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(Acts whose publication is obligatory)

DECISION NO 456/2005/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 9 March 2005****establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 157(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(2) Internet penetration in the Community is still growing considerably. The opportunities offered by the Internet should be exploited in order to enable every individual and organisation in the Community to enjoy the social and economic benefits of sharing information and knowledge. The stage has now been set in Europe to exploit the potential of digital content.

(3) The conclusions of the European Council held in Lisbon on 23 and 24 March 2000 stressed that the shift to a digital, knowledge-based economy, prompted by new goods and services, will be a powerful engine for growth, competitiveness and jobs. On that occasion the role of the content industries in creating added value by exploiting and networking European cultural diversity was specifically recognised.

(4) The eEurope 2005 Action Plan, developing the Lisbon strategy, calls for actions to stimulate the emergence of secure services, applications and content over broadband networks and thus to provide a favourable environment for private investment, for the creation of new jobs, to boost productivity, to modernise public services and to give everyone the opportunity to participate in the global information society.

(1) The evolution of the information society and the emergence of broadband will influence the life of every citizen in the European Union by, *inter alia*, stimulating access to knowledge and new ways of acquiring knowledge, thus increasing the demand for new content, applications and services.

(5) The demand for quality digital content in Europe, with balanced access and user rights, by a broad community, be they citizens in society, students, researchers, SMEs and other business users, or people with special needs wishing to augment their knowledge, or 're-users' wishing to exploit digital content resources to create services, is increasingly apparent.

⁽¹⁾ OJ C 117, 30.4.2004, p. 49.

⁽²⁾ Opinion of the European Parliament of 22 April 2004 (not yet published in the Official Journal), Council Common Position of 24 September 2004 (OJ C 25 E, 1.2.2005, p. 19) and Position of the European Parliament of 27 January 2005 (not yet published in the Official Journal). Council Decision of 28 February 2005.

(6) Digital content stakeholders are content providers (including public and private organisations and institutions that create, collect or own digital content) and content users (including organisations and enterprises that are end-users that reuse and/or add value to digital content). Particular attention should be given to the participation of SMEs.

- (7) The eContent Programme (2001 to 2004) adopted by Council Decision 2001/48/EC ⁽¹⁾, favoured the development and use of European digital content on the Internet and the linguistic diversity of European websites in the information society. The Commission Communication of 10 October 2003 concerning the mid-term evaluation of the eContent Programme reaffirms the importance of acting in this field.
- (8) Technological advances offer the potential to add value to content in the form of embedded knowledge and to improve interoperability at the service level, which is fundamental to accessing and using and distributing digital content. This is particularly relevant to those areas of public interest to be addressed by this programme.
- (9) Fostering of solid business models will enhance the continuity of the projects initiated under this programme, and will thus improve the conditions for greater economic return from services based on access to, and reuse of, digital content.
- (10) A legislative framework has been defined to deal with the challenges of digital content in the information society ⁽²⁾ ⁽³⁾ ⁽⁴⁾.
- (11) Different practices among Member States continue to pose technical obstacles impeding wide access, use, reuse and exploitation of public sector information in the Community.
- (12) Where the digital content involves personal data, Directives 95/46/EC ⁽⁵⁾ and 2002/58/EC ⁽⁶⁾ should be respected and the technologies used should respect and, where possible, enhance privacy.
- (13) Community actions undertaken concerning the content of information should promote the Community's multilingual and multicultural specificity.
- (14) The measures necessary for the implementation of this Decision should 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 ⁽⁷⁾.
- (15) The Commission should ensure complementarity and synergy with related Community initiatives and programmes, in particular those related to education and culture and to the European interoperability framework.
- (16) This Decision lays down, for the entire duration of the programme, a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽⁸⁾, for the budgetary authority during the annual budgetary procedure.
- (17) Since the objectives of the proposed action, namely aiming at making digital content in Europe more accessible, usable and exploitable, cannot be sufficiently achieved by the Member States due to the transnational character of the issues at stake and can therefore, by reason of the European scope and effects of the actions, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives,

HAVE DECIDED AS FOLLOWS:

Article 1

Objective of the Programme

1. This Decision establishes a Community programme for the period 2005 to 2008 to make digital content in Europe more accessible, usable and exploitable, facilitating the creation and diffusion of information, in areas of public interest, at Community level.

The programme shall be known as the 'eContentplus' programme (hereinafter the Programme).

⁽¹⁾ OJ L 14, 18.1.2001, p. 32.

⁽²⁾ Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the reuse of public sector information (OJ L 345, 31.12.2003, p. 90).

⁽³⁾ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, (OJ L 167, 22.6.2001, p. 10).

⁽⁴⁾ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

⁽⁵⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31). Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽⁶⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

⁽⁷⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁸⁾ OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

2. In order to attain the overall aim of the Programme, the following lines of action shall be addressed:

- (a) facilitating at Community level access to digital content, its use and exploitation;
- (b) facilitating improvement of quality and enhancing best practice related to digital content between content providers and users, and across sectors;
- (c) reinforcing cooperation between digital content stakeholders and awareness.

The activities to be carried out under those lines of action target areas of public sector information, spatial data and educational, cultural and scientific content as set out in Annex I. The Programme shall be implemented in accordance with Annex II.

Article 2

Participation

1. Participation in the Programme shall be open to legal entities established in the Member States. It shall also be open to participation of legal entities established in the candidate countries in accordance with bilateral agreements in existence or to be concluded with those countries.

2. Participation in the Programme may be opened to legal entities established in EFTA States which are contracting parties to the EEA Agreement, in accordance with the provisions of that Agreement.

3. Participation in the Programme may be opened, without financial support by the Community, to legal entities established in third countries and to international organisations, where such participation contributes effectively to the implementation of the Programme. The decision to allow such participation shall be adopted in accordance with the procedure referred to in Article 4(2).

Article 3

Competences of the Commission

1. The Commission shall be responsible for the implementation of the Programme.

2. The Commission shall draw up a work programme on the basis of this Decision.

3. In the implementation of the Programme, the Commission shall, in close cooperation with the Member States, ensure general consistency and complementarity with other relevant Community policies, programmes and actions that impinge upon the development and use of European digital content and the promotion of linguistic diversity in the information society, in particular the Community research and technological development programmes, IDA, eTEN, eInclusion, eLearning, Modinis and Safer Internet.

4. The Commission shall act in accordance with the procedure referred to in Article 4(2) for the purposes of the following:

- (a) adoption and modifications of the work programme;
- (b) determination of the criteria and content of calls for proposals, in line with the objectives set out in Article 1;
- (c) assessment of the projects proposed under calls for proposals for Community funding of an estimated amount of Community contribution equal to, or more than, EUR 1 million;
- (d) any departure from the rules set out in Annex II.

5. The Commission shall inform the committee referred to in Article 4 of progress with the implementation of the Programme.

Article 4

Committee

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 5

Monitoring and evaluation

1. In order to ensure that Community aid is used efficiently, the Commission shall ensure that actions under this Decision are subject to prior appraisal, follow-up and subsequent evaluation.

2. The Commission shall monitor the implementation of projects under the Programme. The Commission shall evaluate the manner in which the projects have been carried out and the impact of their implementation in order to assess whether the original objectives have been achieved.

3. The Commission shall report on the implementation of the lines of action referred to in Article 1(2) to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions by mid-2006 at the latest. In this context, the Commission shall report on the consistency of the amount for 2007 to 2008 with the financial perspective. If applicable, the Commission shall take the necessary steps within the budgetary procedures for 2007 to 2008 to ensure the consistency of the annual appropriations with the financial perspective. The Commission shall submit a final evaluation report at the end of the Programme.

4. The Commission shall forward the results of its quantitative and qualitative evaluations to the European Parliament and the Council together with any appropriate proposals for the amendment of this Decision. The results shall be forwarded before presentation of the draft general budget of the European Union for the years 2007 and 2009 respectively.

Article 6

Financial framework

1. The financial framework for the implementation of the Community actions under this Decision for the period from

1 January 2005 to 31 December 2008 is hereby set at EUR 149 million, of which EUR 55,6 million is for the period until 31 December 2006.

2. For the period following 31 December 2006, the amount shall be deemed to be confirmed if it is consistent for this phase with the financial perspective in force for the period commencing in 2007.

3. The annual appropriations for the period from 2005 to 2008 shall be authorised by the budgetary authority within the limits of the financial perspective. An indicative breakdown of expenditure is given in Annex III.

Done at Strasbourg, 9 March 2005.

For the European Parliament

The President

J. P. BORRELL FONTELLES

For the Council

The President

N. SCHMIT

ANNEX I

Actions

I. INTRODUCTION

eContentplus has the overall aim of making digital content in Europe more accessible, usable and exploitable, facilitating the creation and diffusion of information, in areas of public interest, at Community level.

It will create better conditions for accessing and managing digital content and services in multilingual and multicultural environments. It will broaden users' choice and support new ways of interacting with knowledge-enhanced digital content, a feature which is becoming essential to make content more dynamic and tailored to specific contexts (learning, cultural, people with special needs, etc.).

The Programme will pave the way for a structured framework for quality digital content in Europe — The European Digital Content Area — by facilitating transfer of experiences, best practice and cross-fertilisation between content sectors, content providers and users.

Three lines of action are foreseen:

- (a) facilitating at Community level access to digital content, its use and exploitation;
- (b) facilitating improvement of quality and enhancing best practice related to digital content between content providers and users, and across sectors;
- (c) reinforcing cooperation between digital content stakeholders and awareness.

II. LINES OF ACTION

A. Facilitating at Community level access to digital content, its use and exploitation

The activities to be carried out under this line of action encompass the establishment of networks and alliances between stakeholders, encouraging the creation of new services.

Target areas are public sector information, spatial data, learning and cultural content.

Focus will be on:

- (a) supporting a wider recognition of the importance of public sector information (PSI), its commercial value and associated societal implications of its use. Activities shall improve effective cross-border use and exploitation of PSI between public sector organisations and private companies, including SMEs, for added-value information products and services;
- (b) encouraging a wider use of spatial data by public sector bodies, private companies, including SMEs, and citizens through cooperation mechanisms at European level. Activities should tackle both technical and organisational issues, avoiding duplications and underdeveloped territorial data sets. They should promote cross-border interoperability, supporting coordination between mapping agencies and fostering the emergence of new services at European level for mobile users. They should also support the use of open standards;

- (c) fostering the proliferation of open European knowledge pools of digital objects, for education and research communities, as well as the individual. The activities will support the creation of trans-European brokering services for digital learning content, with associated business models. The activities should also encourage the use of open standards, and the creation of large user groups analysing and testing pre-standardisation and specifications schemes with a view to conveying European multilingual and multicultural aspects into the process of definition of global standards for digital learning content;
- (d) promoting the emergence of trans-European information infrastructures for accessing and using high quality European digital cultural and scientific resources through the linking of virtual libraries, community memories, etc. Activities should encompass coordinated approaches to digitisation and collection building, preservation of digital objects and inventories of cultural and scientific digital resources. They should improve access to digital cultural and scientific assets through effective licensing schemes and collective pre-emptive clearing of rights.

B. Facilitating improvement of quality and enhancing best practice related to digital content between content providers and users, and across sectors

The activities to be carried out under this line of action are intended to facilitate the identification and wide diffusion of best practice in methods, processes and operations to achieve higher quality, greater efficiency and effectiveness in the creation, use and distribution of digital content.

These activities encompass experiments that demonstrate searchability, usability, reusability, composability and interoperability of digital content within the context of the existing legal framework while meeting from the early stage of the process the requirements of different target groups and markets in an increasingly multilingual and multicultural environment, and extending beyond mere localisation technologies.

These activities will exploit the benefits of enhancing digital content with machine-understandable data (semantically well-defined metadata based on relevant descriptive terminology, vocabularies and ontologies).

The experiments will be conducted in thematic clusters. The gathering, dissemination and cross-sector fertilisations of gained knowledge will be an integral part of the experiments.

Target application areas are public sector information, spatial data, digital learning and cultural content, as well as scientific and scholarly digital content.

C. Reinforcing cooperation between digital content stakeholders and awareness

The activities to be carried out under this line of action include measures accompanying relevant legislation relating to digital content, and fostering increased collaboration between digital content stakeholders, as well as awareness building. These activities will support the development of benchmarking, monitoring and analysis tools, the impact assessment of the Programme and the dissemination of results. They will identify and analyse emerging opportunities and problems (e.g. trust, quality marking, intellectual property rights in education) and propose, as appropriate, solutions.

ANNEX II

The means for implementing the programme

1. The Commission will implement the Programme in accordance with the technical content specified in Annex I.
 2. The Programme will be executed through indirect action comprising:
 - (a) shared-cost actions
 - (i) Projects designed to increase knowledge so as to improve existing products, processes and/or services and/or to meet the needs of Community policies. The Community funding will normally not exceed 50 % of the cost of the project. Public sector bodies may be reimbursed on the basis of 100 % of additional costs.
 - (ii) Best practice actions to spread knowledge. They will normally be conducted in thematic clusters and linked through thematic networks. The Community contribution for the measures set out under this point will be limited to direct costs deemed necessary or appropriate for achieving the specific objectives of the action.
 - (iii) Thematic networks: networks bringing together a variety of stakeholders around a given technological and organisational objective, so as to facilitate coordination activities and the transfer of knowledge. They may be linked to best practice actions. Support will be granted towards the additional eligible costs of coordinating and implementing the network. The Community participation may cover the additional eligible costs of these measures;
 - (b) accompanying measures

Accompanying measures will contribute to the implementation of the Programme or the preparation of future activities. Measures devoted to the commercialisation of products, process or services, marketing activities and sales promotion are excluded.

 - (i) Studies in support of the Programme, including the preparation of future activities.
 - (ii) Exchange of information, conferences, seminars, workshops or other meetings and the management of clustered activities.
 - (iii) Dissemination, information and communication activities.
 3. The selection of shared-cost actions will be based on calls for proposals published on the Commission's Internet site in accordance with the financial provisions in force.
 4. Applications for Community support should provide, where appropriate, a financial plan listing all the components of the funding of the projects, including the financial support requested from the Community, and any other requests for or grants of support from other sources.
 5. Accompanying measures will be implemented through calls for tenders in accordance with the financial provisions in force.
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*ANNEX III***Indicative breakdown of expenditure**

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|----|--|------------|
| 1. | Facilitating at Community level access to digital content, its use and exploitation | 40 to 50 % |
| 2. | Facilitating improvement of quality and enhancing best practice related to digital content between content providers and users, and across sectors | 45 to 55 % |
| 3. | Reinforcing cooperation between digital content stakeholders and awareness | 8 to 12 % |
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DIRECTIVE 2005/1/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 9 March 2005

amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees

(Text with EEA relevance)

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 Committee ⁽¹⁾,

Having consulted the Committee of the Regions,

Having regard to the opinion of the European Central Bank ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) The Commission Communication of 11 May 1999 entitled 'Implementing the framework for financial markets: action plan' identifies a series of actions that are required in order to complete the single market for financial services.

(2) At its meeting in Lisbon of 23 and 24 March 2000, the European Council called for the implementation of this Action Plan by 2005.

(3) On 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European Securities Markets. In its final report, the Committee of Wise Men called for the establishment of a four-level regulatory framework in order to make the regulatory process for Community securities legislation more flexible, effective and transparent.

(4) In its Resolution on more effective securities market regulation in the European Union, the Stockholm European Council of 23 and 24 March 2001 welcomed the report of the Committee of Wise Men and called for the four-level approach to be implemented.

(5) In the light of those developments, the Commission adopted on 6 June 2001 Decisions 2001/527/EC ⁽⁴⁾ and 2001/528/EC ⁽⁵⁾ setting up, respectively, the Committee of European Securities Regulators (CESR) and the European Securities Committee (ESC).

(6) Democratic accountability and transparency must be inherent in the Lamfalussy process and its extension, which can only be sufficiently guaranteed by respecting the interinstitutional balance with regard to implementing measures.

⁽¹⁾ OJ C 112, 30.4.2004, p. 21.

⁽²⁾ OJ C 58, 6.3.2004, p. 23.

⁽³⁾ Opinion of the European Parliament of 31 March 2004 (not yet published in the Official Journal) and Council Decision of 11 May 2004.

⁽⁴⁾ OJ L 191, 13.7.2001, p. 43.

⁽⁵⁾ OJ L 191, 13.7.2001, p. 45. Decision as amended by Decision 2004/8/EC (OJ L 3, 7.1.2004, p. 33).

- (7) This Directive amends Council Directives 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance ⁽¹⁾, 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ⁽²⁾, 91/675/EEC of 19 December 1991 setting up an insurance committee ⁽³⁾, 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) ⁽⁴⁾ and 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions ⁽⁵⁾ and Directives of the European Parliament and of the Council 94/19/EC of 30 May 1994 on deposit-guarantee schemes ⁽⁶⁾, 98/78/EC of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group ⁽⁷⁾, 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions ⁽⁸⁾, 2001/34/EC of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities ⁽⁹⁾, 2002/83/EC of 5 November 2002 concerning life assurance ⁽¹⁰⁾ and 2002/87/EC of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate. This Directive aims only at making certain changes in the organisational structure of committees. None of the modifications are intended to extend the powers to adopt implementing measures vested in the Commission pursuant to these Directives, nor the powers vested in the Council pursuant to Directive 93/6/EEC.
- (8) In its Resolution of 5 February 2002, the European Parliament endorsed the four-level approach for securities, on the basis of a solemn declaration made before Parliament the same day by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the Chairman of the Parliament's Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process. In its Resolution of 21 November 2002 the Parliament called for certain aspects of that approach to be extended to the banking and insurance sectors subject to a clear commitment on the part of the Council to guarantee a proper institutional balance.
- (9) The commitments made by the Commission regarding securities legislation via the abovementioned declaration of 5 February 2002 and letter of 2 October 2001 should be complemented by sufficient guarantees concerning a proper institutional balance.
- (10) On 3 December 2002, the Council invited the Commission to implement arrangements for the remaining financial services sectors based upon the Final Report of the Committee of Wise Men.
- (11) Safeguards with respect to the extension of the four-level approach are also required because the EU institutions do not yet benefit from an extensive practical experience of the four-level Lamfalussy approach. Furthermore, the first and second Interim Reports of the Interinstitutional Monitoring Group monitoring the Lamfalussy process have made certain remarks and criticisms concerning the functioning of the process.
- (12) The speed of adoption of legislation and the quality of legislation are fundamental objectives of the Lamfalussy process. The success of the Lamfalussy process depends more on the political will of the institutional partners to set up an appropriate framework for the adoption of the legislation than on an acceleration of the setting up of the related technical delegated provisions. In addition, an overemphasis on the speed of setting up of the delegated provisions could create significant problems with regard to the quality of those provisions.
- (13) The extension of the Lamfalussy procedure is without prejudice to possible decisions regarding the organisation of supervision at a European level.
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- ⁽¹⁾ OJ L 228, 16.8.1973, p. 3. Directive as last amended by the 2003 Act of Accession.
- ⁽²⁾ OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2004/39/EC of the European Parliament and of the Council (OJ L 145, 30.4.2004, p. 1).
- ⁽³⁾ OJ L 374, 31.12.1991, p. 32. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).
- ⁽⁴⁾ OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).
- ⁽⁵⁾ OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 2004/39/EC.
- ⁽⁶⁾ OJ L 135, 31.5.1994, p. 5. Directive as amended by the 2003 Act of Accession.
- ⁽⁷⁾ OJ L 330, 5.12.1998, p. 1. Directive as amended by Directive 2002/87/EC.
- ⁽⁸⁾ OJ L 126, 26.5.2000, p. 1. Directive as last amended by Commission Directive 2004/69/EC (OJ L 125, 28.4.2004, p. 44).
- ⁽⁹⁾ OJ L 184, 6.7.2001, p. 1. Directive as last amended by Directive 2004/109/EC (OJ L 390, 31.12.2004, p. 38).
- ⁽¹⁰⁾ OJ L 345, 19.12.2002, p. 1. Directive as amended by Council Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

- (14) For those purposes, as regards the banking sector, the role of the Banking Advisory Committee (BAC) set up by Directive 2000/12/EC should be adapted.
- (15) To reflect that adapted role, the BAC should be replaced by 'the European Banking Committee'.
- (16) The measures necessary for the implementation of Directive 2000/12/EC are measures of general scope and should be adopted in accordance with Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (17) The implementing measures adopted should not modify the essential provisions of the Directives.
- (18) The European Parliament should be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases this period may be shortened. If, within that period, a resolution is passed by the European Parliament, the Commission will re-examine the draft measures.
- (19) In exercising its implementing powers, the Commission should respect the following principles: the need to ensure confidence in financial markets among investors by promoting high standards of transparency in those markets; the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances; the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against economic crime; the need for high levels of transparency and consultation with all market participants and with the European Parliament and the Council; the need to encourage innovation in financial markets if they are to be dynamic and efficient; the need to ensure market integrity by close and reactive monitoring of financial innovation; the importance of reducing the cost of, and increasing access to, capital; the balance of costs and benefits to market participants on a long-term basis (including small and medium-sized businesses and small investors) in any implementing measures; the need to foster the international competitiveness of EU financial markets without prejudice to a much-needed extension of international cooperation; the need to achieve a level playing field for all market participants by establishing EU-wide regulations every time it is appropriate; the need to respect differences in national markets where these do not unduly impinge on the cohesion of the single market; and the need to ensure coherence with other
- Community legislation in this area, as imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.
- (20) Certain existing provisions for technical amendments to Directive 2000/12/EC need to be brought into line with Decision 1999/468/EC.
- (21) In order to ensure institutional and legal consistency with the approach taken in other Community sectors, Commission Decision 2004/10/EC ⁽²⁾ established the European Banking Committee in an advisory capacity to assist the Commission as regards the development of Community banking legislation. References to the advisory functions of the BAC in Directive 2000/12/EC should therefore be deleted.
- (22) As regards the monitoring of observation ratios for the solvency and liquidity of credit institutions, the competencies of the BAC are no longer needed in view of the harmonisation of capital adequacy rules and of developments in the techniques used by credit institutions to measure and manage their liquidity risk.
- (23) Moreover, the substantial progress made in cooperation and exchange of information between supervisory authorities, in particular through Memoranda of Understanding, has rendered superfluous the regular monitoring by the Commission of certain individual supervisory decisions and their systematic reporting to the BAC.
- (24) The establishment of the European Banking Committee should not rule out other forms of cooperation between the different authorities involved in the regulation and supervision of credit institutions, in particular within the Committee of European Banking Supervisors established by Commission Decision 2004/5/EC ⁽³⁾.
- (25) The Insurance Committee (IC) set up under Directive 91/675/EEC is to assist the Commission in the exercise of the implementing powers granted by Directives adopted in the field of insurance, and in particular to make the technical adaptations necessary to take account of developments in the insurance sector; such measures being taken in accordance with Decision 1999/468/EC.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 3, 7.1.2004, p. 36.

⁽³⁾ OJ L 3, 7.1.2004, p. 28.

- (26) Under Directive 91/675/EEC, the IC is also to examine any question relating to the application of Community provisions concerning the insurance sector and, in particular, to advise the Commission on proposals for legislation which the Commission intends to present to the European Parliament and to the Council.
- (27) In order to build an internal market where policyholders and beneficiaries are properly protected, insurance and occupational pensions undertakings operating in the internal market under the principles of freedom of establishment and freedom to provide services are subject to specific Community legislation. To ensure the proper functioning of the internal market and maintain financial stability, that legislation should be capable of being rapidly adapted to market changes affecting those sectors, in particular with regard to financial and technical aspects.
- (28) The role of the IC should therefore be adapted, and this Committee should accordingly be renamed 'the European Insurance and Occupational Pensions Committee'. However, in the occupational pensions field, the European Insurance and Occupational Pensions Committee should not address labour and social law aspects such as the organisation of occupational regimes, in particular compulsory membership and the results of collective bargaining agreements.
- (29) The measures necessary for the implementation of acts covered by Directive 91/675/EEC are measures of general scope and should be adopted in accordance with Article 5 of Decision 1999/468/EC.
- (30) To ensure institutional and legal consistency with the approach taken in other Community sectors, Commission Decision 2004/9/EC ⁽¹⁾, established the European Insurance and Occupational Pensions Committee in an advisory capacity to assist the Commission in the fields of insurance and occupational pensions. References to the advisory functions of the IC in Directive 91/675/EEC should therefore be deleted.
- (31) Directive 85/611/EEC set up the UCITS Contact Committee to assist the Commission by facilitating the harmonised implementation of that Directive through regular consultations, promoting consultation between Member States and advising the Commission, if necessary, on amendments to be made to that Directive.
- (32) The UCITS Contact Committee also acts as a 'comitology' Committee within the meaning of Decision 1999/468/EC to assist the Commission with regard to the technical amendments to be made to Directive 85/611/EEC.
- (33) On 3 December 2002, the Council invited the Commission to take steps in order to transfer to the ESC, *inter alia*, the function of advice to the Commission in the exercise of its implementing powers held by the UCITS Contact Committee.
- (34) In order to fully implement the model set out in recent Directives in the securities field, in particular Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ⁽²⁾, which gives to the ESC the function to advise the Commission in the exercise of its regulatory powers, while leaving the organisation of other aspects of the ESC's work to be governed by Decision 2001/528/EC, it is necessary to delete the provisions setting up, under Article 53 of Directive 85/611/EEC, the organisation and functions of the present UCITS Contact Committee outside its 'comitology' capacity.
- (35) The competences of the ESC should therefore be expressly extended beyond those already conferred upon it by Directive 2003/6/EC, to cover the functions currently laid down in Directive 85/611/EEC. The measures necessary for the implementation of the latter Directive are measures of general scope and should be adopted in accordance with Article 5 of Decision 1999/468/EC.
- (36) It is accordingly necessary to amend Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC, 93/6/EEC, 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

AMENDMENTS TO DIRECTIVES 93/6/EEC, 94/19/EC, AND 2000/12/EC ON THE BANKING SECTOR

Article 1

Directive 93/6/EEC

In the third sentence of Article 7(9) of Directive 93/6/EEC, the words 'and to the Banking Advisory Committee' shall be deleted.

⁽¹⁾ OJ L 3, 7.1.2004, p. 34.

⁽²⁾ OJ L 96, 12.4.2003 p. 16.

*Article 2***Directive 94/19/EC**

In the third subparagraph of Article 3(1) of Directive 94/19/EC, the words 'Banking Advisory Committee' shall be replaced by the words 'European Banking Committee'.

*Article 3***Directive 2000/12/EC**

Directive 2000/12/EC is hereby amended as follows:

1. Article 2(4) shall be replaced by the following:

'4. The Commission, pursuant to the procedure referred to in Article 60(2), shall decide on amendments to the list in paragraph 3.;

2. in Article 2(5), the third subparagraph shall be replaced by the following:

'In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or which have resulted from scission or mergers of existing institutions dependent on or answerable to the central body, the Commission, pursuant to the procedure referred to in Article 60(2), may lay down additional rules for the application of the second subparagraph including the repeal of exemptions provided for in the first subparagraph, where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in the second subparagraph might have an adverse effect on competition.;

3. Article 4 shall be replaced by the following:

*'Article 4***Authorisation**

Member States shall require credit institutions to obtain authorisation before commencing their activities. They shall lay down the requirements for such authorisation subject to Articles 5 to 9, and notify them to the Commission.;

4. in Article 22(9), the second sentence shall be deleted;

5. in Article 22(10), the second sentence shall be deleted;

6. Article 23(1) shall be replaced by the following:

'1. The competent authorities of the Member States shall inform the Commission and the competent authorities of the other Member States:

- (a) of any authorisation of a direct or indirect subsidiary one or more of whose parent undertakings are governed by the laws of a third country;

- (b) whenever such a parent undertaking acquires a holding in a Community credit institution such that the latter would become its subsidiary.

When authorisation is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission in accordance with Article 11.;

7. in Article 24(2), the words 'Banking Advisory Committee' shall be replaced by the words 'European Banking Committee';

8. Article 25(3) shall be replaced by the following:

'3. Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Banking Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.;

9. in the third sentence of Article 49(2), the words 'Banking Advisory Committee' shall be replaced by the words 'European Banking Committee';

10. in Article 52(9), the third sentence shall be replaced by the following:

'The competent authority concerned shall forward such information to the competent authorities of the other Member States.;

11. in Article 56a, second paragraph, first sentence, the words 'The Banking Advisory Committee may' shall be replaced by the words 'The Commission may request the European Banking Committee to';

12. Title VI shall be deleted;

13. Article 60(2) shall be replaced by the following:

'2. The Commission shall be assisted by the European Banking Committee instituted by Commission Decision 2004/10/EC ⁽¹⁾ (hereinafter referred to as the Committee).

⁽¹⁾ OJ L 3, 7.1.2004, p. 36.;

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.

The Committee shall adopt its rules of procedure.

(b) the acquisition of holdings by direct or indirect parent undertakings governed by the law of the third country in question.

14. in Article 64(2) and (6), the words 'and the Banking Advisory Committee' shall be deleted.

(*) OJ L 184, 17.7.1999, p. 23.'

CHAPTER II

AMENDMENTS TO DIRECTIVES 73/239/EEC, 91/675/EEC, 92/49/EEC, 98/78/EC AND 2002/83/EC ON THE INSURANCE AND OCCUPATIONAL PENSIONS SECTORS

Article 4

Directive 73/239/EEC

Directive 73/239/EEC is hereby amended as follows:

1) Article 29a shall be replaced by the following:

'Article 29a

1. The competent authorities of the Member States shall inform the Commission and the competent authorities of the other Member States:

- (a) of any authorisation of a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the law of a third country;
- (b) whenever such a parent undertaking acquires a holding in a Community insurance undertaking which would turn the latter into its subsidiary.

2. When the authorisation referred to in paragraph 1(a) is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of a third country, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission.;

2) in Article 29b(4), the second subparagraph shall be replaced by the following:

'In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure referred to in Article 5 of Decision 1999/468/EC (*) and in compliance with Article 7(3) and Article 8 thereof that the competent authorities of the Member States must limit or suspend their decisions regarding the following:

- (a) requests for authorisation, whether pending at the moment of the decision or submitted thereafter;

Article 5

Directive 91/675/EEC

Directive 91/675/EEC is hereby amended as follows:

1. in the title, the words 'Insurance Committee' shall be replaced by the words 'European Insurance and Occupational Pensions Committee';

2. Article 1 shall be replaced by the following:

'Article 1

1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC of 5 November 2003 (*) (hereinafter the Committee).

2. The chairperson of the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2004/6/EC (**) shall participate at the meetings of the Committee as an observer.

3. The Committee may invite experts and observers to attend its meetings.

4. The secretariat of the Committee shall be provided by the Commission.

(*) OJ L 3, 7.1.2004, p. 34.

(**) OJ L 3, 7.1.2004, p. 30.;

3. Article 2 shall be replaced by the following:

'Article 2

1. Where acts adopted in the field of direct non-life insurance and direct life assurance, reinsurance and occupational pensions confer on the Commission powers for the implementation of the rules which they lay down, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (*) 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.

2. The Committee shall adopt its rules of procedure.

(*) OJ L 184, 17.7.1999, p. 23.;

4. Articles 3 and 4 shall be deleted.

Article 6

Directive 92/49/EEC

In the first sentence of Article 40(10) of Directive 92/49/EEC, the words 'submit to the Insurance Committee set up by Directive 91/675/EEC a report summarising' shall be replaced by the words 'inform the European Insurance and Occupational Pensions Committee of'.

Article 7

Directive 98/78/EC

Directive 98/78/EC is hereby amended as follows:

1. Article 10a(3) shall be replaced by the following:
- '3. Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Insurance and Occupational Pensions Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.;
2. Article 11(5) shall be replaced by the following:
- '5. Not later than 1 January 2006 the Commission shall issue a report on the application of this Directive and, if necessary, on the need for further harmonisation.'

Article 8

Directive 2002/83/EC

Directive 2002/83/EC is hereby amended as follows:

1. in the first sentence of Article 46(9), the words 'the Commission shall submit to the Insurance Committee a report summarising' shall be replaced by the words 'the Commission shall inform the European Insurance and Occupational Pensions Committee of';

2. Article 58 shall be replaced by the following:

'Article 58

Information from Member States to the Commission

The competent authorities of the Member States shall inform the Commission and the competent authorities of the other Member States:

- (a) of any authorisation of a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the laws of a third country;
- (b) whenever such a parent undertaking acquires a holding in a Community assurance undertaking which would turn the latter into its subsidiary.

When the authorisation referred to in point (a) is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission and to the other competent authorities.;

3. Article 65(1) shall be replaced by the following:

'1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC (*).

(*) OJ L 3, 7.1.2004, p. 34.'

CHAPTER III

AMENDMENTS TO DIRECTIVES 85/611/EEC AND 2001/34/EC ON THE SECURITIES SECTOR

Article 9

Directive 85/611/EEC

Directive 85/611/EEC is hereby amended as follows:

1. Article 6c shall be amended as follows:
 - (a) in paragraph 9, the second sentence shall be replaced by the following:

'Every two years the Commission shall issue a report on such cases.;
 - (b) in paragraph 10, the second sentence shall be replaced by the following:

'Every two years the Commission shall issue a report on such cases.;
2. in Article 14(6), the second subparagraph shall be deleted;

3. in Article 21(4), the third sentence shall be replaced by the following:

‘Such information shall be the subject of exchanges of views within the European Securities Committee.’;

4. in the third subparagraph of Article 22(4), the fourth sentence shall be replaced by the following:

‘Such communications may be the subject of exchanges of views within the European Securities Committee.’;

5. the title of Section X shall be replaced by the following:

‘European Securities Committee’;

6. Article 53 shall be deleted;

7. Article 53a shall be replaced by the following:

‘Article 53a

The technical amendments to be made to this Directive in the following areas shall be adopted in accordance with the procedure referred to in Article 53b(2):

- (a) clarification of the definitions in order to ensure uniform application of this Directive throughout the Community;
- (b) alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.’;

8. the following Article shall be inserted:

‘Article 53b

1. The Commission shall be assisted by the European Securities Committee instituted by Commission Decision 2001/528/EC (*), hereinafter “the Committee”.

2. 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.

3. The Committee shall adopt its rules of procedure.

(*) OJ L 191, 13.7.2001, p. 45. Decision as amended by Decision 2004/8/EC (OJ L 3, 7.1.2004, p. 33).

(**) OJ L 184, 17.7.1999, p. 23.’

Article 10

Directive 2001/34/EC

Directive 2001/34/EC is hereby amended as follows:

- 1. Article 108 shall be deleted;
- 2. Article 109 shall be replaced by the following:

‘Article 109

1. For the purpose of adjusting, in the light of the requirements of the economic situation, the minimum amount of the foreseeable market capitalisation laid down in Article 43(1), the Commission shall submit to the European Securities Committee instituted by Commission Decision 2001/528/EC of 6 June 2001 (*) a draft of the measures to be taken.

2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (**) shall apply, having regard to Article 8 thereof.

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

3. The Committee shall adopt its rules of procedure.

(*) OJ L 191, 13.7.2001, p. 45. Decision as amended by Decision 2004/8/EC (OJ L 3, 7.1.2004, p. 33).

(**) OJ L 184, 17.7.1999, p. 23.’

CHAPTER IV

AMENDMENT TO DIRECTIVE 2002/87/EC ON FINANCIAL CONGLOMERATES

Article 11

Directive 2002/87/EC

Article 19(2) of Directive 2002/87/EC shall be replaced by the following:

- 2. Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Banking Committee, the European Insurance and Occupational Pensions Committee and the Financial Conglomerates Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.’

CHAPTER V

FINAL PROVISIONS

Article 12

Implementing measures

1. The implementing measures adopted in accordance with the procedure referred to in Articles 5 and 7 of Decision 1999/468/EC having regard to the provisions of Article 8 thereof must not modify the essential provisions of the Directives.
2. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. Should the conditions established under the Treaty governing the exercise of implementing powers conferred on the Commission be modified, the Commission shall review this Directive and, if appropriate, propose amendments. Such a review shall in any case be carried out by 31 December 2007 at the latest.

Done at Strasbourg, 9 March 2005.

For the European Parliament
The President
J.P.BORRELL FONTELLES

Article 13

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 13 May 2005.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 14

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 15

Addressees

This Directive is addressed to the Member States.

For the Council
The President
N. SCHMIT
