

COUNCIL DIRECTIVE 93/22/EEC

of 10 May 1993

on investment services in the securities field

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament ⁽²⁾,

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

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

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

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

Whereas the principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorization where factors such as the content of programmes of operations, the geographical

distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities; whereas, for the purposes of this Directive, an investment firm which is a legal person must be authorized in the Member State in which it has its registered office; whereas an investment firm which is not a legal person must be authorized in the Member State in which it has its head office; whereas, in addition, Member States must require that an investment firm's head office must always be situated in its home Member State and that it actually operates there;

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

Whereas in order to guarantee fair competition, it must be ensured that investment firms that are not credit institutions have the same freedom to create branches and provide services across frontiers as is provided for by the Second Council Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions ⁽⁴⁾;

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

Whereas an investment firm authorized in its home Member State may carry on business throughout the Community by whatever means it deems appropriate; whereas, to that end it may, if it deems it necessary, retain tied agents to receive and transmit orders for its account and under its full and unconditional responsibility; whereas, in these circumstances, such agents' business must be regarded as that of the firm; whereas, moreover, this Directive does not prevent a home Member State from making the status of such agents subject to special requirements; whereas should

⁽¹⁾ OJ No C 43, 22. 2. 1989, p. 7; and OJ No C 42, 22. 2. 1990, p. 7.

⁽²⁾ OJ No C 304, 4. 12. 1989, p. 39; and OJ No C 115, 26. 4. 1993.

⁽³⁾ OJ No C 298, 27. 11. 1989, p. 6.

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