



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.11.2003  
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2003/0263 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 93/6/EEC and 94/19/EC and Directives 2000/12/EC, 2002/83/EC and 2002/87/EC of the European Parliament and of the Council, in order to establish a new financial services committee organisational structure**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. GENERAL COMMENTS

#### 1.1. Introduction: building a single market for financial services

While substantive progress has been made, the single market for financial services remains incomplete. Markets remain segmented. There are relatively low levels of cross-border service provision. Yet, the completion of a genuine single market for financial services is crucial for economic growth and job creation in the European Union. It will increase European economic competitiveness and contribute to economic and social cohesion.

In order to achieve this fundamental objective, the Commission adopted an Action Plan for Financial Services<sup>1</sup> that identified a series of actions required to construct a single European financial market. At the Lisbon European Council in March 2000, and at the Stockholm European Council in March 2001, the European Heads of State or Government called for full implementation of the Action Plan by 2005.

Despite these measures, it has become increasingly clear, initially in the securities sector but subsequently for the other financial service sectors, that the financial services committee structure itself has and will increasingly come under pressure, especially when it will have to deal with new demands being placed on it.

On the one hand:

- financial markets and services are now developing and moving at a much faster pace than ever before, as they exploit new technology and innovate;
- combined with this, the introduction of the Euro, and the Lisbon economic reform agenda have accelerated the pace of European integration in this area. For the first time, an integrated capital and financial services market is within sight.

On the other hand:

- European legislators and regulators in the banking, insurance and mutual fund industry are saddled with a legislative and "comitology" organisation that is ill-suited to an enlarged EU of 25 Member States. Even if this process were to be maintained, the present committee structure would still need to be adapted to new developments, with, for instance, the scope of the Insurance Committee extended to occupational pensions;
- legislators and regulators in these areas need the ability to respond quickly and effectively to technological change and market developments, by adopting implementing rules on a much faster and more flexible basis;
- there would be huge benefits to the EU in having an even more efficient, transparent and clear regulatory structure in this area;
- above all, as European financial services and markets integrate, there will be a much greater need for effective supervisory co-operation and convergence.

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<sup>1</sup> COM(1999) 232 final

## 1.2. The Existing Committee Architecture

Before looking at the changes required, it is worth recalling the existing committee architecture.

The current committee structure for banking, insurance and investment funds is governed by Directives 2000/12/EC, 91/675/EEC and 85/611/EEC (as amended) respectively.

### 1.2.1. The Banking Advisory Committee

The **Banking Advisory Committee (BAC)** was established by the First Banking Directive<sup>2</sup>. The scope of the BAC was further developed by subsequent directives in the banking field. All provisions pertaining to the BAC are now to be found in the **Codified Banking Directive**<sup>3</sup>, which repeals and supersedes the First Banking Directive and some other directives containing references to the BAC.

The BAC has three main functions. It advises the European Commission in drawing up new proposals for European legislation in the banking field, which are then presented to the European Parliament and the European Council. It also advises the Commission in its task of ensuring that legislation is correctly implemented across the EU. These two advisory tasks are defined in Title VI of the Codified Banking Directive. The BAC may furthermore act as a "comitology" committee assisting the Commission in the exercise of its implementing powers to make technical amendments to certain provisions of the Codified Banking Directive, under the "comitology" procedure laid down by Decision 1999/468/EC<sup>4</sup> Article 5. This "comitology" function is laid down in Title VII of the Codified Banking Directive. Recital 67 makes the link between the BAC established under Article 57 and the "comitology" committee established under Article 60(2). In addition, some specific advisory tasks have been conferred upon the BAC.

The BAC is composed of high level representatives from each Member State and of the Commission. The BAC is chaired by a Member State representative when acting in its advisory function and by the Commission when acting as "comitology" committee.

Since its first meeting in 1979, the BAC has advised the Commission on all aspects of EU banking legislation, in particular on the establishment of the single market for banking services and on the definition of prudential rules for credit institutions. The advisory function has by far been its dominant activity. Since being granted a "comitology" role in 1989<sup>5</sup>, the BAC has only acted as "comitology" committee on four occasions.

### 1.2.2. The Insurance Committee

Council Directive 91/675/EEC<sup>6</sup> established an **Insurance Committee**. The Insurance Committee has been granted two different functions.

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<sup>2</sup> Council Directive 77/780/EEC of 12 December 1977 (Article 11) on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions.

<sup>3</sup> Directive 2000/12/EC of the European Parliament and Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions.

<sup>4</sup> Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

<sup>5</sup> Council Directive 89/647/EEC (Solvency Ratio Directive) Article 9.

<sup>6</sup> OJ L 374, 31.12.1991 p. 32.

First, it is a high-level forum for discussion and advisor to the Commission on insurance-related matters. In particular, the Insurance Committee advises the Commission on new proposals that the Commission intends to submit to the Council on further coordination in the field of insurance.

Second, the Insurance Committee may act as a "comitology" committee, assisting the Commission in the exercise of the implementing powers conferred on it by Insurance Directives<sup>7</sup>. These Directives enable the Commission to take decisions, under the "comitology" procedure laid down by Decision 1999/468/EC, Articles 5 and 7, in order to make specific technical adaptations to the Insurance Directive, as well as to make proposals on the treatment afforded to insurance undertakings of non-WTO members which do not ensure effective market access to EU insurance undertakings (the "reciprocity clause").

The Insurance Committee, which is composed of representatives of Member States, is chaired by the Commission. It has been working since 1992 and has actively dealt with a whole range of policy issues on insurance, as well as advising the Commission on new legislative proposals on insurance. As the Commission has not yet looked to make use of its implementing powers, the Insurance Committee has not so far acted in its "comitology" function.

### *1.2.3. The UCITS Contact Committee*

Council Directive 85/611/EEC<sup>8</sup> on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) established the UCITS Contact Committee, which has been granted two different sets of functions.

First, it is a specific forum for discussion on UCITS-related matters and policy issues, entrusted with the following tasks:

- To facilitate the harmonised implementation of the Directive through regular consultations on practical problems arising from its application;
- To facilitate consultation between Member States on more rigorous or additional requirements allowed under the Directive or on the means for advertising and payment for UCITS;
- To advise the Commission on any additions or amendments to be made to the Directive.

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<sup>7</sup> Directives 73/239/EEC Article 29 b); 92/49/EEC (non-life), Article 51 and Directive 2002/83/EC, Articles 59 and 64 (life).

<sup>8</sup> OJ L 375, 31.12.1985, p.3.

Second, the UCITS Contact Committee is also entrusted with assisting, as a "comitology" committee, the Commission in the exercise of the implementing powers, conferred upon it by Directive 2001/108/EC<sup>9</sup> amending the UCITS Directive with regard to investments of UCITS. This recent Directive enables the Commission to take Decisions, under the procedure laid down by Decision 1999/468/EC, Article 5, in order to make specific technical modifications to the UCITS Directive in the following areas:

- clarification of the definitions, in order to ensure uniform application of the Directive throughout the Community; and
- alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.

The UCITS Contact Committee, which is composed of representatives of Member States, is chaired by the Commission. The Committee has been working since 1989 and has actively dealt with a range of different policy issues regarding UCITS. It has also advised the Commission with respect to, *inter alia*, the proposals which led to the most recent Directives on UCITS. As the Commission has not yet looked to make use of the implementing powers, the Committee has not so far met in a "comitology" capacity.

### **1.3. The reform of securities regulation**

As noted in Section 1.1 above, it has become increasingly clear that regulatory reform of these structures is needed if the objectives of the Financial Services Action Plan and the calls of successive Spring European Councils for the completion of an integrated financial services market are to be realised.

This first became clear in the **securities sector**. In response, in July 2000 the Council (ECOFIN) set up a Committee of Wise Men on the Regulation of European Securities Markets to develop proposals for making the regulatory process for EU securities legislation more flexible, effective and transparent.

The Final Report of the Committee was issued in February 2001 and recommended a move to a four-level regulatory approach as follows:

*Level 1 will consist of legislative acts, namely Directives or Regulations, adopted in co-decision by the Council and the European Parliament on the basis of the EC Treaty. The Council and the European Parliament will agree on the nature and extent of the implementing measures to be decided at Level 2 on the basis of Commission proposals.*

*Implementing technical measures will be adopted at Level 2 in application of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.*

*The key objective of Level 3 will be to ensure consistent and timely implementation of Level 1 and 2 acts by enhanced co-operation and networking among EU securities regulators through the Committee of European Securities Regulators.*

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<sup>9</sup> OJ L 41, 13.2.2002, p. 35.

*At Level 4, the Commission and the Member States will strengthen the enforcement of Community law.*

Under the recommendations, this approach was to be assisted by two Committees:

- (1) A Committee established under two different legal bases, according to the functions fulfilled:
  - an advisory function established under Commission Decision to advise the Commission in the development of legislation (Level 1);
  - a "comitology" function established by legislative acts to assist the Commission in the exercise of its implementing powers (Level 2), under the regulatory procedure laid down by Decision 1999/468/EC, Article 5.
- (2) A new committee of supervisors composed of high-level representatives from **the national supervisory authorities** to enhance cooperation and networking among them to ensure common implementation standards in the field of securities (Level 3).

The European Parliament, in its resolution of 5 February 2002 on the implementation of financial services legislation<sup>10</sup>, accepted the principle of a four-level regulatory approach recommended by the Committee of Wise Men's report to establish an internal market in the securities field, provided that it received equivalent treatment at Level 2 to that guaranteed to the Council under the Stockholm European Council Resolution. President Prodi's solemn declaration on 5 February 2002 provided the European Parliament with the necessary guarantees for it to endorse fully the four-level approach proposed.

A Committee of European Securities Regulators (CESR) was established on 6 June 2001 by Commission Decision<sup>11</sup> for Level 3 and to offer technical advice to the Commission.

A European Securities Committee (ESC) was established on the same day in an advisory capacity by another Commission Decision<sup>12</sup>. The European Parliament and Council Directive 2003/6/EC on Market Abuse of 28 January 2003<sup>13</sup> provides for "comitology" functions to be covered by the ESC.

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<sup>10</sup> A5-0011/2002 European Parliament resolution on the implementation of financial services legislation (2001/2247(INI))

<sup>11</sup> Decision 2001/527/EC of 6 June 2001 establishing the Committee of European Securities Regulators (OJ L 191, 13.7.2001 p. 43)

<sup>12</sup> Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191 13.7.2001, p. 45)

<sup>13</sup> Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003 p. 16)

## 1.4. The New Committee Architecture in the banking, insurance and UCITS fields

### 1.4.1. *The requests of the Council and European Parliament*

In response to the pressures mentioned in Section 1.1, in April 2002 the Council called for a review of how best to make improvements to the financial services committee architecture. On the basis of this review, on 3 December 2002, the **Council**<sup>14</sup> invited the Commission to extend the committee structure applied in the securities sector to the sectors of banking, insurance and UCITS. In particular, the Council invited the Commission to establish “as quickly as possible” new committees in each sector by Decisions of the Commission.

In the **banking and insurance** sector, it called for two committees:

- (1) A Committee established under two different legal bases, according to the functions fulfilled:
  - an advisory function established under Commission Decision to advise the Commission in the development of legislation (Level 1)
  - a "comitology" function established by legislative acts to assist the Commission in the exercise of its implementing powers (Level 2), under the regulatory procedure laid down by Decision 1999/468/EC, Article 5.
- (2) A new committee of supervisors composed of high-level representatives from **the national supervisory authorities** to promote the convergence of day-to-day supervisory practices; and to enhance the exchange of confidential information on individual supervised institutions (Level 3) and to provide technical advice to the Commission in particular on draft implementing measures that the Commission may wish to propose.

The Council requested that as had been done for the securities sector, the former should initially be established in advisory mode only, with a view to getting the committees established and working as soon as possible, before establishing them in "comitology" mode later.

For **UCITS**, the Council called for the transfer of the functions of the UCITS Contact Committee into the already existing European Securities Committee and Committee of European Securities Regulators.

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<sup>14</sup> Ecofin (3/12/2002) on the basis of a report from the Economic and Financial Committee on financial regulation, supervision and stability.

The effect of all these changes, together with the two earlier Commission Decisions of 2001 would be to establish the following system:

|  | <b>Banking</b>                                   | <b>Insurance and Occupational Pensions</b>                                    | <b>Securities (including UCITS)</b>                |
|--|--|---|--|
| <b>Advisory (Level 1) and "Comitology" (Level 2)</b> | European Banking Committee (EBC)                 | European Insurance and Occupational Pensions Committee (EIOPC)                | European Securities Committee (ESC)                |
| <b>(Level 3)</b>                                     | Committee of European Banking Supervisors (CEBS) | Committee of European Insurance and Occupational Pension Supervisors (CEIOPS) | Committee of European Securities Regulators (CESR) |

Separately on 21 November 2002, the European Parliament adopted an own-initiative report on prudential supervision in the European Union. In its Resolution A5-0370/2002 on prudential rules in the European Union, it endorsed the emphasis on convergence not only in rules but also in implementation and supervisory practices; welcomed the institutionalisation of a regular dialogue between supervisors at European level through the creation of CESR, and hoped that such an extension would indeed lead to more coherent implementation and enforcement of prudential legislation within the EU.

Nevertheless, in its Resolution B5-0578/2002 on financial regulation, supervision and stability, the European Parliament questioned the urgency of restructuring the committee architecture, and argued that there should be a clear Council commitment to a reform, comprising a revision of Article 202 of the Treaty and Decision No. 1999/468/EEC with a guarantee of the European Parliament being placed on an equal footing with the Council in supervising the Commission's exercise of its implementing powers before it could agree to the proposed extension.

While awaiting the outcome of the revision of the Treaty, the European Commission has proposed such a reform in its 11 December 2002 proposal for a Council Decision amending Decision 1999/468/EEC. In its Resolution A5-0266/2003 adopted on 2 September 2003, the European Parliament endorsed the Commission's approach.

*1.4.2. The proposed package*

As noted in Section 1.3 above, in implementing this approach in the securities sector, and in line with current interinstitutional practice and precedent, three pieces of legislation were used:

- (1) A **Commission Decision** establishing the **(Level 3)** Committee of European Securities Regulators **(Level 3)**;
- (2) A **Commission Decision** establishing the **(Level 2)** European Securities Committee **in advisory mode (Level 1)**;
- (3) A **European Parliament and Council Directive** (on market abuse) subsequently establishing the **(Level 2)** European Securities Committee as a committee assisting the Commission in the exercise of its implementing powers **(Level 2)**.



In the banking, insurance and UCITS sectors, however, the situation is complicated by the presence of committees (the BAC, IC and UCITS Contact Committee) established by, and referred to in, existing European Parliament and Council Directives, and acting in both advisory and "comitology" modes.

In coming forward with a package of measures therefore, the Commission has been careful to take an approach that:

- (a) is institutionally and legally consistent with the approach used in the securities sector, and across the range of Community activities;
- (b) avoids the risk of unnecessary complexity and duplication due to the overlap between existing and newly established committees;
- (c) is consistent with the requests of the Council for committees to be set up in advisory capacity as soon as possible;
- (d) is mindful of the concerns raised in the two Parliament Resolutions and gives the Parliament as co-legislator an equal right to decide on the move to a new financial service committee architecture.

The Commission has concluded that the only way that these objectives can be successfully reconciled in the banking and insurance fields is to amend the provisions of existing Directives to repeal the existing committees and establish the new banking and insurance committees as committees assisting the Commission in the exercise of its implementing powers (Level 2) **at the same time** as new banking and insurance committees are established in advisory mode (Level 1) by two Commission Decisions. New committees of supervisors (Level 3) are established by two separate Commission Decisions.

In the UCITS field, this will mean amending the existing Directive to delete existing references to the UCITS Contact Committee and transfer to the ESC the role of "comitology" committee in this field **at the same time** as the ESC and CESR Commission Decisions are amended to take on advisory functions in this field.

The Commission decided that most effective and transparent mechanism to ensure that such a simultaneous transfer takes place is for the Commission to adopt immediately "suspensive" Decisions creating the new banking and insurance committees (Level 1) and amending the ESC and CESR Decisions, but with clauses stipulating that these Decisions would **only come into effect** if and when an amending Directive of the type set out above also came into effect. This will ensure both that there is no duplication of committees and that the establishment of the committees (Level 1 and 2) in the banking and insurance field (and the transfer of UCITS functions to the ESC and CESR) is conditional on the agreement of the Council and European Parliament.

The Commission is therefore coming forward with a package of seven measures:

- (1) A Commission Decision establishing the CEBS (Level 3) with effect from 1 January 2004;
- (2) A Commission Decision establishing the CEIOPS (Level 3) with effect from 24 November 2003;
- (3) The attached proposal for a Council and European Parliament Directive, deleting references to the BAC, IC and UCITS Contact Committee acting in an advisory mode and amending references to them acting as committees assisting the Commission in the exercise of its implementing powers to refer to the EBC, EIOPC, and ESC;
- (4) A Commission Decision establishing the EBC in its advisory capacity (Level 1) which will only enter into force at the same time as such an amending Directive;
- (5) A Commission Decision establishing the EIOPC in its advisory capacity (Level 1) which will enter into force at the same time as such an amending Directive;
- (6) A Commission Decision amending the ESC Decision which will only enter into force at the same time as such an amending Directive;
- (7) A Commission Decision amending the CESR Decision which will only enter into force at the same time as such an amending Directive.

The package of Decisions and proposal for a Directive are about the creation of a new committee structure and do not create any new implementation powers for the Commission.

#### *1.4.3. The Urgency of the Measures*

The new financial services committee structure will form a coherent whole that needs to be put in place in its entirety as soon as possible.

Its adoption will produce **real benefits** by allowing far greater and more detailed co-operation between supervisors than at present, and much greater convergence in day to day regulation and supervision, so strengthening European **financial stability** as stressed in Parliament Resolution A5-0370/2002. Effective co-operation between representatives of finance ministries is needed if effective strategic decisions are to be taken on stability and other key issues.

The package is needed **urgently** if the Financial Services Action Plan (FSAP) is to be delivered within by the deadline of 2005 set by the 2000 Lisbon Council, and thus if the EU's overall economic objectives are to be met. An emerging complaint from financial markets is that the legislative ambitions of the FSAP are fundamentally undermined by poor and inconsistent implementation across Member States and that an **integrated European financial market is impossible** without tackling this.

Whilst these complaints are already being addressed in the securities field by the introduction of a new "comitology" approach, failure to extend this approach to **banking, insurance and investment funds** risks weakening the other elements of the European financial sector at a time when two crucial pieces of legislation are about to be put forward: the CAD III and Solvency II proposals on **capital adequacy rules**. The successful implementation of these new rules in Member States will rely on close co-operation not just between Member State supervisors but also between Member State regulators. This work needs to begin as soon as possible and can only effectively be achieved if the new committee structure is in place.

Looking beyond co-operation to **ensure common implementation**, the timeframe for the adoption and implementation of these two capital adequacy proposals is extremely short. Delaying the creation of committees until these proposals are on the table would not give long enough and would risk delaying the full implementation of these new frameworks as the new capital adequacy framework in the banking and insurance sectors involves supervisory judgement to a much greater extent than at present (e.g. for the validation of internal systems and for the fine-tuning of individual capital requirements). Guidance on supervisory approaches will begin to be needed from early 2004 onwards, well ahead of the adoption of the proposal and well ahead of the deadline for its implementation.

The extension of the scope of the IC is needed with the adoption of the Pension Funds Directive, as the committee will be able to address interpretation problems before entry into force and thus contribute to common implementation.

Underpinning this urgency, there is a real deadline imposed by the imminent elections to the European Parliament in June 2004. The Parliament will be dissolved for **elections** in Spring 2004. If these measures are not adopted by that point, there is likely to be a significant delay before the measures can be reconsidered by the new Parliament. This will penalise European businesses and investors, and hinder the integration of markets.

#### *1.4.4. The European Banking Committee*

The European Banking Committee will take over most of the functions of the Banking Advisory Committee, which will no longer exist.

The objective of this proposal (and related Commission Decision) is to amend the recitals and articles in Directive 2000/12/EC referring to the BAC, thereby:

- **Transferring its "comitology" functions** to the EBC; and
- **Deleting references to the existing Committee's advisory capacity** and establishing the EBC in an advisory mode by Commission Decision.

In advisory mode, the Committee will be consulted by the Commission on policy issues, as well as proposals in the banking sector. It will also assist the Commission in preparing mandates for technical advice by the Committee of European Banking Supervisors (CEBS) on draft implementing measures.

The format of the EBC should be expected to follow the recommendations of the Report of the Economic and Financial Committee on financial regulation, supervision and stability. The EBC will be chaired by the Commission and each Member State is expected to send one high level representative. By comparison, the existing BAC is chaired by a Member State representative and each delegation may comprise up to three members.

In order to ensure close links with the committee of supervisors, the chairperson of CEBS will participate as an observer at meetings of the EBC. The European Central Bank will also participate in observer capacity.

In line with the tradition of close cooperation between the different European banking committees, the EBC may also invite the chairpersons of these committees as observers. This is consistent with the long-established practice of cross-observership between the different banking committees.

#### *1.4.5. The European Insurance and Occupational Pensions Committee (EIOPC)*

The objective of this proposal is to amend Directive 91/675/EEC setting up an Insurance Committee in order to embrace occupational pensions and to clarify that it covers the insurance sector as such, including for example activities such as reinsurance. The Insurance Committee will become the European Insurance and Occupational Pensions Committee (EIOPC). Amendment of Directive 91/675/EEC entails:

- **transferring the "comitology" function** of the Insurance Committee to the EIOPC. Directive 91/675/EEC provides that the Insurance Committee shall assist the Commission in the exercise of its implementing powers in the field of direct non-life and direct life insurance, under the regulatory procedure laid down by Decision 1999/468/EC, Article 5. The EIOPC will take over the current regulatory functions of the Insurance Committee, and will continue to act as a regulatory committee, in accordance with Decision 1999/468/EC on comitology, in order to assist the Commission when it takes decisions or implementing measures conferred on it by the Third Insurance Directives 92/49/EEC and 92/96/EEC, and other legal instruments adopted in the fields of insurance (e.g. reinsurance, insurance groups) and occupational pensions.
- **deleting references to the existing Committee's advisory capacity** and establishing the EIOPC in an advisory mode by Commission Decision.

Under the accompanying Commission Decision, the EIOPC will take over the existing Insurance Committee's consultative functions provided for in Directive 91/675/EEC. Therefore, the EIOPC will examine any question relating to the application of Community provisions concerning the insurance sector, and in particular Directives on direct insurance. The Insurance Committee is also consulted by the Commission on new proposals of legal instruments in the sphere of insurance. Indeed, the Decision also endorses the advisory capacities of the Committee. They will relate to insurance, reinsurance and occupational pension activities.

In order to ensure close links between both committees, the chairperson of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) will participate in the meetings of the EIOPC as an observer.

#### *1.4.6. The transferral of the powers of the UCITS Contact Committee*

As noted in 1.4.1 above, the existing Committee has both "comitology" and advisory functions. The objective of this proposal is to amend Directives 85/611/EEC and 2001/108/EC in all their provisions referring to the present Committee, thereby:

- **transferring its "comitology" function to the ESC.** The ESC will therefore become the new "comitology" committee in the field of UCITS and in conformity with the model set forth in the European Parliament and Council Directive 2003/6/EC on Market Abuse of 28 January 2003<sup>15</sup>; Directive 2001/108/EC provides that the UCITS Contact Committee shall assist the Commission in the adoption of implementing measures, limited to:
  - the clarification of the definitions; and
  - the alignment of terminology and the framing of definitions, in accordance with the procedures laid down by the rules regarding the exercise of implementing powers.

The proposal does not affect the scope of these current regulatory powers.

- **deleting references to the existing Committee's advisory capacity** and transferring them to the ESC and CESR.

The Commission Decisions of 6 June 2001 which established these Committees are accordingly being amended by Decisions adopted at the same time as this proposal. However, as explained above, these amendments will be dependent on, and will only come into effect on the same day as the entry into force of this Directive.

## **2. ARTICLES**

### **Articles 1 and 2 – Provisions amending Directives 93/6/EC and 94/19/EC**

These provisions amend a number of references to the BAC in Community legislation in the financial services field: Directive 93/6/EC (capital adequacy), and Directive 94/19/EC (deposit insurance).

They remove a duplication of notification between the Commission and the banking committee in Article 7(9) of Directive 93/6/EC.

### **Article 3 – Provisions amending Directive 2000/12/EC**

#### **Article 3 – Points (1) and (2)**

These changes bring the procedure for amending the list of institutions permanently excluded from the scope of Directive 2000/12/EC and the procedure for reviewing the rules applicable to credit institutions excluded from the scope of certain provisions of Directive 2000/12/EC in view of their affiliation to a central body into line with the standard procedure for technical

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<sup>15</sup> Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 96 , 12.4.2003, pp. 16-25.

adaptations to the Directive. The procedure currently laid down in Articles 2(4) and 2(5) dates back to the First Banking Directive 77/780/EEC and as such is out of date.

### **Article 3 – Point (3)**

This provision removes the duplication of notification between the Commission and the Banking Advisory Committee for the notification of:

- the requirements for the authorisation of credit institutions
- the process for having credit exposures brought within the limits laid down in Article 49,
- the use by Member States of the option to extend the time limits for this.

This duplication of notification is superfluous and should therefore be repealed.

### **Article 3 - Point (4) – Report on the withdrawal of authorisations**

This amendment to Article 22(9) of Directive 2000/12/EC removes the obligation for the Commission to submit a report every two years to the banking committee on the withdrawal of authorisations by Member State home country authorities.

This provision, which has been inherited from the Second Banking Directive 89/649/EC, is outdated in the light of substantial progress in the cooperation between home and host country authorities. Bilateral cooperation between supervisors in the EEA has developed significantly, not only in the context of an extensive network of Memoranda of Understanding - some of them covering specific cross-border banking and financial groups - but also in the form of extensive multilateral exchange of information in the Groupe de Contact of European banking supervisors. The notification of the withdrawal of authorisation appears to be well integrated in the routine information flow between supervisory authorities. This has made regular review by the Commission and reporting to the Banking Advisory Committee superfluous.

### **Article 3 - Point (5) – Report on refusal of authorisation**

This article amends Article 22(10) to remove the obligation for the Commission to report every two years to the banking committee on the refusal of authorisation. Experience has demonstrated that such routine reporting – introduced by the Second Banking Directive 89/649/EC - is no longer needed now that the single market for banking services has been in place for a considerable amount of time.

### **Article 3 - Point (6) – Routine information on third country authorisations and acquisitions**

This article amends Article 23(1) to remove the obligation for the Commission to systematically inform the banking committee of individual authorisations or acquisitions. This routine reporting is not consistent with the regulatory focus of the European Banking Committee. This of course does not exclude the possibility for the Commission to inform the European Banking Committee if appropriate.

### **Article 3 – Point (7)**

The article replaces two references to the BAC with references to the EBC.

### **Article 3 – Point (8) - Examination of outcome of negotiations**

This provision amends a further reference to the BAC and provides legal certainty by making clear that the provision does not conflict with the provisions of the Treaty on external competences.

### **Article 3 - Point (9) – Notification of delegated authority**

This amendment to Article 52(9) of Directive 2000/12/EC removes the obligation to notify the delegation of responsibilities for the supervision of certain subsidiaries to the banking committee.

This provision, which has been inherited from Directive 89/647/EC, now seems obsolete in the light of progress in cooperation between supervisory authorities, as noted above. While notification to the Commission is instrumental in monitoring the implementation of the Community provisions regarding cooperation between the different supervisory authorities involved in the supervision of a group, and while information of the competent supervisory authorities in other Member States is needed to identify the responsible authority in a group context, the systematic notification of every delegation of supervisory responsibilities to the banking committee appears superfluous, and is not consistent with the regulatory focus of the new European Banking Committee. The pronoun "it" in the third sentence will therefore now refer to the delegating competent authority rather than to the European Commission.

### **Article 3 - Point (10) Advisory functions of the BAC and Observation ratios**

This article deletes Title VI of Directive 2000/12/EC (Articles 57-59). As Articles 57 and 58 cover the advisory functions of the BAC, and as these functions are now covered by Commission Decision [xx/2003] establishing the European Banking Committee, and as explained in Section 1.4.2 above, the title should now be deleted.

Article 59 on observation ratios for solvency and liquidity, which had been inherited from the First Banking Directive 77/780/EEC is also deleted. These provisions are outdated in view of the harmonisation of the framework for solvency, and in view of the development of the techniques used by the banking industry to measure and manage liquidity risk.

The monitoring of solvency tends to be mainly based on the harmonised measures of capital adequacy laid down in Sections 1 and 2 of Chapter 2 of Directive 2000/12/EC. The coordination foreseen under paragraph 1 of Article 59 has been achieved, and the calculation of observation ratios for solvency would be largely redundant with the solvency ratio defined in Title V (Chapter 2, Section 2).

As regards the monitoring of liquidity, the definition of a simple harmonised ratio between the assets and liabilities of credit institutions has proved to be fraught with technical difficulties, and has been hampered by differences in the liquidity behaviour of several key categories of assets and liabilities (e.g. the liquidity patterns of deposits in reaction to changes in interest rates differs widely across the EU). Equally important has been the substantial progress in the management of assets and liabilities, where sophisticated models including tailored behavioural assumptions on assets and liquidities are superseding simpler static liquidity ratios. For these reasons, the reference to liquidity ratios now appears outdated.

In addition, the monitoring of solvency and liquidity typically belongs to the domain of supervision, for which other banking supervisory fora have substantially developed their contribution since the adoption of Directive 2000/12/EC. This monitoring, which is based on extensive quantitative and qualitative analysis, will typically include a range of relevant indicators and help provide a more comprehensive picture of the solvency and liquidity of banks.

This monitoring would not be consistent with the regulatory focus of the European Banking Committee, and should better be left to committees which have invested heavily on these aspects over recent years.

### **Article 3 - Point (11) - Identification of committee**

This provision amends Article 60 to formally identify the "comitology" committee established under Article 60(2) with the European Banking Committee established by Commission Decision [xx/2003]. As certain technical provisions of Directive 2000/12/EC apply to both credit institutions and investment firms, the composition of the EBC when delivering an opinion on technical adaptations of such provisions shall ensure that the investment firm's perspective is taken into account.

### **Article 4**

This provision amends a reference to the IC in Directive 73/273/EEC as most recently amended.

### **Article 5 – Provisions amending Directive 91/675/EEC**

#### **Article 5 - Point (1) - Title of the Committee**

This article changes the title of the Insurance Committee in order to confirm that the Committee will be a Committee for Insurance and Occupational Pensions.

#### **Article 5 - Point (2) - Composition of the Committee**

This article sets out membership and observership in the EIOPC.

The EIOPC comprises high-level representatives of Member States.

As already provided in Directive 91/675/EEC, the Commission will chair the EIOPC.

In order to ensure an effective link between the EIOPC and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), the chairperson of the CEIOPS will participate in the meetings of the EIOPC as an observer.

The EIOPC may invite experts and observers to its meetings, for instance members of other committees.

An identical form of words is used in Article 2 of Commission Decision [xx/2003] establishing the EIOPC in advisory mode.



### **Article 5 - Point (3) - Exercise of "comitology" functions by the EIOPC**

This provision states that the "comitology" functions of the EIOPC to assist the Commission in the exercise of implementing powers in the field of insurance and occupational pensions shall be executed in accordance with the procedure laid down in Decision 1999/468/EC, Articles 5 and 7. This provision also expands the EIOPC's "comitology" functions to occupational pensions

### **Article 5 - Point (4) - Consultative role of the EIOPC.**

In line with the approach explained in Section 1.4.1 above, this provision deletes references to the IC acting in advisory capacity.

### **Article 6 – Provision amending Directive 2002/83/EC**

This provision amends three further references to the IC in Directive 2002/83/EC on life assurance.

### **Article 7 - Provisions amending Directive 85/611/EEC**

#### **Article 7 - Points (1) to (4) – Name of the Committee.**

While Article 14(6) is taken directly from Directive 85/611/EEC, it is worth noting that the other concerned provisions result from amendments to that original Directive brought about by, respectively, Directive 2001/107/EC (insofar as Article 6c is concerned) and Directive 2001/108/EC (insofar as Article 21(4) and Article 22(4), third sub-paragraph are concerned). They amend the Directive to bring it into line with institutional norms.

The term, "UCITS Contact Committee" is substituted with that of the "European Securities Committee" as the new "comitology" committee competent for UCITS.

The second subparagraph of Article 14(6) refers to a requirement for the Commission to report to the Contact Committee on the application of paragraphs 4 and 5 of Article 14 within five years of the implementation of the Directive. As the Directive was adopted in 1985 and had a deadline for implementation of 1 October 1989, this subparagraph is outdated and should therefore be deleted.

#### **Article 7 - Point (5) – Title of Section X.**

This article changes the title of Section X in order to point out that the relevant committee here is from now on the European Securities Committee.

#### **Article 7 - Point (6) – Deletion of Article 53.**

Unlike the above-mentioned provisions which provide that specific exchanges of views or focused discussions on Commission's reports shall take place in the competent "comitology" committee, Article 53 of Directive 85/611/EEC lists the general principles organising the work of the UCITS Contact Committee when meeting outside its "comitology" capacity and sets out, *inter alia*, membership and chairmanship principles for the Committee. As noted in Section 1.4.2 above, these principles cover both "comitology" committee and committee of supervisors-type functions.

In conformity with the model used in Directive 2003/6/EC on Market Abuse, these general principles need to be left to the Commission Decisions organising the work of the ESC (when meeting outside its "comitology" capacity) and CESR, as completed by the rules of procedure and working arrangements of these Committees. Therefore, it is proposed to delete the contents of Article 53, and to adopt two Commission Decisions amending the Decisions setting up the ESC and CESR to give them these advisory functions, within the limits defined in the decisions which created these committees. These Commission Decisions will only enter into force once the proposed Directive has been adopted.

Nevertheless, it should be clear that in the UCITS field, policy issues for discussion in the ESC will also include any more rigorous or additional requirements which Member States may adopt in accordance with Article 1(7) of the amended UCITS Directive and the provisions which they may adopt in accordance with Articles 44 and 45 of that Directive.

#### **Article 7 - Point (7) – "comitology" powers of the ESC under the Directive.**

This provision merely substitutes the UCITS Contact Committee with the European Securities Committee, without any modification to the contents of the present "comitology" powers of the former Committee. It also states that the "comitology" functions of the Committee assisting the Commission in the exercise of implementing powers in the field of UCITS shall be executed in accordance with the procedure laid down in Decision 1999/468/EC, Articles 5 and 7.

#### **Article 8 – Amendments to references to the Banking Advisory Committee and the Insurance Committee in the Financial Conglomerates Directive**

This provision amends three further references to the BAC and IC in Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (the Financial Conglomerates Directive). It also provides legal certainty by making clear that the provision does not conflict with the provisions of the Treaty on external competences.

In line with the approach adopted elsewhere in this amending Directive, the amendment to Article 29(11) (itself inserting a new Article 56a in the Consolidated Banking Directive 2000/12/EC) brings this provision into line with institutional precedent by clarifying that the EBC should give guidance as to whether the consolidated supervision arrangements of competent authorities are likely to achieve the objectives defined elsewhere in the chapter at the request of the Commission.

#### **Article 9 – Entry into force**

There is no reason to delay the introduction of the committees. The Directive will therefore enter into force on the twentieth day following the date of its publication in the Official Journal.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 93/6/EEC and 94/19/EC and Directives 2000/12/EC, 2002/83/EC and 2002/87/EC of the European Parliament and of the Council, in order to establish a new financial services committee organisational structure**

**(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<sup>16</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>17</sup>,

Having regard to the opinion of the Committee of the Regions<sup>18</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>19</sup>,

Whereas:

- (1) The Commission Action Plan for Financial Services<sup>20</sup> identifies a series of actions that are required in order to complete the single market for financial services.
- (2) At its meeting in Lisbon in 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 welcomed the report of the Committee of Wise Men and called for the four-level approach to be implemented.

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<sup>16</sup> OJ C ..., ..., p. ...

<sup>17</sup> OJ C ..., ..., p. ...

<sup>18</sup> OJ C ..., ..., p. ...

<sup>19</sup> OJ C ..., ..., p. ...

<sup>20</sup> COM (1999) 232 final

- (5) In the light of those developments, the Commission adopted Decisions 2001/527/EC<sup>21</sup> and 2001/528/EC<sup>22</sup> setting up, respectively, the Committee of European Securities Regulators (CESR) and the European Securities Committee (ESC).
- (6) In the Resolutions of 5 February 2002 and 21 November 2002, the European Parliament respectively endorsed the four-level approach for securities and 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.
- (7) 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.
- (8) For those purposes, as regards the banking sector, the role of the Banking Advisory Committee (BAC) set up by Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>23</sup> should be adapted.
- (9) To reflect that adapted role, the BAC should be renamed "the European Banking Committee".
- (10) Since the measures necessary for the implementation of Directive 2000/12/EC are measures of general scope within the meaning 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>24</sup>, they should be adopted by use of the "comitology" procedure provided for in Article 5 of that Decision.
- (11) Certain existing provisions for technical amendments to Directive 2000/12/EC need to be brought in line with Council Decision 1999/468/EC.
- (12) In order to ensure institutional and legal consistency with the approach taken in other Community sectors, Commission Decision [xx/2003] of [xx]<sup>25</sup> establishes the European Banking Committee in an advisory capacity to advise the Commission as regards the development of Community banking legislation.
- (13) References to the advisory functions of the BAC in Directive 2000/12/EC should therefore be deleted.
- (14) 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.

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<sup>21</sup> OJ L 191, 13.7.2001, p.43

<sup>22</sup> OJ L 191, 13.7.2001, p.45

<sup>23</sup> OJ L 126, 26.5.2000 p. 1

<sup>24</sup> OJ L 184, 17.7.1999 p 23

<sup>25</sup> OJ C ..., ..., p. ...

- (15) 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.
- (16) 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 [xx/2003]<sup>26</sup>.
- (17) The Insurance Committee (IC) set up under Council Directive 91/675/EEC of 19 December 1991 setting up an Insurance Committee<sup>27</sup> 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 the "comitology" procedure laid down in Decision 1999/468/EC.
- (18) 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.
- (19) 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 of being rapidly adapted to market changes affecting those sectors, in particular with regard to financial and technical aspects.
- (20) The role of the IC should therefore be adapted, and this Committee should accordingly be renamed "the European Insurance and Occupational Pensions Committee";
- (21) Since the measures necessary for the implementation of acts covered by Directive 91/675/EEC are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, they should be adopted by use of the "comitology" procedure provided for in Article 5 of that Decision.
- (22) To ensure institutional and legal consistency with the approach taken in other Community sectors, Commission Decision [xx/2003] of [xx]<sup>28</sup> establishes the European Insurance and Occupational Pensions Committee in an advisory capacity to assist the Commission in the fields of insurance and occupational pensions.
- (23) References to the advisory functions of the IC in Directive 91/675/EEC should therefore be deleted.

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<sup>26</sup> OJ C ..., ..., p. ...

<sup>27</sup> OJ L 374, 31.12.1991 p. 32.

<sup>28</sup> OJ C ..., ..., ...

- (24) Council Directive 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>29</sup> set up a 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.
- (25) The UCITS Contact Committee may also act as a "comitology" Committee within the meaning of Decision 1999/468/EC to assist the Commission in regard to the technical amendments to be made to Directive 85/611/EEC.
- (26) 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.
- (27) 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>30</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.
- (28) 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. Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, they should be adopted by use of the "comitology" procedure provided for in Article 5 of that Decision.
- (29) It is therefore also necessary to amend accordingly First Council Directive 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>31</sup>, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive)<sup>32</sup> Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions<sup>33</sup>, Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes<sup>34</sup>, Directive 2000/12/EC, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life

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<sup>29</sup> OJ L 375, 31.12.1985 p. 3

<sup>30</sup> OJ L 96, 12.4.2003 p. 16

<sup>31</sup> OJ L 228, 16.8.1973 p.3

<sup>32</sup> OJ L 228, 11.8.1992 p. 1

<sup>33</sup> OJ L 141, 11.6.1993 p.1

<sup>34</sup> OJ L 135, 31.5.1994 p. 5

assurance<sup>35</sup> and Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and the Council<sup>36</sup>.

HAVE ADOPTED THIS DIRECTIVE:

## **Chapter I**

### **Amendments of Directives 93/6/EEC, 94/19/EC, and 2000/12/EC on the banking sector**

#### *Article 1*

##### *Directive 93/6/EEC*

In Article 7(9) of Directive 93/6/EEC, the term "Banking Advisory Committee" is deleted.

#### *Article 2*

##### *Directive 94/19/EC*

In Article 3(1) of Directive 94/19/EC, the term "Banking Advisory Committee" is replaced by the term "European Banking Committee".

#### *Article 3*

##### *Directive 2000/12/EC*

Directive 2000/12/EC is amended as follows:

1. Article 2 (4) is replaced by the following:

"4. The Commission, pursuant to the procedure set out in Article 60(2) shall decide on any amendments to the list in paragraph 3."

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<sup>35</sup> OJ L 345, 19.12.2002 p. 1

<sup>36</sup> OJ L 35, 11.2.2003 p. 1

2. In Article 2 (5), the last two sentences are replaced by the following:

" In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or have resulted from scission or mergers of existing institutions dependent or answerable to the central body, the Commission, pursuant to the procedure set out in Article 60(2) may lay down additional rules for the application of the second subparagraph including the repeal of exemptions provided for in the first subparagraph, where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in the second subparagraph might have an adverse effect on competition.
3. In Articles 4, 64(2) and 64(6), the term "and to the Banking Advisory Committee" is deleted.
4. In Article 22(9), the last sentence is deleted.
5. In Article 22(10), the last sentence is deleted.
6. In Article 23(1), the last sentence of paragraph (a) and the last sentence of paragraph (b) are deleted.
7. In Articles 24(2) and 49(2), the term "Banking Advisory Committee" is replaced by the term "European Banking Committee".
8. Article 25 paragraph 3 is replaced by the following:

"3. Without prejudice to Article 300(1) and (2) of the Treaty establishing the European Community, the Commission shall, with the assistance of the European Banking Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation."
9. In the third sentence of Article 52(9), the words "and to the Banking Advisory Committee" are deleted.
10. Title VI is deleted.
11. Article 60(2) is replaced by the following:

"2. The Commission shall be assisted by the European Banking Committee instituted by Commission Decision [xx/2003](hereinafter referred to as "the Committee"), composed of representatives of the Member States and chaired by the representative of the Commission.

Where reference is made to this paragraph, the "comitology" procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 (3) and Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months."



## Chapter II

### Amendments of Directives 73/239/EEC, 91/675/EEC and 2002/87/EC on the insurance and occupational pensions sector

#### *Article 4*

#### *Directive 73/239/EEC*

Directive 73/239/EEC is amended as follows:

- (1) Article 29a is replaced by the following:

#### *"Article 29a*

1. The competent authorities of the Member States shall inform the Commission:
  - (a) of any authorisation of a direct or indirect subsidiary, one or more parent undertakings of which are governed by the law of a third country;
  - (b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary.

The Commission shall inform the European Insurance and Occupational Pensions Committee.
2. When the authorisation referred to in paragraph 1(a) is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of a third country, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission."

- (2) In Article 29b(4), the second subparagraph is replaced by the following:

"In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure referred to in Article 2(2) of Council Directive 91/675/EEC\* that the competent authorities of the Member States must limit or suspend their decisions regarding the following:

- (a) requests for authorisation, whether pending at the moment of the decision or submitted thereafter;
- (b) the acquisition of holdings by direct or indirect parent undertakings governed by the law of the third country in question.

\*OJL 374 , 31.12.1991 p.32"

*Article 5*

*Directive 91/675/EEC*

Directive 91/675/EEC is amended as follows:

- (1) In the Title, the term "Insurance Committee" is replaced by the term "*European Insurance and Occupational Pensions Committee*".
- (2) Article 1 is replaced by the following:

*"Article 1*

1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee instituted by Commission Decision [xx/2003] hereinafter "the Committee", composed of representatives of the Member States and chaired by the representative of the Commission.

2. Each Member State delegation shall be considered to be one member of the committee.

The chairperson of the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2003/..EC<sup>37</sup> shall participate at the meetings of the Committee as an observer.

3. The Commission may invite experts and observers to attend its meetings.

4. The secretariat of the Committee shall be provided by the Commission.

5. The Committee shall adopt its own rules of procedure."

- (3) Article 2 is replaced by the following:

*"Article 2*

Where acts adopted in the field of direct non-life insurance and direct life assurance, reinsurance and occupational pensions confer on the Commission powers for the implementation of the rules which they lay down, the "comitology" procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 (3) and Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at three months."

- (4) Articles 3 and 4 are deleted

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<sup>37</sup> OJ C ..., ..., p. ...

*Article 6*

*Directive 2002/83/EC*

Directive 2002/83/EC is amended as follows:

1. In the first sentence of Article 46(9), the words "submit to the Insurance Committee" are replaced by the word "issue".
2. Article 65, paragraphs 1 and 3 are deleted.

### **Chapter III**

## **Amendment of Directive 85/611/EEC on the securities sector**

*Article 7*

*Directive 85/611/EEC*

Directive 85/611/EEC is amended as follows:

- (1) Article 6c is amended as follows:
  - (a) in paragraph 9, the last sentence is replaced by the following:

"Every two years the Commission shall issue a report on such cases. "
  - (b) in paragraph 10, the last sentence is replaced by the following:

"Every two years the Commission shall issue a report on such cases."
- (2) In Article 14(6), the second sub-paragraph is deleted.
- (3) Article 21(4) is amended as follows:
  - (a) The last sentence is replaced by the following:

"Such information shall be the subject of exchanges of views within the European Securities Committee."
  - (b) The following second subparagraph is added:

"The Commission shall issue a report on the application of paragraphs 4 and 5 within five years of the implementation of this Directive. The Commission shall, if need be, propose appropriate measures."
- (4) In the third sub-paragraph of Article 22(4), the last sentence is replaced by the following:

"Such communications may be the subject of exchanges of views within the European Securities Committee."

- (5) The title of Section X is replaced by the following:  
"European Securities Committee"
- (6) Article 53 is deleted.
- (7) Article 53a is replaced by the following:

*"Article 53a*

The technical amendments to be made to this Directive in the following areas, shall be adopted in accordance with the procedure referred to in Article 53b(2):

- (a) clarification of the definitions in order to ensure uniform application of this Directive throughout the Community;
- (b) alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.
- (8) The following Article 53b is inserted:

*"Article 53b*

1. The Commission shall be assisted by the European Securities Committee instituted by Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)\*, hereinafter "the Committee".

2. Where reference is made to this paragraph, the "comitology" procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

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

\* OJ L 96, 12.4.2003 p. 16"

## **Chapter IV**

### **Amendment of Directive 2002/87/EC on financial conglomerates**

#### *Article 8*

##### *Directive 2002/87/EC*

1. Article 19 paragraph 2 of Directive 2002/87/EC is replaced by the following:

"2. Without prejudice to Articles 300(1) and (2) of the Treaty establishing the European Community, the Commission, shall, with the assistance of the European Banking Committee, the European Insurance and Occupational Pensions Committee, and the Financial Conglomerates Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation."
2. In Article 28, the words "The Commission and the Insurance Committee shall" are replaced by the words "Without prejudice to Articles 300(1) and (2) of the Treaty establishing the European Community, the Commission, shall, with the assistance of the European Insurance and Occupational Pensions Committee".
3. In Article 29(11), the words "The Banking Advisory Committee may" are replaced by the words "The European Commission may request the European Banking Committee to".

## **Chapter V: Final Provisions**

#### *Article 9*

##### *Transposition*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by one month after its entry into force at the latest.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

#### *Article 10*

##### *Entry into force*

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

*Article 11*

*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

| <b>FINANCIAL STATEMENT</b>  |   |                                  |   |   |      |
|---|---|----------------------------------|---|---|------|
|   |   |                                  | DATE:   |   |      |
| 1.  | BUDGET HEADING:<br>Internal Policies  | APPROPRIATIONS:<br>0             |   |   |      |
| 2.  | TITLE:<br>Directive amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 93/6/EEC and 94/19/EC and Directives 2000/12/EC, 2002/83/EC and 2002/87/EC, in order to establish a new financial services committee organisational structure |                                  |   |   |      |
| 3.  | LEGAL BASIS:<br>Article 47(2)   |                                  |   |   |      |
| 4.  | AIMS:<br>To establish a new organisational structure for committees in the financial services field   |                                  |   |   |      |
| 5.  | FINANCIAL IMPLICATIONS<br>(No financial implications)   | 12 MONTH PERIOD<br>(EUR million) | CURRENT FINANCIAL YEAR<br>2003<br>(EUR million) | FOLLOWING FINANCIAL YEAR<br>2004<br>(EUR million) |      |
| 5.0   | EXPENDITURE<br>- CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTIONS)<br>- NATIONAL AUTHORITIES<br>- OTHER  | 0                                | 0   | 0   |      |
| 5.1   | REVENUE<br>- OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES)<br>- NATIONAL  | 0                                | 0   | 0   |      |
|   |   | 2005                             | 2006  | 2007  | 2008 |
| 5.0.1   | ESTIMATED EXPENDITURE   | 0                                | 0   | 0   | 0    |
| 5.1.1   | ESTIMATED REVENUE   | 0                                | 0   | 0   | 0    |
| 5.2   | METHOD OF CALCULATION:<br>Not relevant  |                                  |   |   |      |
| 6.0   | CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?  |                                  |   | Not relevant                                      |      |
| 6.1   | CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?   |                                  |   | Not relevant                                      |      |
| 6.2   | WILL A SUPPLEMENTARY BUDGET BE NECESSARY?   |                                  |   | No  |      |
| 6.3   | WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?   |                                  |   | No  |      |
| OBSERVATIONS:<br>The proposal replaces two existing committees with two new ones, and brings another within the purview of an existing committee. The effect will therefore be that there is no net financial impact. |   |                                  |   |   |      |