

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC (89) 1207 final - SYN 85

Brussels, 20 July 1989

COMMUNICATION FROM THE COMMISSION
TO THE PARLIAMENT

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE
COORDINATING REGULATIONS ON INSIDER TRADING

COMMON POSITION OF THE COUNCIL

1. Introduction

Insider trading, in which the insider takes advantage of privileged information to trade profitably in securities, is a threat to the proper operation and the development of securities markets. It allows investors who have access to privileged information to profit at the expense of others who have not. Insider trading thus destroys equality of opportunity between investors and also the confidence of investors with no access to privileged information in the proper operation of securities markets.

To ensure the smooth working of the Community's securities markets, and thus to facilitate interpenetration between them, the Commission on 25 May 1987 presented a proposal for a directive on the subject to this Council. The purpose of the proposal is to coordinate within the Community regulations to combat insider trading. The Community rules would also make the prevention of insider trading more effective by providing for intensive cooperation between the competent authorities to deal with cases of insider trading across borders.

The proposal would therefore promote the interpenetration of securities markets in the Community, and thus help to create a genuine European capital market. It is squarely among the measures to be taken to establish the single internal market of 1992.

II. Parliament's opinion

On the basis of a report from the Committee on Legal Affairs and Citizens' Rights (Rapporteur: Mr Geoffrey Hoon), the European Parliament delivered its opinion on first reading at its plenary sitting of 13 to 17 June 1988. In its opinion Parliament suggested a number of amendments but was broadly in agreement with the Commission's proposal and its objectives. Almost all Parliament's amendments were aimed at making the directive more effective. The Commission has accepted most of them.

The only two amendments which gave the Commission any real difficulty concerned the penalties for insider trading. Article 11 of the Commission's proposal merely provided that Member States were to determine the penalties to be applied for infringement of the measures taken pursuant to the directive. Parliament took the view that this provision did not go far enough, and that it was not sufficient to require that penalties be imposed; the penalties for insider trading in the different Member States had also to be harmonized.

The Commission did not think it would be advisable to accept these amendments, for the reasons put forward by Lord Cockfield at the plenary sitting of Parliament on 15 June 1988 (OJ C 187 18.7.88, p.93) particularly the fact that a harmonization of criminal penalties would cause not only political but also legal problems.

The Commission has not in the end accepted these amendments, but it has inserted in its amended proposal a provision which moves in the direction desired by Parliament. Article 11 of the proposal now includes a clause stipulating that the penalties imposed by the Member States must be "sufficiently dissuasive to ensure respect" for the measures which the Member States have taken pursuant to the directive. This provision does not directly harmonize the penalties themselves, but indirectly should secure the same result, as the effects of the penalties should be the same in all Member States.

III. The Council's common position

On 18 July the Council unanimously adopted a common position on the proposal for a directive.

The amendments made by the Council to the Commission's proposal are fully in line with the concerns expressed by Parliament when it considered the proposal. They are aimed essentially at tightening up the regulations on insider trading.

The Council has broadened the scope of the directive (Article 1(2)) to include not only transferable securities proper and negotiable options on such securities but also any rights related to such securities and fixed-term financial instruments in respect of them.

The Council has broadened the category of secondary insiders. The Commission's proposal would have caught only those secondary insiders who had received inside information directly from a primary insider. The common position (Article 4) covers the entire chain of secondary insiders, whether or not they have received inside information directly from a primary insider.

The common position also appreciably extends cooperation between the competent authorities in the different Member States, thus making the directive a great deal more effective, particularly in respect of cross border insider trading (Article 10).

The Council has accepted all the amendments made by Parliament which the Commission had incorporated in its amended proposal.

In some cases the Council felt unable to adopt a Parliamentary amendment word for word, but nevertheless complied with its spirit. In order to allow financial analysts to continue to operate without hindrance, for example, Parliament had proposed that inside information should be defined