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Investment Services: final adoption of Directive is boost for investment firms and their clients

The European Commission has welcomed definitive adoption by the EU's Council of Ministers of the Directive on Financial Instruments Markets, also known as the Investment Services Directive. The Directive will give investment firms an effective "single passport", allowing them to operate throughout the EU on the basis of authorisation in their home Member State. It will mean investment firms can process client orders outside regulated exchanges, which is not currently possible in some Member States. It will also make sure investors enjoy a high level of protection when employing investment firms, wherever they are located in the EU. The Directive establishes, for the first time, a comprehensive regulatory framework governing the organised execution of investor transactions by exchanges, other trading systems and investment firms. It is a crucial part of the Financial Services Action Plan. The Commission proposed the Directive in November 2002 (see IP/02/1706 and MEMO/02/257). It was subsequently amended by the European Parliament in September 2003 (see IP/03/1291) and the resulting text was further amended by the Council. Negotiations between the Parliament, the Council and the Commission before the proposal's second reading in the Parliament ensured that, at that stage, the Parliament was able to approve a compromise text also acceptable to the Council. Member States will now need to implement the Directive within two years of its publication in the EU's Official Journal, due shortly.

Internal Market Commissioner Frits Bolkestein said: "This Directive is a central component of the Financial Services Action Plan. Its adoption means we are on the cusp of completing the FSAP on time, a remarkable achievement for the EU, made possible by excellent cooperation between the Council, the Parliament and the Commission. All of us have worked hard on this Directive, as on others, to overcome differences of view. It has sometimes been a hard road. Everyone has sometimes had to give ground for the greater good - and make no mistake, agreement on this measure will ultimately benefit all Member States by allowing reputable investment firms to work anywhere in the EU with a minimum of red tape while bolstering our defences against dodgy operators. In the end, that will mean lowering the costs of raising capital and ensuring more investment will go where it is most needed and deserved. That in turn will lead to big economic benefits for Europe as a whole."

The Directive will allow investment firms, banks and exchanges to provide their services across borders on the basis of their home country authorisation. It will bring closer into line national rules on the provision of investment services and the operation of exchanges, with the ultimate aim of creating a single European "securities rule book". It will benefit investors, issuers and market participants by promoting efficient and competitive markets, notably by allowing banks and other investment institutions to compete fairly with stock exchanges.

The Directive will considerably enhance investor protection, including by setting minimum standards for the mandate and the powers national competent authorities must have at their disposal and establishing effective mechanisms for real-time cooperation in investigating and pursuing breaches of the Directive.

The final text maintains the principle of a pre-trade transparency obligation whereby "internalisers" (i.e. firms trading outside regulated markets) would be obliged to disclose the prices at which they will be willing to buy from and/or to sell to their clients. However, it limits this disclosure obligation to transactions up to "standard market size", defined as the "average size" for the orders executed in the market. This will guarantee that European wholesale markets will not be subject to the rule and that wholesale broker-dealers will not be subjected to significant risks in their role as market makers.

The Directive also includes a set of protective measures for "internalisers" when they are obliged to quote, so that they can provide this essential service to their customers without incurring undesirable risks. These measures include the possibility to update and withdraw their quotes. It will in addition establish a fair marketplace for retail investors and prevent financial institutions from discriminating between small investors, for example by offering some of them undisclosed improvements to prices publicly quoted (so-called ‘price improvement’).

The Directive is a framework measure in line with the February 2002 agreement with the European Parliament on improving the regulation of EU securities markets, following the recommendations of the Committee of Wise Men chaired by Alexandre Lamfalussy (see IP/02/195). It therefore confines itself to setting out the general high-level obligations which Member State authorities should enforce. More detailed implementing measures will be set down by the Commission, following consultations with market participants and Member States, and taking into account advice from the Committee of European Securities Regulators (CESR).

For more information, please see:

http://www.europa.eu.int/comm/internal_market/en/finances/mobil/isd/index.htm