



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.07.1997  
COM(97) 355 final

95/ 0188 (COD)

OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty,  
on the European Parliament's amendments  
to the Council's common position regarding the

proposal for a  
**EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE**

amending Council directive 93/6/EEC  
on the capital adequacy of investment firms and  
credit institutions and Council directive 93/22/EEC on  
investment services in the securities field

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

## 1. STAGE REACHED IN THE PROCEDURE

- a) On 17 July 1995 the Commission adopted a proposal<sup>1</sup> for the above mentioned directive, the aim of which is to set up the Securities Committee.
- b) The European Parliament made a first reading of the proposal at its sitting on 9 May 1996<sup>2</sup>.
- c) On 20 June 1996 the Commission submitted an amended proposal<sup>3</sup> in the light of Parliament's first reading opinion.
- d) On 16 December 1996 the Council adopted its common position<sup>4</sup>.
- e) On 9 April 1997 the European Parliament adopted its second reading opinion<sup>5</sup>, in which ten amendments are made to the common position.

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<sup>1</sup> COM(95)360 final, OJ N° C 253, 29.9.1995, p. 19

<sup>2</sup> OJ N° C 152, 27.5.1996, p. 18

<sup>3</sup> COM(96)292 final, OJ N° C 221, 30.7.1996, p. 31

<sup>4</sup> OJ N° C 69, 5.3.1997, p. 1

<sup>5</sup> Text not yet published in the Official Journal

## 2. POSITION TAKEN BY THE COMMISSION REPRESENTATIVE AT THE PLENARY SITTING

The Commission representative accepted amendment N° 3 but rejected the other nine amendments.

## 3. COMMISSION OPINION ON THE AMENDMENTS VOTED BY THE EUROPEAN PARLIAMENT

### a) Purpose of the amendments

#### **Amendment 1 (Recital 5)**

It deletes references to the advisory role of the Committee.

#### **Amendment 2 (Recital 6)**

This reflects Parliament's call for a change of committee procedure from variant IIIb in the common position to variant IIb (as laid down in the Council Decision 87/373/EEC of 13 July 1987<sup>6</sup> laying down the procedures for the exercise of implementing powers conferred on the Commission).

#### **Amendment 3 (new Recital 6a)**

This adds a reference to the 1994 "modus vivendi" between the three institutions<sup>7</sup>.

#### **Amendment 4 (Recital 10)**

It deletes the reference to the need for co-operation between the Securities Committee and the Banking Advisory and Insurance Committees.

#### **Amendment 5 (Article 1)**

This amendment reverses the common position's objective of giving the Securities Committee the right to receive certain information under the Capital Adequacy Directive<sup>8</sup>.

#### **Amendment 6 ( Article 1)**

This amendment :

- deletes the requirement for the Securities Committee to adopt its own rules of procedure

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<sup>6</sup> OJ N° L 197, 18.7.1987, p. 33

<sup>7</sup> OJ N° C 293, 8.11.1995, p. 1

<sup>8</sup> OJ N° L 141, 11.6.1993, p. 1

- changes the type of committee procedure from variant IIIb (in the common position) to IIb for the exercise of implementing powers conferred on the Commission under the Capital Adequacy Directive.

#### **Amendments 7 and 10 (Articles 1 and 2)**

These two amendments delete the common position wording under which the Securities Committee is given a consultative role.

#### **Amendment 8 ( Article 2)**

This amendment reverses the common position's objective of giving the Securities Committee the right to receive certain information under the Investment Services Directive<sup>9</sup>.

#### **Amendment 9**

This amendment changes the type of committee procedure from variant IIIb (in the common position) to IIb for the exercise of implementing powers conferred on the Commission under the Investment Services Directive.

#### **b) Commission position**

#### **Amendments 2, 6 and 9**

The Commission cannot accept these amendments. It considers that the most appropriate type of committee procedure for exercise of the implementing powers under the Capital Adequacy Directive and the Investment Services Directive is variant III(a). It considers that variant III(b) (the Council's preference) gives too much power to the Council to block decisions. On the other hand, variant II(b) (the Parliament's preference) envisages the taking of decisions on an emergency basis, which is inappropriate for technical modification of financial services directives. Procedure type IIIa is the most appropriate solution and represents the correct balance between the extreme positions of the Council and the Parliament.

As regards the Committee's need to adopt its own rules of procedure (amendment 6) the rules of procedure will have no impact on the role of the Committee in the comitology field : they will only apply to the work of the committee acting in a consultative mode. In this respect it should be borne in mind that the directive setting up the Insurance Committee contains an identical requirement.

#### **Amendments 1, 7 and 10**

These three amendments are not acceptable, because they would eliminate the advisory role of the Committee. This however is an essential element of the proposal, because the Securities Committee will represent a useful discussion forum which the Commission can decide (but is not obliged) to consult when it is envisaging possible new initiatives.

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<sup>9</sup> OJ N° L 141, 11.6.1993, p. 27

It should be borne in mind that both the Banking Advisory Committee and the Insurance Committee have been given an advisory role in addition to a "comitology" role.

### **Amendment 3**

The Commission can accept this amendment, which it had indeed included expressly in its amended proposal following Parliament's first reading opinion.

### **Amendment 4**

This amendment deletes reference to co-operation between the Securities Committee and the other two financial services committees i.e. the Banking Advisory Committee and the Insurance Committee.

The Commission cannot accept this amendment because issues frequently arise which are of common interest to financial services firms in two or even all three sectors, and it appears only sensible to consult all three committees in a concerted manner when that situation arises.

### **Amendments 5 and 8**

These two amendments are not acceptable, because the two basic directives (the Capital Adequacy Directive and the Investment Services Directive) were drafted in such a way that as and when the Securities Committee was created the latter would be supplied with certain information arising under the two directives. It was only on a purely temporary basis that this information was to be given to the Council itself, (see for example article 7(1) of the Investment Services Directive). Once the Securities Committee has been set up it is a necessary and logical step to replace the previous temporary regime with the permanent one.

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