

Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees (Text with EEA relevance)

DIRECTIVE 2005/1/EC OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 9 March 2005

amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

Having consulted the Committee of the Regions,

Having regard to the opinion of the European Central Bank<sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(3)</sup>,

Whereas:

- (1) The Commission Communication of 11 May 1999 entitled 'Implementing the framework for financial markets: action plan' identifies a series of actions that are required in order to complete the single market for financial services.
- (2) At its meeting in Lisbon of 23 and 24 March 2000, the European Council called for the implementation of this Action Plan by 2005.
- (3) On 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European Securities Markets. In its final report, the Committee of Wise Men called for the establishment of a four-level regulatory framework in order to make the regulatory process for Community securities legislation more flexible, effective and transparent.
- (4) In its Resolution on more effective securities market regulation in the European Union, the Stockholm European Council of 23 and 24 March 2001 welcomed the report of the Committee of Wise Men and called for the four-level approach to be implemented.

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- (5) In the light of those developments, the Commission adopted on 6 June 2001 Decisions 2001/527/EC<sup>(4)</sup> and 2001/528/EC<sup>(5)</sup> setting up, respectively, the Committee of European Securities Regulators (CESR) and the European Securities Committee (ESC).
- (6) Democratic accountability and transparency must be inherent in the Lamfalussy process and its extension, which can only be sufficiently guaranteed by respecting the interinstitutional balance with regard to implementing measures.
- (7) This Directive amends Council Directives 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance<sup>(6)</sup>, 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)<sup>(7)</sup>, 91/675/EEC of 19 December 1991 setting up an insurance committee<sup>(8)</sup>, 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive)<sup>(9)</sup> and 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions<sup>(10)</sup> and Directives of the European Parliament and of the Council 94/19/EC of 30 May 1994 on deposit-guarantee schemes<sup>(11)</sup>, 98/78/EC of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group<sup>(12)</sup>, 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>(13)</sup>, 2001/34/EC of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities<sup>(14)</sup>, 2002/83/EC of 5 November 2002 concerning life assurance<sup>(15)</sup> and 2002/87/EC of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate. This Directive aims only at making certain changes in the organisational structure of committees. None of the modifications are intended to extend the powers to adopt implementing measures vested in the Commission pursuant to these Directives, nor the powers vested in the Council pursuant to Directive 93/6/EEC.
- (8) In its Resolution of 5 February 2002, the European Parliament endorsed the four-level approach for securities, on the basis of a solemn declaration made before Parliament the same day by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the Chairman of the Parliament's Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process. In its Resolution of 21 November 2002 the Parliament called for certain aspects of that approach to be extended to the banking and insurance sectors subject to a clear commitment on the part of the Council to guarantee a proper institutional balance.
- (9) The commitments made by the Commission regarding securities legislation via the abovementioned declaration of 5 February 2002 and letter of 2 October 2001 should be complemented by sufficient guarantees concerning a proper institutional balance.
- (10) On 3 December 2002, the Council invited the Commission to implement arrangements for the remaining financial services sectors based upon the Final Report of the Committee of Wise Men.

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- (11) Safeguards with respect to the extension of the four-level approach are also required because the EU institutions do not yet benefit from an extensive practical experience of the four-level Lamfalussy approach. Furthermore, the first and second Interim Reports of the Interinstitutional Monitoring Group monitoring the Lamfalussy process have made certain remarks and criticisms concerning the functioning of the process.
- (12) The speed of adoption of legislation and the quality of legislation are fundamental objectives of the Lamfalussy process. The success of the Lamfalussy process depends more on the political will of the institutional partners to set up an appropriate framework for the adoption of the legislation than on an acceleration of the setting up of the related technical delegated provisions. In addition, an overemphasis on the speed of setting up of the delegated provisions could create significant problems with regard to the quality of those provisions.
- (13) The extension of the Lamfalussy procedure is without prejudice to possible decisions regarding the organisation of supervision at a European level.
- (14) For those purposes, as regards the banking sector, the role of the Banking Advisory Committee (BAC) set up by Directive 2000/12/EC should be adapted.
- (15) To reflect that adapted role, the BAC should be replaced by ‘the European Banking Committee’.
- (16) The measures necessary for the implementation of Directive 2000/12/EC are measures of general scope and should be adopted in accordance with Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(16)</sup>.
- (17) The implementing measures adopted should not modify the essential provisions of the Directives.
- (18) The European Parliament should be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases this period may be shortened. If, within that period, a resolution is passed by the European Parliament, the Commission will re-examine the draft measures.
- (19) In exercising its implementing powers, the Commission should respect the following principles: the need to ensure confidence in financial markets among investors by promoting high standards of transparency in those markets; the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances; the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against economic crime; the need for high levels of transparency and consultation with all market participants and with the European Parliament and the Council; the need to encourage innovation in financial markets if they are to be dynamic and efficient; the need to ensure market integrity by close and reactive monitoring of financial innovation; the importance of reducing the cost of, and increasing access to, capital; the balance of costs and benefits to market participants on a long-term basis (including small and

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medium-sized businesses and small investors) in any implementing measures; the need to foster the international competitiveness of EU financial markets without prejudice to a much-needed extension of international cooperation; the need to achieve a level playing field for all market participants by establishing EU-wide regulations every time it is appropriate; the need to respect differences in national markets where these do not unduly impinge on the cohesion of the single market; and the need to ensure coherence with other Community legislation in this area, as imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.

- (20) Certain existing provisions for technical amendments to Directive 2000/12/EC need to be brought into line with Decision 1999/468/EC.
- (21) In order to ensure institutional and legal consistency with the approach taken in other Community sectors, Commission Decision 2004/10/EC<sup>(17)</sup> established the European Banking Committee in an advisory capacity to assist the Commission as regards the development of Community banking legislation. References to the advisory functions of the BAC in Directive 2000/12/EC should therefore be deleted.
- (22) As regards the monitoring of observation ratios for the solvency and liquidity of credit institutions, the competencies of the BAC are no longer needed in view of the harmonisation of capital adequacy rules and of developments in the techniques used by credit institutions to measure and manage their liquidity risk.
- (23) Moreover, the substantial progress made in cooperation and exchange of information between supervisory authorities, in particular through Memoranda of Understanding, has rendered superfluous the regular monitoring by the Commission of certain individual supervisory decisions and their systematic reporting to the BAC.
- (24) The establishment of the European Banking Committee should not rule out other forms of cooperation between the different authorities involved in the regulation and supervision of credit institutions, in particular within the Committee of European Banking Supervisors established by Commission Decision 2004/5/EC<sup>(18)</sup>.
- (25) The Insurance Committee (IC) set up under Directive 91/675/EEC is to assist the Commission in the exercise of the implementing powers granted by Directives adopted in the field of insurance, and in particular to make the technical adaptations necessary to take account of developments in the insurance sector; such measures being taken in accordance with Decision 1999/468/EC.
- (26) Under Directive 91/675/EEC, the IC is also to examine any question relating to the application of Community provisions concerning the insurance sector and, in particular, to advise the Commission on proposals for legislation which the Commission intends to present to the European Parliament and to the Council.
- (27) In order to build an internal market where policyholders and beneficiaries are properly protected, insurance and occupational pensions undertakings operating in the internal market under the principles of freedom of establishment and freedom to provide services are subject to specific Community legislation. To ensure the proper functioning of the internal market and maintain financial stability, that legislation should be capable

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of being rapidly adapted to market changes affecting those sectors, in particular with regard to financial and technical aspects.

- (28) The role of the IC should therefore be adapted, and this Committee should accordingly be renamed ‘the European Insurance and Occupational Pensions Committee’. However, in the occupational pensions field, the European Insurance and Occupational Pensions Committee should not address labour and social law aspects such as the organisation of occupational regimes, in particular compulsory membership and the results of collective bargaining agreements.
- (29) The measures necessary for the implementation of acts covered by Directive 91/675/EEC are measures of general scope and should be adopted in accordance with Article 5 of Decision 1999/468/EC.
- (30) To ensure institutional and legal consistency with the approach taken in other Community sectors, Commission Decision 2004/9/EC<sup>(19)</sup>, established the European Insurance and Occupational Pensions Committee in an advisory capacity to assist the Commission in the fields of insurance and occupational pensions. References to the advisory functions of the IC in Directive 91/675/EEC should therefore be deleted.
- (31) Directive 85/611/EEC set up the UCITS Contact Committee to assist the Commission by facilitating the harmonised implementation of that Directive through regular consultations, promoting consultation between Member States and advising the Commission, if necessary, on amendments to be made to that Directive.
- (32) The UCITS Contact Committee also acts as a ‘comitology’ Committee within the meaning of Decision 1999/468/EC to assist the Commission with regard to the technical amendments to be made to Directive 85/611/EEC.
- (33) On 3 December 2002, the Council invited the Commission to take steps in order to transfer to the ESC, *inter alia*, the function of advice to the Commission in the exercise of its implementing powers held by the UCITS Contact Committee.
- (34) In order to fully implement the model set out in recent Directives in the securities field, in particular Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)<sup>(20)</sup>, which gives to the ESC the function to advise the Commission in the exercise of its regulatory powers, while leaving the organisation of other aspects of the ESC's work to be governed by Decision 2001/528/EC, it is necessary to delete the provisions setting up, under Article 53 of Directive 85/611/EEC, the organisation and functions of the present UCITS Contact Committee outside its ‘comitology’ capacity.
- (35) The competences of the ESC should therefore be expressly extended beyond those already conferred upon it by Directive 2003/6/EC, to cover the functions currently laid down in Directive 85/611/EEC. The measures necessary for the implementation of the latter Directive are measures of general scope and should be adopted in accordance with Article 5 of Decision 1999/468/EC.

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- (36) It is accordingly necessary to amend Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC, 93/6/EEC, 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 112, 30.4.2004, p. 21.](#)
- (2) [OJ C 58, 6.3.2004, p. 23.](#)
- (3) Opinion of the European Parliament of 31 March 2004 (not yet published in the Official Journal) and Council Decision of 11 May 2004.
- (4) [OJ L 191, 13.7.2001, p. 43.](#)
- (5) [OJ L 191, 13.7.2001, p. 45.](#) Decision as amended by Decision 2004/8/EC ([OJ L 3, 7.1.2004, p. 33](#)).
- (6) [OJ L 228, 16.8.1973, p. 3.](#) Directive as last amended by the 2003 Act of Accession.
- (7) [OJ L 375, 31.12.1985, p. 3.](#) Directive as last amended by Directive 2004/39/EC of the European Parliament and of the Council ([OJ L 145, 30.4.2004, p. 1](#)).
- (8) [OJ L 374, 31.12.1991, p. 32.](#) Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council ([OJ L 284, 31.10.2003, p. 1](#)).
- (9) [OJ L 228, 11.8.1992, p. 1.](#) Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council ([OJ L 35, 11.2.2003, p. 1](#)).
- (10) [OJ L 141, 11.6.1993, p. 1.](#) Directive as last amended by Directive 2004/39/EC.
- (11) [OJ L 135, 31.5.1994, p. 5.](#) Directive as amended by the 2003 Act of Accession.
- (12) [OJ L 330, 5.12.1998, p. 1.](#) Directive as amended by Directive 2002/87/EC.
- (13) [OJ L 126, 26.5.2000, p. 1.](#) Directive as last amended by Commission Directive 2004/69/EC ([OJ L 125, 28.4.2004, p. 44](#)).
- (14) [OJ L 184, 6.7.2001, p. 1.](#) Directive as last amended by Directive 2004/109/EC ([OJ L 390, 31.12.2004, p. 38](#)).
- (15) [OJ L 345, 19.12.2002, p. 1.](#) Directive as amended by Council Directive 2004/66/EC ([OJ L 168, 1.5.2004, p. 35](#)).
- (16) [OJ L 184, 17.7.1999, p. 23.](#)
- (17) [OJ L 3, 7.1.2004, p. 36.](#)
- (18) [OJ L 3, 7.1.2004, p. 28.](#)
- (19) [OJ L 3, 7.1.2004, p. 34.](#)
- (20) [OJ L 96, 12.4.2003 p. 16.](#)