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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2004/39/EC on markets in financial instruments, as regards the implementing powers conferred on the Commission

**DIRECTIVE 2008/.../EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

of

**amending Directive 2004/39/EC
on 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,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Central Bank²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

¹ OJ C 161, 13.7.2007, p. 45.

² OJ C 39, 23.2.2007, p. 1.

³ Opinion of the European Parliament of 14 November 2007 (not yet published in the Official Journal) and Council Decision of ...

Whereas:

- (1) Directive 2004/39/EC¹ 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 Commission².
- (2) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced the regulatory procedure with scrutiny for the adoption of measures of general scope and designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, inter alia by deleting some of those elements or by supplementing the instrument with new non-essential elements.
- (3) In accordance with the statement by the European Parliament, the Council and the Commission³ concerning Decision 2006/512/EC, for the regulatory procedure with scrutiny to be applicable to instruments adopted in accordance with the procedure referred to in Article 251 of the Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.

¹ OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

² OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

³ OJ C 255, 21.10.2006, p. 1.

- (4) The Commission should be empowered to adopt the measures necessary for the implementation of Directive 2004/39/EC in order to take account of technical developments on financial markets and ensure the uniform application of that Directive. Those measures are designed to adapt definitions or modify the scope of exemptions under that Directive; elaborate upon or supplement provisions of that Directive concerning organisational requirements or operating conditions imposed upon investment firms or credit institutions; and 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 by supplementing it with new non-essential elements, they must 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 provides for a time restriction concerning the implementing powers conferred on the Commission. In their statement concerning Decision 2006/512/EC, the European Parliament, the Council and the Commission 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 the Council also declared that they would ensure 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) The Commission should, at regular intervals, evaluate the functioning of the provisions concerning the implementing powers conferred on it in order to allow the European Parliament and the Council to determine whether the extent of those powers and the procedural requirements imposed on the Commission are appropriate and ensure both efficiency and democratic accountability.
- (7) Directive 2004/39/EC should therefore be amended accordingly.
- (8) Since the amendments made to Directive 2004/39/EC by this Directive are technical in nature and concern committee procedure only, 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
Amendments

Directive 2004/39/EC is hereby amended as follows:

1) Article 2(3) shall be amended as follows:

(a) the words ", acting in accordance with the procedure referred to in Article 64(2)," shall be deleted;

(b) the following sentence shall be 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 shall be amended as follows:

(a) in point 2 of paragraph 1, the words ", acting in accordance with the procedure referred to in Article 64(2)" shall be deleted;

(b) paragraph 2 shall be amended as follows:

(i) the terms ", acting in accordance with the procedure referred to in Article 64(2)," shall be deleted;

(ii) the following subparagraph shall be added:

"The measures referred to in this Article, 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).";

3) Article 13(10) shall be amended as follows:

(a) the words ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;

(b) the following sentence shall be 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) in the second and third subparagraphs of Article 15(3), the words ", in accordance with the procedure referred to in Article 64(2)," shall be replaced by ", in accordance with the regulatory procedure referred to in Article 64(3),";

5) Article 18(3) shall be amended as follows:

(a) the words ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;

- (b) the following subparagraph shall be 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) shall be amended as follows:

- (a) the words ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;

- (b) the following subparagraph shall be 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) shall be amended as follows:

- (a) the terms ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;

- (b) the following subparagraph shall be 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) shall be amended as follows:

- (a) the words ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;
- (b) the following subparagraph shall be 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) shall be amended as follows:

- (a) the words ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;
- (b) the following subparagraph shall be 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) shall be amended as follows:

- (a) the words ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;

- (b) the following sentence shall be 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) shall be amended as follows:

- (a) the words ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;

- (b) the following subparagraph shall be 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) shall be amended as follows:

- (a) the words ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;

- (b) the following subparagraph shall be 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) shall be amended as follows:
- (a) in the first subparagraph, the words ", in accordance with the procedure referred to in Article 64(2)" shall be deleted;
 - (b) the following subparagraph shall be 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) shall be amended as follows:
- (a) in the first subparagraph the words ", in accordance with the procedure referred to in Article 64(2)" shall be deleted;
 - (b) the following subparagraph shall be 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) shall be amended as follows:
- (a) the words ", in accordance with the procedure referred to in Article 64(2)" shall be deleted;

- (b) the following subparagraph shall be 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) shall be amended as follows:

- (a) the words ", in accordance with the procedure referred to in Article 64(2)" shall be deleted;

- (b) the following subparagraph shall be 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) shall be amended as follows:

- (a) the words ", in accordance with the procedure referred to in Article 64(2)" shall be deleted;

- (b) the following subparagraph shall be 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) Article 56(5) shall be amended as follows:
- (a) the words ", in accordance with the procedure referred to in Article 64(2)," shall be deleted;
 - (b) the following sentence shall be 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) in Article 58(4), the words ", in accordance with the procedure referred to in Article 64(2)," shall be replaced by ", in accordance with the regulatory procedure referred to in Article 64(3),";
- 20) Article 64 shall be amended as follows:
- (a) paragraph 2 shall be 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 shall be replaced by the following:

"3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.";

(c) the following paragraph shall be added:

"4. By 31 December 2010, and, thereafter, at least every three years, the Commission shall review the provisions concerning its implementing powers and present a report to the European Parliament and to the Council on the functioning of those powers. The report shall examine, in particular, the need for the Commission to propose amendments to this Directive in order to ensure the appropriate scope of the implementing powers conferred on the Commission. The conclusion as to whether or not amendment is necessary shall be accompanied by a detailed statement of reasons. If necessary, the report shall be accompanied by a legislative proposal to amend the provisions conferring implementing powers on the Commission.".

Article 2
Entry into force

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

Article 3
Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President
