COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 549 final - COD 468

Brussels, 29.11.1994

OPINION OF THE COMMISSION

pursuant to Article 189b(2) (d) of the EC Treaty
on the European Parliament's amendments
to the Council common position regarding the
proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE AMENDING DIRECTIVES 77/780/EEC AND 89/646/EEC IN THE FIELD OF CREDIT INSTITUTIONS, DIRECTIVES 73/239/EEC AND 92/49/EEC IN THE FIELD OF NON-LIFE INSURANCE, DIRECTIVES 79/267/EEC AND 92/96/EEC IN THE FIELD OF LIFE ASSURANCE, DIRECTIVE 93/22/EEC IN THE FIELD OF INVESTMENT FIRMS AND DIRECTIVE 85/611/EEC IN THE FIELD OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS), WITH A VIEW TO REINFORCING PRUDENTIAL SUPERVISION

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 189 a (2) of the EC Treaty

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1. STAGE REACHED IN THE PROCEDURE

(a) On 28 July 1993 the Commission adopted a proposal for a Directive[1] amending Directives 77/780/EEC and 89/646/EEC (on credit institutions), 73/239/EEC and 92/49/EEC (on non–life insurance), 79/267/EEC and 92/96/EEC (on life assurance) and 93/22/EEC (on investment firms). The proposal was sent to the Council by letter of the same date.

The Council immediately sent copies of the proposal to Parliament and the Economic and Social Committee. It began consideration of the proposal on 9 September.

(b) At its 311th plenary session in Brussels on 21 December 1993, the Economic and Social Committee unanimously adopted an opinion on the proposal for a Directive,[2] approving the principle but requesting certain amendments.

(c) Parliament adopted a legislative resolution embodying its opinion on the Commission proposal for a Directive at its sitting on 9 March 1994.[3]

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1 OJ No C 229, 25.8.1993, p. 10.
2 OJ No C 52, 19.2.1994, p. 15.
3 EP 180.578 - Record of the sitting on 9 March 1994

(d) On 2 May 1994 the Commission adopted and transmitted to the Council an amended proposal[4] worded in such a way as to take account of the consultations with Parliament and the Economic and Social Committee.

(e) On 6 June 1994 the Council adopted a common position[5] which also concerns Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS).

(f) On 26 October 1994 the European Parliament has adopted unanimously two amendments to the common position.

In accordance with the procedure described in Article 189b(2)(d) of the Treaty, the Commission has to deliver an opinion on these amendments.

2. POSITION TAKEN BY THE COMMISSION REPRESENTATIVE AT THE PLENARY SITTING

The European Parliament proposes two amendments to the text of the common position of the Council. The Commission's representative rejected one of these in the plenary session because it threatened a question of principle and risked reopening the compromise which constituted the common position. According to the terms of Article 189b, 3rd paragraph of the Treaty, the Council cannot approve this amendment except unanimously.

3. THE COMMISSION'S OPINION ON THE AMENDMENTS VOTED BY THE EUROPEAN PARLIAMENT

A. Amendment accepted by the Commission

Amendment n° 1

This amendment aims to classify Article 3 in respect of the place of establishment of the central administration and the registered office of a financial institution in the same Member State, by adding "offices of the principal organs of the company" each time the expression "central administration" is used.

The Commission accepts this addition

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4 Document COM(94) 170 final - COD 468.

5 Document 6497/97 EF 18 SURE 2 CODEC 19.

B. Amendment receiving the Commission's negative opinion

Amendment n° 2

This amendment, relating to Article 5 which deals with informing the competent authorities by the external auditors to the financial institution, has two paragraphs. The first aims to include the text of the Commission's initial proposal, whilst the second adds a clause aiming to avoid that the external auditors responsibility is compromised, for violation of professional secrecy, which they have informed the competent authorities in good faith.
The Commission believes, on the one hand, that the text of the common position is more precise than this first paragraph and therefore enables the direct insertion of new provisions into the key directives to be modified and on the other hand, the clause excluding responsibility is inappropriate because the investigation of such facts descends from normal function of external auditors.

The Commission therefore submits a negative opinion on this amendment.

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE AMENDING DIRECTIVES 77/780/EEC AND 89/646/EEC IN THE FIELD OF CREDIT INSTITUTIONS, DIRECTIVES 73/239/EEC AND 92/49/EEC IN THE FIELD OF NON-LIFE INSURANCE, DIRECTIVES 79/267/EEC AND 92/96/EEC IN THE FIELD OF LIFE ASSURANCE, DIRECTIVE 93/22/EEC IN THE FIELD OF INVESTMENT FIRMS AND DIRECTIVE 85/611/EEC IN THE FIELD OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS), WITH A VIEW TO REINFORCING PRUDENTIAL SUPERVISION

(presented by the Commission pursuant to Article 189 (2) of the EC-Treaty)

Common position of the Council	Amendments

(Amendment 1)
ARTICLE 3

1. The following paragraph shall be inserted in Article 8 of Directive 73/239/EEC and in Article 8 of Directive 79/267/EEC:	1. The following paragraph shall be inserted in Article 8 of Directive 73/239/EEC and in Article 8 of Directive 79/267/EEC:
"1a. Member States shall require that the head offices of insurance undertakings be situated in the same Member State as their registered offices."	"1a. Member States shall require that the head offices of insurance undertakings (where the undertaking's governing bodies are established) be situated in the same Member State as their registered offices."
2. The following paragraph shall be inserted in Article 3 of Directive 77/780/EEC:	2. The following paragraph shall be inserted in Article 3 of Directive 77/780/EEC:
"2a. Each Member State shall require that:	"2a. Each Member State shall require that:
- any credit institution which is a legal person and which, under its national law, has a registered office have its head office in the same Member State as its registered office;	- any credit institution which is a legal person and which, under its national law, has a registered office have its head office (where the undertaking's governing bodies are established) in the same Member State as its registered office;
- any other credit institution have its head office in the Member State which issued its authorization and in which it actually carries on its business."	- any other credit institution have its head office (where the undertaking's governing bodies are established) in the Member State which issued its authorization and in which it actually carries on its business."

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