authorities, report to the European Parliament and to the Council on the continued appropriateness of the requirements for professional indemnity insurance imposed on intermediaries under Community law.]

#### Textual Amendments

- F5** Substituted by [Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending directive 2004/39/EC on markets in financial instruments, as regards certain deadlines \(Text with EEA relevance\)](#).

### Article 66

#### Amendment of Directive 85/611/EEC

In Article 5 of Directive 85/611/EEC, paragraph 4 shall be replaced by the following:

4. Articles 2(2), 12, 13 and 19 of [<sup>X1</sup>Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ]<sup>(2)</sup>, shall apply to the provision of the services referred to in paragraph 3 of this Article by management companies.

#### Editorial Information

- X1** Substituted by [Corrigendum to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC \(Official Journal of the European Union L 145 of 30 April 2004\)](#).

### Article 67

#### Amendment of Directive 93/6/EEC

Directive 93/6/EEC shall be amended as follows:

- 1) Article 2(2) shall be replaced by the following:
2. Investment firms shall mean all institutions that satisfy the definition in Article 4(1) of [<sup>X1</sup>Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ]<sup>(3)</sup>, which are subject to the requirements imposed by the same Directive, excluding:
  - a credit institutions,
  - b local firms as defined in 20, and
  - c firms which are only authorised to provide the service of investment advice and/or receive and transmit orders from investors without in both cases holding money or securities belonging to their clients and which for that reason may not at any time place themselves in debit with their clients.
- 2) Article 3(4) shall be replaced by the following:

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4. The firms referred to in point (b) of Article 2(2) shall have initial capital of EUR 50 000 in so far as they benefit from the freedom of establishment or to provide services under Articles 31 or 32 of Directive 2004/39/EC.;
- 3) In Article 3 the following paragraphs shall be inserted:
- (4a) Pending revision of Directive 93/6/EC, the firms referred to in point (c) of Article 2(2) shall have:
- a initial capital of EUR 50 000; or
  - b professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR 1 500 000 per year for all claims; or
  - c a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to points (a) or (b).
- The amounts referred to in this paragraph shall be periodically reviewed by the Commission in order to take account of changes in the European Index of Consumer Prices as published by Eurostat, in line with and at the same time as the adjustments made under Article 4(7) of Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation<sup>(4)</sup>.
- 4b When an investment firm referred to in Article 2(2)(c), is also registered under Directive 2002/92/EC it has to comply with the requirement established by Article 4(3), of that Directive and in addition it has to have:
- a initial capital of EUR 25 000; or
  - b professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 500 000 applying to each claim and in aggregate EUR 750 000 per year for all claims; or
  - c a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to points (a) or (b).

#### Editorial Information

- X1** Substituted by [Corrigendum to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC \(Official Journal of the European Union L 145 of 30 April 2004\)](#).

### Article 68

#### Amendment of Directive 2000/12/EC

Annex I of Directive 2000/12/EC shall be amended as follows:

At the end of the Annex I the following sentence is added:

The services and activities provided for in Section A and B of Annex I of [X1] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [5] when referring to the financial instruments

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provided for in Section C of Annex I of that Directive are subject to mutual recognition according to this Directive.

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#### **Editorial Information**

- X1** Substituted by [Corrigendum to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC \(Official Journal of the European Union L 145 of 30 April 2004\)](#).

#### *[<sup>F5</sup> Article 69*

#### **Repeal of Directive 93/22/EEC**

Directive 93/22/EEC shall be repealed with effect from 1 November 2007. References to Directive 93/22/EEC shall be construed as references to this Directive. References to terms defined in, or Articles of, Directive 93/22/EEC shall be construed as references to the equivalent term defined in, or Article of, this Directive.]

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#### **Textual Amendments**

- F5** Substituted by [Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending directive 2004/39/EC on markets in financial instruments, as regards certain deadlines \(Text with EEA relevance\)](#).

#### *Article 70*

#### **Transposition**

[<sup>F5</sup>Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 January 2007. They shall forthwith inform the Commission thereof.

They shall apply these measures from 1 November 2007.]

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

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#### **Textual Amendments**

- F5** Substituted by [Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending directive 2004/39/EC on markets in financial instruments, as regards certain deadlines \(Text with EEA relevance\)](#).

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## Article 71

### Transitional provisions

[<sup>F51</sup> Investment firms already authorised in their home Member State to provide investment services before 1 November 2007 shall be deemed to be so authorised for the purposes of this Directive if the laws of that Member State provide that to take up such activities they must comply with conditions comparable to those provided for in Articles 9 to 14.

2 A regulated market or a market operator already authorised in its home Member State before 1 November 2007 shall be deemed to be so authorised for the purposes of this Directive if the laws of that Member State provide that the regulated market or market operator, as the case may be, must comply with conditions comparable to those provided for in Title III.

3 Tied agents already entered in a public register before 1 November 2007 shall be deemed to be so registered for the purposes of this Directive if the laws of Member States concerned provide that tied agents must comply with conditions comparable to those provided for in Article 23.

4 Information communicated before 1 November 2007 for the purposes of Articles 17, 18 or 30 of Directive 93/22/EEC shall be deemed to have been communicated for the purposes of Articles 31 and 32 of this Directive.

5 Any existing system falling under the definition of an MTF operated by a market operator of a regulated market shall, at the request of the market operator of the regulated market, be authorised as an MTF, provided that it complies with rules equivalent to those required by this Directive for the authorisation and operation of MTFs and that the request concerned is made within eighteen months following 1 November 2007.]

6 Investment firms shall be authorised to continue considering existing professional clients as such provided that this categorisation has been granted by the investment firm on the basis of an adequate assessment of the expertise, experience and knowledge of the client which gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understands the risks involved. Those investment firms shall inform their clients about the conditions established in the Directive for the categorisation of clients.

#### Textual Amendments

- F5** Substituted by [Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending directive 2004/39/EC on markets in financial instruments, as regards certain deadlines \(Text with EEA relevance\)](#).

## Article 72

### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

*Article 73*

**Addressees**

This Directive is addressed to the Member States.

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- (1) OJ L 191, 13.7.2001, p. 45.
- (2) [<sup>X1</sup>OJ L 145, 30.4.2004, p. 1.]’
- (3) [<sup>X1</sup>OJ L 145, 30.4.2004, p. 1.]’
- (4) OJ L 9, 15.1.2003, p. 3.’
- (5) [<sup>X1</sup>OJ L 145, 30.4.2004, p. 1.]’

#### **Editorial Information**

- X1** Substituted by Corrigendum to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (Official Journal of the European Union L 145 of 30 April 2004).