



# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives	
Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.05 Insurance, pension funds 2.50.10 Financial supervision	

Key players			
European Parliament	Former committee responsible		
	 Legal Affairs, Citizens' Rights		26/07/1994
		PPE <a href="#">JANSSEN VAN RAAY James L.</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">1856</a>	19/06/1995
	Development	<a href="#">1805</a>	25/11/1994
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">1764</a>	06/06/1994

Key events			
28/07/1993	Legislative proposal published	COM(1993)0363	Summary
13/09/1993	Committee referral announced in Parliament, 1st reading		
17/02/1994	Vote in committee, 1st reading		Summary
17/02/1994	Committee report tabled for plenary, 1st reading	A3-0085/1994	
08/03/1994	Debate in Parliament		
09/03/1994	Decision by Parliament, 1st reading	T3-0125/1994	Summary
02/05/1994	Modified legislative proposal published	COM(1994)0170	Summary
06/06/1994	Council position published	<a href="#">06497/1/1994</a>	Summary
22/07/1994	Committee referral announced in Parliament, 2nd reading		

15/09/1994	Vote in committee, 2nd reading		Summary
15/09/1994	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A4-0007/1994</a>	
25/10/1994	Debate in Parliament		
26/10/1994	Decision by Parliament, 2nd reading	T4-0052/1994	Summary
25/11/1994	Parliament's amendments rejected by Council		
30/03/1995	Formal meeting of Conciliation Committee		
30/03/1995	Final decision by Conciliation Committee		Summary
11/05/1995	Joint text approved by Conciliation Committee co-chairs	<a href="#">03608/2/1995</a>	
11/05/1995	Report tabled for plenary, 3rd reading	<a href="#">A4-0106/1995</a>	
18/05/1995	Decision by Parliament, 3rd reading	T4-0203/1995	Summary
19/06/1995	Decision by Council, 3rd reading		Summary
29/06/1995	Final act signed		
29/06/1995	End of procedure in Parliament		
18/07/1995	Final act published in Official Journal		

### Technical information

Procedure reference	1993/0468(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC before Amsterdam E 057-p2
Stage reached in procedure	Procedure completed
Committee dossier	CODE/4/06233

### Documentation gateway

Legislative proposal		COM(1993)0363 <a href="#">OJ C 229 25.08.1993, p. 0010</a>	28/07/1993	EC	Summary
Reconsultation		COM(1993)0570	10/11/1993	EC	
Economic and Social Committee: opinion, report		<a href="#">CES1304/1993</a> <a href="#">OJ C 052 19.02.1994, p. 0015</a>	21/12/1993	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading		A3-0085/1994 <a href="#">OJ C 077 14.03.1994, p. 0002</a>	17/02/1994	EP	
Text adopted by Parliament, 1st reading/single reading		T3-0125/1994 <a href="#">OJ C 091 28.03.1994, p. 0037-0061</a>	09/03/1994	EP	Summary
Modified legislative proposal		COM(1994)0170	02/05/1994	EC	Summary
Council position		<a href="#">06497/1/1994</a> <a href="#">OJ C 213 03.08.1994, p. 0029</a>	06/06/1994	CSL	Summary

Commission communication on Council's position		SEC(1994)1174	17/07/1994	EC	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A4-0007/1994</a> <a href="#">OJ C 323 21.11.1994, p. 0005</a>	15/09/1994	EP	
Text adopted by Parliament, 2nd reading		T4-0052/1994 <a href="#">OJ C 323 21.11.1994, p. 0038-0056</a>	26/10/1994	EP	Summary
Commission opinion on Parliament's position at 2nd reading		COM(1994)0549	29/11/1994	EC	
Joint text approved by Conciliation Committee co-chairs		<a href="#">03608/2/1995</a>	11/05/1995	CSL/EP	
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		<a href="#">A4-0106/1995</a> <a href="#">OJ C 151 19.06.1995, p. 0002</a>	11/05/1995	EP	
Text adopted by Parliament, 3rd reading		T4-0203/1995 <a href="#">OJ C 151 19.06.1995, p. 0166-0184</a>	18/05/1995	EP	Summary

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Directive 1995/26](#)  
[OJ L 168 18.07.1995, p. 0007](#) Summary

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

The proposal for a Directive is intended to modify the Framework Directives for the financial services sector, which comprises banks (Second Banking Directive), insurance (third-generation insurance Directives) and movable property (Investment Services Directive). The objective is to strengthen the powers of the supervisory authorities to make them better able to prevent fraud and other irregularities in the financial services sector. The following are therefore proposed: - a provision whereby, when a financial undertaking forms part of a group, the structure of the group must be sufficiently transparent to allow adequate monitoring of that financial undertaking. To that end, sufficient information must be disclosed to the competent authorities at the time of initial authorisation; - a provision whereby credit institutions and insurance companies must have their headquarters in the same Member State as their registered offices; - additions to the list of bodies with which the competent authorities may exchange confidential information relating to monitoring, including the authorities responsible for monitoring the liquidators of financial undertakings and external auditors; - additions to the list of potential addressees of information to include the bodies responsible for monitoring the application of company law and payment systems; - a requirement that external auditors notify the competent authorities of any irregularities they may encounter when carrying out their instructions. ?

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

The report by Mr van RAAY (NL, PPE) was adopted by the Committee on Legal Affairs. It aimed to prevent the abuses that were possible through the very liberal regime in force in the internal market, abuses that had been noted, for example, in the BCCI case. In fact, it had its registered office in Luxembourg, whilst operations were carried out from its branch in London, thus avoiding supervision by the Luxembourg authorities. The directive proposed that the head office of a financial enterprise should be located in the same Member State as its registered office and where authorisation was requested. This should prevent cases similar to that of BCCI, in which the authorities of the country of authorisation had practically no means of carrying out supervision. The only amendment tabled came from the rapporteur's desire to provide

clarification by replacing the term "head office" of an enterprise with "directorate-general (headquarters of the main decision-making bodies)" of an enterprise. ?

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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Parliament approved the Commission proposal subject to the change introduced by the only amendment adopted, which aimed to clarify, for the purposes of transparency, the requirement for financial enterprises to have their head offices, in the form of a directorate-general, in the same Member State as their registered office. The Commission accepted Parliament's amendment. ?

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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The Commission's amended proposal took over the European Parliament's amendment aimed at aligning the wording of Article 3 of the proposal, on situating the head office and registered office of a financial company in the same Member State, with Article 58 of the Treaty. Furthermore, the Commission removed recital 15 of its proposal which related to the possibility of charging a single external auditor with organising and coordinating the various statutory audits of a group's accounts. ?

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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The common position only took over a small part of the Commission's amended proposal, which took account of the amendment adopted by the European Parliament. Furthermore, certain provisions of the text differed formally and in substance from the Commission proposal. The Council's amendments, without wishing to affect the aims of the proposal, were intended to: step up monitoring of financial undertakings by extending the scope of the directive; respect the principle of subsidiarity by giving Member States the flexibility needed to take account of the specific situations that existed in each Member State; facilitate the direct incorporation of new provisions in the framework directives to be amended. More specifically, the Council moved the text of Article 7 of the Commission proposal to Article 1 of the common position. A reference to the Ucits was added in light of the inclusion of Directive 85/611/EEC among the basic directives to be amended. - With regard to transparency in the grouping of undertakings to which a financial company was connected, the common position: introduced the term "close links" instead of "grouping"; clarified and extended the definition of the term "close links" in order to facilitate monitoring of a group by including natural persons, subsidiary undertakings of a subsidiary undertaking and sister companies permanently linked to one and the same person by a control relationship; extended the powers of the competent authorities and provided them with the ability to assess the information that the undertakings should provide on changes to the structure of the group to which they belonged; - In the context of Article 3 on the location of the head office of a financial undertaking, the situation of certain undertakings that did not have company status was taken into account; - With regard to the extension of the opportunities for the exchange of information between the supervising authorities and certain other qualified authorities (Article 4), solutions already in place in certain Member States, as well as the Ucits and "undertakings that took part in those activities" were expressly included in the scope of the directive; similarly, the specific situation of the monetary authorities and authorities responsible for the supervision of payment systems was given special consideration; Finally, the common position set out the scope of the requirement for account auditors to inform the competent authorities of irregularities detected within financial undertakings. ?

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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The Committee on Legal Affairs approved all the amendments tabled by the rapporteur to the draft directive. ?

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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Parliament amended the Council's common position with the adoption of two amendments aimed at clarifying: - the requirement for financial undertakings to have their head office, in the form of a directorate-general, in the same Member State as their registered office; - that the Member States should ensure that all persons charged with carrying out the statutory audits of accounts of financial undertakings were required to inform the authorities responsible for prudential supervision of any aspect that might have result in serious reservations with regard to the certification of accounts or refusal to certify them, put the company at risk, seriously affect the development of its activities, threaten the protection of the client, or indicate that the principles of sound management had been seriously infringed. ?

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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In light of the amendments tabled by the EP, the Conciliation Committee agreed to clarify in Article 5(2) of the common position that, within the meaning of the Directive, the disclosure in good faith of certain information on the financial condition of a banking institution by auditors did not

constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and did not involve such persons in liability of any kind. The joint text thus included this stipulation. Therefore, auditors who believed that they had information that demonstrated that a financial institution was in danger of bankruptcy should not fear any legal consequences as a result of disclosing this information to the competent authorities. Thus auditors enjoyed the necessary legal protection demanded by the sector for cooperation in the implementation of the Directive. As regards Amendment No 1 to Article 3, Parliament welcomed the clarification introduced by the Council and accepted the argument that any attempts to clarify the text further could lead to complications in the transposition of the Directive into national law. As a consequence, the EP delegation no longer felt that it needed to insist upon this first amendment.

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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The European Parliament approved the joint text concerning the proposal to amend the Directives aimed at reinforcing prudential supervision.  
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## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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The Council adopted, insofar as it was concerned, a 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. This is the outcome of the conciliation procedure with the European Parliament (Article 189b of the EC Treaty), which led to the establishment of a joint text at the meeting on 30 March 1995 (see Joint Press Release 6125/95, Presse 104). The joint text was approved by the European Parliament on 18 May 1995.

## Prudential supervision of credit institutions, life assurance and non-life insurance, UCITS: review of directives

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PURPOSE: to modify the Framework Directives for the financial services sector, which comprises banks (Second Banking Directive), insurance (third-generation insurance Directives) and movable property (Investment Services Directive), with the objective of strengthening the powers of the supervisory authorities to make them better able to prevent fraud and other irregularities. LEGISLATIVE ACT : [Directive 95/26/EC](#) of the European Parliament and of the Council

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.

CONTENT : The Directive makes the following provisions:

-when a financial undertaking forms part of a group, the structure of the group must be sufficiently transparent to allow adequate monitoring of that financial undertaking. To that end, sufficient information must be disclosed to the competent authorities at the time of initial authorisation;

-the Directive used the term "close links" instead of "grouping";

-the Directive clarifies and extends the definition of the term "close links" with a view to facilitating surveillance of a group by including natural persons, subsidiary undertakings of a subsidiary undertaking and sister companies permanently linked to one and the same person by a c o n t r o l r e l a t i o n s h i p ;

-the head offices of credit institutions and insurance undertakings should be situated in the same Member State as their registered offices. The situation of certain undertakings that did not have company status was taken into consideration;

- there are additions to the list of bodies with which the competent authorities could exchange confidential information concerning surveillance, by including authorities responsible for overseeing the bodies involved in the liquidation of financial undertakings and persons charged with carrying out the statutory audits of accounts;

-exchanges of information between, on the one hand, the competent authorities and, on the other, central banks and other bodies with a similar function in their capacity as monetary authorities and, where appropriate, other public authorities responsible for supervising payment systems are also authorized;

-the same obligation of professional secrecy on the authorities responsible for authorizing and supervising Ucits and the undertakings that take part in those activities and the same possibilities for exchanging information as those granted to the authorities responsible for authorizing and supervising credit institutions, investment firms and insurance undertakings, are included in Directive 85/611/EEC;

- an auditor has a duty to report promptly to the competent authorities, wherever, as provided for by this Directive, he becomes aware, while carrying out his tasks, of certain facts which are liable to have a serious effect on the financial situation or the administrative and accounting organization of a financial undertaking;

-the specific situation of monetary authorities and the authorities responsible for supervising payment systems is given special consideration.

DATE OF TRANSPOSITION : 18 July 1996

