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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2006  
COM(2006) 910 final

2006/0305 (COD)

Proposal for a

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

**amending**

**Directive 2004/39/EC relating to markets in financial instruments as regards the  
implementing powers conferred on the Commission**

(presented by the Commission)

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

**amending**

**Directive 2004/39/EC relating to markets in financial instruments as regards the  
implementing powers conferred on the Commission**

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>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the European Central Bank,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments and amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC<sup>3</sup> provides that certain measures are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>4</sup>.
- (2) Decision 1999/468/EC has been amended by Decision 2006/512/EC which introduced a regulatory procedure with scrutiny to be used for the adoption of implementing measures of general scope which seek to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, including by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ L 145, 30. 4. 2004, p.1. Directive as amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p.60).

<sup>4</sup> OJ L184, 17.7.1999, p.23 . Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p.11).

- (3) In accordance with the joint statement of the European Parliament, the Council and the Commission<sup>5</sup> on Decision 2006/512/EC, instruments which are already in force must be adjusted in accordance with the applicable procedures. That statement indicates a list of instruments which should be adjusted as a matter of urgency, including Directive 2004/39/EC.
- (4) In particular, power should be conferred on the Commission to adopt measures necessary for the implementation of Directive 2004/39/EC, in order to take account of technical developments on financial markets and to ensure uniform application of that Directive. More particularly, those measures are designed to adapt definitions or modify the scope of exemptions, to elaborate upon or supplement the provisions of that Directive concerning organisational requirements or operating conditions imposed upon investment firms or credit institutions and to add detailed specifications on the pre- and post-trade transparency obligations imposed upon the various negotiating venues under that Directive. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2004/39/EC and to supplement it by the addition of new non-essential elements they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (5) Directive 2004/39/EC provided for a time restriction concerning the implementing powers conferred to the Commission. In their joint statement on Decision 2006/512/EC, the European Parliament, the Council and the Commission have stated that Decision 2006/512/EC provides a horizontal and satisfactory solution to the European Parliament's wish to scrutinise the implementation of instruments adopted under the co-decision procedure and that, accordingly, implementing powers should be conferred on the Commission without time-limit. The European Parliament and Council also declared that they would make sure that the proposals aimed at repealing the provisions in the instruments that provide for a time-limit on the delegation of implementing powers to the Commission are adopted as rapidly as possible. Following the introduction of the regulatory procedure with scrutiny, the provision establishing that time restriction in Directive 2004/39/EC should be deleted.
- (6) Directive 2004/39/EC should therefore be amended accordingly.
- (7) Since the amendments to be made to Directive 2004/39/EC are adjustments of a technical nature which only concern the committee procedure they do not need to be transposed by the Member States. It is therefore not necessary to lay down provisions to that effect,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 2004/39/EC is amended as follows:

- (1) Article 2(3) is amended as follows:

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<sup>5</sup> OJ C255, 21.10.2006, p. 1

(a) the terms “acting in accordance with the procedure referred to in Article 64(2)” are deleted;

(b) the following sentence is added:

”Those measures, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(2) Article 4 is amended as follows:

(a) in point (2) of paragraph 1 the terms “acting in accordance with the procedure referred to in Article 64(2)” are deleted;

(b) paragraph 2 is amended as follows:

(i) the terms “acting in accordance with the procedure referred to in Article 64(2)” are deleted;

(ii) the following subparagraph is added:

”The measures referred to in point (2) of paragraph 1 and in the first subparagraph of this paragraph, designed to amend non-essential elements of this Directive including by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(3) Article 13(10) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;

(b) the following sentence is added:

”Those measures, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(4) Article 15(3) is amended as follows:

(a) in the second and third subparagraphs the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;

(b) the following subparagraph is added:

”The measures referred to in the second and third subparagraphs, designed to amend non-essential elements of this Directive including by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

- (5) Article 18(3) is amended as follows:
- (a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;
  - (b) the following subparagraph is added:  
  
”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”
- (6) Article 19(10) is amended as follows:
- (a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;
  - (b) the following subparagraph is added:  
  
”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”
- (7) Article 21(6) is amended as follows:
- (a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;
  - (b) the following subparagraph is added:  
  
”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”
- (8) Article 22(3) is amended as follows:
- (a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;
  - (b) the following subparagraph is added:  
  
”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”
- (9) Article 24(5) is amended as follows:
- (a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;
  - (b) the following subparagraph is added:

”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(10) Article 25(7) is amended as follows:

- (a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;
- (b) the following sentence is added:

”Those measures, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(11) Article 27(7) is amended as follows:

- (a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;
- (b) the following subparagraph is added:

”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(12) Article 28(3) is amended as follows:

- (a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;
- (b) the following subparagraph is added:

”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(13) Article 29(3) is amended as follows:

- (a) in the first subparagraph the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;
- (b) the following subparagraph is added:

”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(14) Article 30(3) is amended as follows:

- (a) in the first subparagraph the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;

(b) the following subparagraph is added:

”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(15) Article 40(6) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;

(b) the following subparagraph is added:

”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(16) Article 44(3) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;

(b) the following subparagraph is added:

”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(17) Article 45(3) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;

(b) the following subparagraph is added:

”The measures referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(18) Articles 56(5) and 58(4) are amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 64(2)” are deleted;

(b) the following sentence is added:

”Those measures, designed to amend non-essential elements of this directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 64(2).”

(19) Article 64 is amended as follows:

(a) paragraph 2 is replaced by the following:



“2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.”

(b) paragraph 3 is deleted

#### *Article 2*

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

#### *Article 3*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*