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*****I**

REPORT

on the proposal for a directive of the European Parliament and of the Council
amending Directive 2004/39/EC on markets in financial instruments, as regards
certain deadlines
(COM(2005)0253 – C6-0191/2005 – 2005/0111(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Piia-Noora Kauppi

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2004/39/EC on markets in financial instruments, as regards certain deadlines

(COM(2005)0253 – C6-0191/2005 – 2005/0111(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0253)¹,
 - having regard to Article 251(2) and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0191/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0334/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 6 A (new)

(6a) In its resolution of 5 February 2002 on the implementation of financial services legislation¹, the European Parliament requested that the European Parliament and the Council should have an equal role in supervising the way in which the Commission exercises its executive role in order to reflect the legislative powers of the European Parliament under Article 251 of the Treaty. In the solemn declaration made before the European Parliament the same day by its President, the Commission

¹ Not yet published in OJ.

supported that request. On 11 December 2002, the Commission proposed amendments to Decision 1999/468/EC (COM(2002)0719), and then submitted an amended proposal on 22 April 2004 (COM(2004)0324). The European Parliament does not consider that this proposal preserves its legislative prerogatives. In the view of the European Parliament, the European Parliament and the Council should have the opportunity of evaluating the conferral of implementing powers on the Commission within a determined period. It is therefore appropriate to limit the period during which the Commission may adopt implementing measures.

¹ OJ C 284 E, 21.11.2002, p. 115.

Justification

The objective is to align the comitology provisions of the MIFID directive with those adopted in the Capital Adequacy directive.

Amendment 2 RECITAL 6 B (new)

(6b) The European Parliament should be given a period of three months from the first transmission of draft amendments or implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, it should be possible to shorten that period. If, within that period, a resolution is adopted by the European Parliament, the Commission should re-examine the draft amendments or measures.

Justification

The objective is to align the comitology provisions of the MIFID directive with those adopted in the Capital Adequacy directive

Amendment 3 RECITAL 7 A (new)

(7a) Given the deferred deadline between the obligation for Member States to transpose Directive 2004/39/EC into national law and the deadline for investment firms and banks to comply with the new requirements, the provisions of Directive 2004/39/EC will remain ineffective until 1 November 2007; it is therefore appropriate to repeal Directive 93/22/EEC on 1 November 2007.

Amendment 4

ARTICLE 1, POINT -1 (new)

Article 64 (Directive 2004/39/EC)

(-1) Article 64 is amended as follows:

(a) A new paragraph 2a is added:

"2a. None of the implementing measures enacted may change the essential provisions of this Directive. ";

(b) Paragraph 3 is replaced by the following:

"3. Without prejudice to the implementing measures already adopted, upon expiry of a two-year-period following the adoption of this Directive and on 1 April 2008 at latest, the application of its provisions requiring the adoption of technical rules, amendments and decisions in accordance with paragraph 2 shall be suspended. Acting on a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them prior to the expiry of the period or date referred to above . "

Justification

The objective is to align the comitology provisions of the MIFID directive with those adopted in the Capital Adequacy directive.

Amendment 5

ARTICLE 1, POINT 1

Article 65 (Directive 2004/39/EC)

(a) paragraphs 1 to 4 are replaced by the following:

"1. By **30 April 2007** at the latest, the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and to the Council on the possible extension of the scope of the provisions of this Directive concerning pre and post-trade transparency obligations to transactions in classes of financial instruments other than shares.

2. By **30 April 2008** at the latest, the Commission shall present a report to the European Parliament and to the Council on the application of Article 27.

3. By **30 October 2007** at the latest, the Commission shall, on the basis of public consultations and in the light of discussions with competent authorities, report to the European Parliament and to the Council on:

(a) the continued appropriateness of the exemption provided for in Article 2(1)(k) for undertakings whose main business is dealing on own account in commodity derivatives;

(b) the content and form of proportionate requirements for the authorisation and supervision of such undertakings as investment firms within the meaning of this Directive;

(c) the appropriateness of rules concerning the appointment of tied agents in performing investment services and/or activities, in particular with respect to the supervision on them;

(d) the continued appropriateness of the exemption provided for in Article 2(1)(i).

4. By **30 October 2007** at the latest, the Commission shall present a report to the European Parliament and to the Council on the state of the removal of the obstacles which may prevent the consolidation at European level of the information that trading venues are required to publish."

(a) paragraphs 1 to 4 are replaced by the following:

"1. By **31 October 2007** at the latest, the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and to the Council on the possible extension of the scope of the provisions of this Directive concerning pre and post-trade transparency obligations to transactions in classes of financial instruments other than shares

2. By **31 October 2008** at the latest, the Commission shall present a report to the European Parliament and to the Council on the application of Article 27.

3. By **30 April 2008** at the latest, the Commission shall, on the basis of public consultations and in the light of discussions with competent authorities, report to the European Parliament and to the Council on:

(a) the continued appropriateness of the exemption provided for in Article 2(1)(k) for undertakings whose main business is dealing on own account in commodity derivatives;

(b) the content and form of proportionate requirements for the authorisation and supervision of such undertakings as investment firms within the meaning of this Directive;

(c) the appropriateness of rules concerning the appointment of tied agents in performing investment services and/or activities, in particular with respect to the supervision on them;

(d) the continued appropriateness of the exemption provided for in Article 2(1)(i).

4. By **30 April 2008** at the latest, the Commission shall present a report to the European Parliament and to the Council on the state of the removal of the obstacles which may prevent the consolidation at European level of the information that trading venues are required to publish."

(b) Paragraph 6 is replaced by the following:

“6. By **30 April 2006** at the latest, the Commission shall, in the light of discussions with competent authorities, report to the European Parliament and to the Council on the continued appropriateness of the requirements for professional indemnity insurance imposed on intermediaries under Community law.”

(b) Paragraph 6 is replaced by the following:

“6. By **31 October 2006** at the latest, the Commission shall, in the light of discussions with competent authorities, report to the European Parliament and to the Council on the continued appropriateness of the requirements for professional indemnity insurance imposed on intermediaries under Community law.”

Justification

This amendment is made to facilitate agreement with the Council.

Amendment 6 ARTICLE 1, POINT 2 Article 69 (Directive 2004/39/EC)

1. Directive 93/22/EEC is repealed with effect from **30 October 2006**. References to Directive 93/22/EEC shall be construed as references to this Directive. References to terms defined in, or Articles of, Directive 93/22/EEC shall be construed as references to the equivalent term defined in, or Article of, this Directive.

2. Member States shall provide that national laws, regulations and administrative provisions adopted in order to comply with Directive 93/22/EC shall remain in force until the measures adopted under Article 70 are applied, and in any event, no later than 30 April 2007.

1. Directive 93/22/EEC is repealed with effect from **1 November 2007**. References to Directive 93/22/EEC shall be construed as references to this Directive. References to terms defined in, or Articles of, Directive 93/22/EEC shall be construed as references to the equivalent term defined in, or Article of, this Directive.

Justification

This amendment is made to facilitate agreement with the Council.

Amendment 7 ARTICLE 1, POINT 3 Article 70, paragraph 1 (Directive 2004/39/EC)

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by **30 October 2006** at the latest. They shall forthwith inform the Commission thereof. They shall apply these provisions from **1**

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by **31 January 2007** at the latest. They shall forthwith inform the Commission thereof. They shall apply these provisions from

May 2007.

1 November 2007.

Justification

This amendment is made to facilitate agreement with the Council.

Amendment 8

ARTICLE 1, POINT 4

Article 71, paragraphs 1 to 4 (Directive 2004/39/EC)

1. Investment firms already authorised in their home Member State to provide investment services before **30 April 2007** shall be deemed to be so authorised for the purposes of this Directive, if the laws of that Member State provide that to take up such activities they must comply with conditions comparable to those provided for in Articles 9 to 14.

2. A regulated market or a market operator already authorised in its home Member State before **30 April 2007** shall be deemed to be so authorised for the purposes of this Directive, if the laws of that Member State provide that the regulated market or market operator, as the case may be, must comply with conditions comparable to those provided for in Title III.

3. Tied agents already entered in a public register before **30 April 2007** shall be deemed to be so registered for the purposes of this Directive, if the laws of those Member States provide that tied agents must comply with conditions comparable to those provided for in Article 23.

4. Information communicated before **30 April 2007** for the purposes of Articles 17, 18 or 30 of Directive 93/22/EEC shall be deemed to have been communicated for the purposes of Articles 31 and 32 of this Directive.

1. Investment firms already authorised in their home Member State to provide investment services before **1 November 2007** shall be deemed to be so authorised for the purposes of this Directive, if the laws of that Member State provide that to take up such activities they must comply with conditions comparable to those provided for in Articles 9 to 14.

2. A regulated market or a market operator already authorised in its home Member State before **1 November 2007** shall be deemed to be so authorised for the purposes of this Directive, if the laws of that Member State provide that the regulated market or market operator, as the case may be, must comply with conditions comparable to those provided for in Title III.

3. Tied agents already entered in a public register before **1 November 2007** shall be deemed to be so registered for the purposes of this Directive, if the laws of those Member States provide that tied agents must comply with conditions comparable to those provided for in Article 23.

4. Information communicated before **1 November 2007** for the purposes of Articles 17, 18 or 30 of Directive 93/22/EEC shall be deemed to have been communicated for the purposes of Articles 31 and 32 of this Directive.

4a. Any existing system falling under the definition of an MTF operated by a market operator of a regulated market shall, at the request of the market operator of the

regulated market, be authorised as an MTF provided that it complies with rules equivalent to those required by this Directive for the authorisation and operation of MTFs and that the request concerned is made within eighteen months after 1 November 2007.

Justification

This amendment is made to facilitate agreement with the Council.

Amendment 9
ARTICLE 2, PARAGRAPH 1

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **30 October 2006** at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **31 January 2007** at the latest. They shall forthwith communicate to the Commission the text of those provisions. ***They shall apply these provisions from 1 November 2007.***

Justification

This amendment is made to facilitate agreement with the Council.

EXPLANATORY STATEMENT

The transposition deadline for Directive 2004/39/EC (Markets in Financial Instruments) was originally agreed in Council and by the European Parliament to be the standard 24 months after the entry into force of the directive, i.e. for April 2006. However, it has appeared that the significant adjustments that MiFID will entail for market participants and national authorities require a postponement of that deadline.

Furthermore, effective and proper transposition of the Directive hinges on the elaboration and implementation of the necessary technical measures. These are now being prepared and the complete set of measures for 17 provisions of the directive is foreseen to be adopted in early 2006. The original transposition deadline of April 2006 would not allow enough time for the implementing measures to be adopted concomitantly, and would impose unnecessary time-pressure on their preparation. The adoption of these measures cannot be accelerated both because of their complexity, the need to consult widely according to the Lamfalussy procedure and building consensus as well as because the process must be carried out in accordance with the comitology procedure requirements specified in Decision 1999/468/EC.

Transposition of those provisions of the Directive which are linked to implementing measures cannot proceed until the concomitant implementing measures have been finalised. In fact, this delay in turn affects the timely transposition of other provisions of the Directive related to the provisions that require implementing measures. Therefore in order to ensure the effective and uniform implementation of the MIFID in all Member States from the transposition deadline, it is appropriate to postpone certain other deadlines.

Summary of the proposal

It is proposed to:

- extend the deadline by which Member States must transpose the MiFID into national law by 6 months, i.e. until 30 October 2006;
- grant an extra 6 month period, after transposition into national law, for the effective application of the MiFID in order to allow firms sufficient time to adapt their systems and internal procedures so as to comply with the requirements of the Directive, i.e. until 30 April 2007;
- extend the date of repeal of Directive 93/22/EC (the Investment Services Directive), which is to be replaced by the MiFID, by 6 months to coincide with the extended transposition deadline of the MiFID in order to avoid a legislative void. However, it is proposed that Member States should be required to retain their current national regulatory regime implementing Directive 93/22/EC for a further 6 months after that Directive has been repealed in order to avoid a legal void.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council amending Directive 2004/39/EC on markets in financial instruments, as regards certain deadlines
References	COM(2005)0253 – C6 0191/2005 – 2005/0111(COD)
Date submitted to Parliament	14.6.2005
Committee responsible Date announced in plenary	ECON 22.6.2005
Committee(s) asked for opinion(s) Date announced in plenary	JURI 22.6.2005
Not delivering opinion(s) Date of decision	JURI 5.10.2005
Rapporteur(s) Date appointed	Piia-Noora Kauppi 4.7.2005
Discussed in committee	5.10.2005 10.10.2005 21.11.2005 22.11.2005
Date adopted	22.11.2005
Result of final vote	Unanimously
Members present for the final vote	Pervenche Berès, Pier Luigi Bersani, Sharon Margaret Bowles, Udo Bullmann, Ieke van den Burg, Jan Christian Ehler, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Wolf Klinz, Christoph Konrad, Guntars Krasts, Enrico Letta, Cristobal Montoro Romero, Joseph Muscat, John Purvis, Alexander Radwan, Karin Riis-Jørgensen, Dariusz Rosati, Eoin Ryan, Antolín Sánchez Presedo, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček
Substitutes present for the final vote	Katerina Batzeli, Jorgo Chatzimarkakis, Catherine Guy-Quint, Ján Hudacký, Werner Langen, Thomas Mann
Substitutes under Rule 178(2) present for the final vote	
Date tabled	24.11.2005
Comments (available in one language only)	...