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COUNCIL DIRECTIVE 93/22/EEC
of 10 May 1993
on investment services in the securities field

(OJ L 141, 11.6.1993, p. 27)

Amended by:

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►**M1**	European Parliament and Council Directive 95/26/EC of 29 June 1995	L 168	7	18.7.1995
►**M2**	Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997	L 84	22	26.3.1997
►**M3**	Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000	L 290	27	17.11.2000
►**M4**	Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002	L 35	1	11.2.2003

Corrected by:

►**C1** Corrigendum, OJ L 170, 13.7.1993, p. 32 (93/22/EEC)

►**C2** Corrigendum, OJ L 194, 3.8.1993, p. 27 (93/22/EEC)

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COUNCIL DIRECTIVE 93/22/EEC

of 10 May 1993

on investment services in the securities field

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof,

Having regard to the proposal from the Commission ([1]),

In cooperation with the European Parliament ([2]),

Having regard to the opinion of the Economic and Social Committee ([3]),

Whereas this Directive constitutes an instrument essential to the achievement of the internal market, a course determined by the Single European Act and set out in timetable form in the Commission's White Paper, from the point of view both of the right of establishment and of the freedom to provide financial services, in the field of investment firms;

Whereas firms that provide the investment services covered by this Directive must be subject to authorization by their home Member States in order to protect investors and the stability of the financial system;

Whereas the approach adopted is to effect only the essential harmonization necessary and sufficient to secure the mutual recognition of authorization and of prudential supervision systems, making possible the grant of a single authorization valid throughout the Community and the application of the principle of home Member State supervision; whereas, by virtue of mutual recognition, investment firms authorized in their home Member States may carry on any or all of the services covered by this Directive for which they have received authorization throughout the Community by establishing branches or under the freedom to provide services;

Whereas the principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorization where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that an investment firm 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 the territory of which it intends to carry on or does carry on the greater part of its activities; whereas, for the purposes of this Directive, an investment firm which is a legal person must be authorized in the Member State in which it has its registered office; whereas an investment firm which is not a legal person must be authorized in the Member State in which it has its head office; whereas, in addition, Member States must require that an investment firm's head office must always be situated in its home Member State and that it actually operates there;

Whereas it is necessary, for the protection of investors, to guarantee the internal supervision of every firm, either by means of two-man management or, where that is not required by this Directive, by other mechanisms that ensure an equivalent result;

Whereas in order to guarantee fair competition, it must be ensured that investment firms that are not credit institutions have the same freedom to create branches and provide services across frontiers as is provided for by the Second Council Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provi-

([1]) OJ No C 43, 22. 2. 1989, p. 7; and OJ No C 42, 22. 2. 1990, p. 7.
([2]) OJ No C 304, 4. 12. 1989, p. 39; and OJ No C 115, 26. 4. 1993.
([3]) OJ No C 298, 27. 11. 1989, p. 6.

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sions relating to the taking up and pursuit of the business of credit institutions ([1]);

Whereas an investment firm should not be able to invoke this Directive in order to carry out spot or forward exchange transactions other than as services connected with the provision or investment services; whereas, therefore, the use of a branch solely for such foreign-exchange transactions would constitute misuse of the machinery of this Directive;

Whereas an investment firm authorized in its home Member State may carry on business throughout the Community by whatever means it deems appropriate; whereas, to that end it may, if it deems it necessary, retain tied agents to receive and transmit orders for its account and under its full and unconditional responsibility; whereas, in these circumstances, such agents' business must be regarded as that of the firm; whereas, moreover, this Directive does not prevent a home Member State from making the status of such agents subject to special requirements; whereas should the investment firm carry on cross-border business, the host Member State must treat those agents as being the firm itself; whereas, moreover, the door-to-door selling of transferable securities should not be covered by this Directive and the regulation thereof should remain a matter for national provisions;

Whereas 'transferable securities' means those classes of securities which are normally dealt in on the capital market, such as government securities, shares in companies, negotiable securities giving the right to acquire shares by subscription or exchange, depositary receipts, bonds issued as part of a series, index warrants and securities giving the right to acquire such bonds by subscription;

Whereas 'money-market instruments' means those classes of instruments which are normally dealt in on the money market such as treasury bills, certificates of deposit and commercial paper;

Whereas the very wide definitions of transferable securities and money-market instruments included in this Directive are valid only for this Directive and consequently in no way affect the various definitions of financial instruments used in national legislation for other purposes such as taxation; whereas, furthermore, the definition of transferable securities covers negotiable instruments only; whereas, consequently, shares and other securities equivalent to shares issued by bodies such as building societies and industrial and provident societies, ownership of which cannot in practice be transferred except by the issuing body's buying them back, are not covered by this definition;

Whereas 'instrument equivalent to a financial-futures contract' means a contract which is settled by a payment in cash calculated by reference to fluctuations in interest or exchange rates, the value of any instrument listed in Section B of the Annex or an index of any such instruments;

Whereas, for the purposes of this Directive, the business of the reception and transmission of orders also includes bringing together two or more investors thereby bringing about a transaction between those investors;

Whereas no provision in this Directive affects the Community provisions or, failing such, the national provisions regulating public offers of the instruments covered by this Directive; whereas the same applies to the marketing and distribution of such instruments;

Whereas Member States retain full responsibility for implementing their own monetary-policy measures, without prejudice to the measures necessary to strengthen the European Monetary System;

Whereas it is necessary to exclude insurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are coordinated at

([1]) OJ No L 386, 30. 12. 1989, p. 1. Directive as last amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

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Community level and undertakings carrying out reinsurance and retrocession activities;

Whereas undertakings which do not provide services for third parties but the business of which consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive;

Whereas the purpose of this Directive is to cover undertakings the normal business of which is to provide third parties with investment services on a professional basis; whereas its scope should not therefore cover any person with a different professional activity (e.g. a barrister or solicitor) who provides investment services only on an incidental basis in the course of that other professional activity, provided that that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services; whereas it is also necessary for the same reason to exclude from the scope of this Directive persons who provide investment services only for producers or users of commodities to the extent necessary for transactions in such products where such transactions constitute their main business;

Whereas firms which provide investment services consisting exclusively in the administration of employee-participation schemes and which therefore do not provide investment services for third parties should not be covered by this Directive;

Whereas it is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof; whereas, in particular, this exclusion does not cover bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings;

Whereas it is necessary to exclude from the scope of this Directive any firms or persons whose business consists only of receiving and transmitting orders to certain counterparties and who do not hold funds or securities belonging to their clients; whereas, therefore, they will not enjoy the right of establishment and freedom to provide services under the conditions laid down in this Directive, being subject, when they wish to operate in another Member State, to the relevant provisions adopted by that State;

Whereas it is necessary to exclude from the scope of this Directive collective investment undertakings whether or not coordinated at Community level, and the depositaries or managers of such undertakings, since they are subject to specific rules directly adapted to their activities;

Whereas, where associations created by a Member State's pension funds to permit the management of their assets confine themselves to such management and do not provide investment services for third parties, and where the pension funds are themselves subject to the control of the authorities charged with monitoring insurance undertakings, it does not appear to be necessary to subject such associations to the conditions for taking up business and for operation imposed by this Directive;

Whereas this Directive should not apply to ‘agenti di cambio’ as defined by Italian law since they belong to a category the authorization of which is not to be renewed, their activities are confined to the national territory and they do not give rise to a risk of the distortion of competition;

Whereas the rights conferred on investment firms by this Directive are without prejudice to the right of Member States, central banks and other national bodies performing similar functions to choose their counterparties on the basis of objective, non-discriminatory criteria;

Whereas responsibility for supervising the financial soundness of an investment firm will rest with the competent authorities of its home Member State pursuant to Council Directive 93/6/EEC of 15 March

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1993 on the capital adequacy of investment firms and credit institutions ([1]), which coordinates the rules applicable to market risk;

Whereas a home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorization conditions, prudential requirements and the rules of reporting and transparency;

Whereas the carrying on of activities not covered by this Directive is governed by the general provisions of the Treaty on the right of establishment and the freedom to provide services;

Whereas in order to protect investors an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm should in particular be protected by being kept distinct from those of the firm; whereas this principle does not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending;

Whereas the procedures for the authorization of branches of investment firms authorized in third countries will continue to apply to such firms; whereas those branches will not enjoy the freedom to provide services under the second paragraph of Article 59 of the Treaty or the right of establishment in Member States other than those in which they are established; whereas, however, requests for the authorization of subsidiaries or of the acquisition of holdings by undertakings governed by the laws of third countries are subject to a procedure intended to ensure that Community investment firms receive reciprocal treatment in the third countries in question;

Whereas the authorizations granted to investment firms by the competent national authorities pursuant to this Directive will have Community-wide, and no longer merely nationwide application, and existing reciprocity clauses will henceforth have no effect; whereas a flexible procedure is therefore needed to make it possible to assess reciprocity on a Community basis; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets in third countries; whereas, to that end, this Directive provides for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization and the restriction of new authorizations;

Whereas one of the objectives of this Directive is to protect investors; whereas it is therefore appropriate to take account of the different requirements for protection of various categories of investors and of their levels of professional expertise;

Whereas the Member States must ensure that there are no obstacles to prevent activities that receive mutual recognition from being carried on in the same manner as in the home Member State, as long as they do not conflict with laws and regulations protecting the general good in force in the host Member State;

Whereas a Member State may not limit the right of investors habitually resident or established in that Member State to avail themselves of any investment service provided by an investment firm covered by this Directive situated outside that Member State and acting outwith that Member State;

Whereas in certain Member States clearing and settlement functions may be performed by bodies separate from the markets on which transactions are effected; whereas, accordingly, any reference in this Directive to access to and membership of regulated markets should be read as including references to access to and membership of bodies performing clearing and settlement functions for regulated markets;

([1]) See page 1 of this Official Journal.