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►**B** **EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 95/26/EC**

of 29 June 1995

amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits), with a view to reinforcing prudential supervision

(OJ L 168, 18.7.1995, p. 7)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000	L 126	1	26.5.2000
►**M2**	Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002	L 345	1	19.12.2002

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EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 95/26/EC

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amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits), with a view to reinforcing prudential supervision

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 ([1]),

Having regard to the opinion of the Economic and Social Committee ([2]),

Acting in accordance with the procedure laid down in Article 189b of the Treaty ([3]) in the light of the joint text approved by the Conciliation Committee on 11 May 1995,

(1) Whereas certain events have shown that it is appropriate to amend in certain respects certain Council Directives, specifying the general framework within which credit institutions, insurance undertakings, investment firms and undertakings for investment in transferable securities (Ucits) may carry on their business, namely Directives 77/780/EEC ([4]) and 89/646/EEC, Directives 73/239/EEC ([5]) and 92/49/EEC, Directives 79/267/EEC ([6]) and 92/96/EEC, Directive 93/22/EEC ([7]) and Directive 85/611/EEC ([8]), with a view to reinforcing prudential supervision; whereas it is desirable to adopt similar measures throughout the financial services sector;

(2) Whereas those Directives lay down, inter alia, the conditions which must be fulfilled before the competent authorities may grant authorization for the taking-up of business;

(3) Whereas the competent authorities should not authorize or continue the authorization of a financial undertaking where they are liable to be prevented from effectively exercising their supervisory functions by the close links between that undertaking and other natural or legal persons; whereas financial undertakings already authorized must also satisfy the competent authorities in that respect;

(4) Die in dieser Richtlinie gewählte Definition des Begriffs ‘Whereas the definition of “close links” in this Directive lays down minimum criteria and that does not prevent Member States from applying it to situations other than those envisaged by the definition;’ beruht auf Mindestkriterien und hindert die Mitglied-

([1]) OJ No C 229, 25. 8. 1993, p. 10.
([2]) OJ No C 52, 14. 2. 1994, p. 15.
([3]) Opinion of the European Parliament of 9 March 1994 (OJ No C 91, 28. 3. 1994, p. 61), Council common position of 6 June 1994 (OJ No C 213, 3. 8. 1994, p. 29), European Parliament Decision of 26 October 1994 (OJ No C 323, 21. 11. 1994, p. 56).
([4]) OJ No L 322, 17. 12. 1977, p. 30. Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).
([5]) OJ No L 228, 16. 8. 1973, p. 3. Directive as last amended by Directive 92/49/EEC (OJ No L 228, 11. 8. 1992, p. 1).
([6]) OJ No L 63, 13. 3. 1979, p. 1. Directive as last amended by Directive 92/96/EEC (OJ No L 360, 9. 12. 1992, p. 1).
([7]) OJ No L 141, 11. 6. 1993, p. 27.
([8]) OJ No L 375, 31. 12. 1985, p. 3. Directive as amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

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staaten nicht, auch andere als die unter diese Definition fallenden Situationen zu erfassen.

(5) Whereas the sole fact of having acquired a significant proportion of a company's capital does not constitute participation for the purposes of this Directive if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking;

(6) Whereas the reference to the supervisory authorities' effective exercise of their supervisory functions covers supervision on a consolidated basis which must be exercised over a financial undertaking where the provisions of Community law so provide; whereas, in such cases, the authorities applied to for authorization must be able to identify the authorities competent to exercise supervision on a consolidated basis over that financial undertaking;

(7) Whereas the principles of mutual recognition and of home Member State supervision require that Member States' competent authorities should not grant or should withdraw authorization where factors such as the content of programmes of operations, the geographical distribution of the activities actually carried on indicate clearly that a financial undertaking has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries on or intends to carry on the greater part of its activities; whereas a financial undertaking which is a legal person must be authorized in the Member State in which it has its registered office; whereas a financial undertaking which is not a legal person must have its head office in the Member State in which it has been authorized; whereas, in addition, Member States must require that a financial undertaking's head office always be situated in its home Member State and that it actually operates there;

(8) Whereas it is appropriate to provide for the possibility of exchanges of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system; whereas, in order to preserve the confidential nature of the information forwarded, the list of addressees must remain within strict limits;

(9) Whereas certain behaviour, such as fraud and insider offenses, is liable to affect the stability, including integrity, of the financial system, even when involving undertakings other than financial ones;

(10) Whereas it is necessary to specify the conditions under which such exchanges of information are authorized;

(11) Whereas, where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, these may, where appropriate, make their agreement subject to compliance with strict conditions;

(12) Whereas exchanges of information between, on the one hand, the competent authorities and, on the other, central banks and other bodies with a similar function in their capacity as monetary authorities and, where appropriate, other public authorities responsible for supervising payment systems should also be authorized;

(13) Whereas the same obligation of professional secrecy on the authorities responsible for authorizing and supervising Ucits and the undertakings that take part in those activities and the same possibilities for exchanging information as those granted to the authorities responsible for authorizing and supervising credit institutions, investment firms and insurance undertakings, should be included in Directive 85/611/EEC;

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(14) Whereas this Directive coordinates all the provisions governing information exchanges between authorities for the entire financial sector as provided for in Directive 93/22/EEC;

(15) Whereas, for the purpose of strengthening the prudential supervision of financial undertakings and protection of clients of financial undertakings, it should be stipulated that an auditor must have a duty to report promptly to the competent authorities, wherever, as provided for by this Directive, he becomes aware, while carrying out his tasks, of certain facts which are liable to have a serious effect on the financial situation or the administrative and accounting organization of a financial undertaking;

(16) Whereas, having regard to the aim in view, it is desirable for Member States to provide that such a duty should apply in all circumstances where such facts are discovered by an auditor during the performance of his tasks in an undertaking which has close links with a financial undertaking;

(17) Whereas the duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning a financial undertaking which they discover during the performance of their tasks in a non-financial undertaking does not in itself change the nature of their tasks in that undertaking nor the manner in which they must perform those tasks in that undertaking;

(18) Whereas adopting this Directive is the most appropriate means of achieving the objectives in view, and in particular of reinforcing the powers of the competent authorities; whereas this Directive restricts itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Wherever the term 'financial undertaking' is used in this Directive, it shall be replaced by:

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— 'insurance undertaking' where this Directive amends Directives 73/239/EEC and 92/49/EEC ►M2 ——————— ◄;

— 'investment firm' where this Directive amends Directive 93/22/EEC;

— 'undertaking for collective investment in transferable securities (Ucits) or an undertaking contributing towards its business activity' where this Directive amends Directive 85/611/EEC.

Article 2

1.

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— I n Article 1 of Directive 92/49/EEC, a point (l) and

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— in Article 1 of Directive 93/22/EEC, a point 15,

shall be added containing the following definition:

'"close links" shall mean a situation in which two or more natural or legal persons are linked by:

(a) "participation", which shall mean the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking or

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(b) “control”, which shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1 (1) and (2) of Directive 83/349/EEC (*), or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

(*) OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).’

2. The following subparagraphs shall be added at the end of:

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— Article 3 (3) of Directive 93/22/EEC,

— Article 8 (1) of Directive 73/239/EEC:

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▼M2

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‘Moreover, where close links exist between the financial undertaking and other natural or legal persons, the competent authorities shall grant authorization only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorization if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require financial undertakings to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.’

Article 3

1. The following paragraph shall be inserted in Article 8 of Directive 73/239/EEC ►M2 —————— ◄:

‘1a. Member States shall require that the head offices of insurance undertakings be situated in the same Member State as their registered offices.’

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Article 4

1. In Article 16 of Directive 92/49/EEC ►M2 —————— ◄, the following paragraph shall be inserted:

‘5a. Notwithstanding paragraphs 1 to 4, Member States may authorize exchanges of information between the competent authorities and:

— the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or

— the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions, or