

Issues Regarding EU Compliance in the Financial Sector

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Introduction

The issue of “Compliance”, that is, conformity with something, can be viewed from three different angles with regard to the European integration of banks and financial institutions.

Firstly, whether the banks themselves — their mechanisms, internal organisation and activities — are in conformity with European legislation and institutions.

Secondly, whether their principal client groups are in such conformity.

And thirdly and finally, whether this conformity exists not only from the legislative and procedural perspective, but also with regard to the competitiveness of the banks in the environment in which they are functioning. This third aspect does not relate to conformity with regulations, but is a matter of indicators of a given institution’s degree of success in economic competition.

The logical route for judging the level of “compliance” begins from the inside — that is, judging whether the organisation meets the requirements that EU legislation has placed on it. It is therefore appropriate to focus on an inventory of these requirements, and to comment on the main ones in terms both of the status quo and of expected future developments.

The Banking Sector

A single banking market became reality as of January 1, 1999, when the **Second Banking Directive** (89/646/EEC) went into effect. This directive introduced the doctrine of a single banking licence permitting banks and other financial institutions to establish branches and offer services throughout the EU. It contains a list of the banking services that can be offered in all the Member States on the basis of the **single licence**. Additionally, as a supplement to the **First Banking Directive** (77/780/EEC), this directive coordinates legal, regulatory and administrative measures that concern banking operations.

A single banking market is founded on the following three pillars:

- **Sufficient harmonisation** in all Member States of laws and practice pertaining to the rules for opening and operating banks, capital coverage of credit and market risk, limits on exposure to a single client or group of related clients, and accounting and auditing regulations including the rules governing consolidation.
- Supervision by the home Member State, including closer cooperation between national supervisory authorities. Banks operating in other EU Member States are supervised by the oversight institutions in their country of origin; that is, in the country which issued the single banking licence and where the bank's registered office is located. In addition, the subsidiaries of credit institutions are supervised on a consolidated basis.
- **Mutual recognition of the rules and regulations** of the supervisory authority in the country of origin by supervisory bodies in other Member States where the bank is also active. The granting of licences to subsidiaries of banks based outside the EU is, in principle, subject to the same regulations, and needs to be stipulated in an international agreement between the country in question and the EU. If such a subsidiary obtains permission to operate, it acquires the same rights as banks from the EU.

In order to create a level-playing field for all banks and financial institutions in the EU, and in order to prevent the migration of banks' main headquarters to third countries where banking supervision is more benevolent, the following **supplementary measures to the Second Banking Directive** were enacted:

- **Rules on the preparation of annual accounts and consolidated accounts of banks and other financial institutions** (Directive 86/635/EEC and Directive 89/117/EEC),
- **Harmonisation of the own funds of credit institutions** (Directive 89/299/EEC),
- **Definition of the solvency ratio for credit institutions** (Directive 89/647/EEC),
- **Rules on the capital adequacy of investments firms and credit institutions** (Directive 93/6/EEC, amending Directive 98/31/EC and amending Directive 98/33/EC),
- **Rules on the prevention of the use of the financial system for the purpose of money laundering** (Directive 91/308/EEC and amended by 2001/97/EC),
- **Rules on the supervision of credit institutions on a consolidated basis** (Directive 92/30/EEC),
- **Rules on the monitoring and control of large exposures of credit institutions** (Directive 92/121/EEC),
- **Deposit-guarantee schemes** (Directive 94/19/EC).

All but three of these measures went into effect on January 1, 1993, with the directive concerning exposures of credit institutions entering force on January 1, 1994, the directive instituting deposit-guarantee schemes on January 1, 1995 and the directive on capital adequacy on January 1, 1996.

All the directives regulating the banking industry were consolidated into one text in **Directive 2000/12/EC**.

The **authority of supervisory authorities** was further strengthened by Directive 95/26/EC. This includes "horizontal" measures concerning other financial sectors (investment companies and insurers). Coordination of winding-up proceedings of credit institutions was accomplished by Directive 2001/24/EC.

Payments Scheme

The **Charter of Payments System Users in the EU** was adopted for the purposes of the single internal financial market, and it represents a parallel stream of harmonisation in the area of payments systems. The charter is based on the principle of the best possible service where:

- the bank must inform its clientele of the **most advantageous offers** of financial services available;
- the user must have, in advance, complete information concerning the **total costs of a payment**;
- the user must have the opportunity to select all services necessary for the recipient to receive the **full transferred amount**;
- foreign payments within the Union are to be **accelerated** so that they require the same time interval for completing a transaction with the **same reliability** as domestic payments;

Auxiliary procedures for foreign payments that are near the quality of those for domestic payments are available to users.

Cross-border payments are defined in detail by Directive 97/5/EC. This aims to set minimum requirements for cross-border payments so that the transfer of funds from one EU Member State to another can be carried out quickly, reliably and at an acceptable cost. This directive was supplemented by Regulation No. 2560/2001/EC concerning **cross-border payments in euro**. Unlike Directive 97/5/EC, this regulation concerns all payments up to EUR 50,000, including credit card transactions. The main goal of the regulation is to eliminate the differences between various fees that are levied on domestic payments or payments between two Member States.

Directive 2000/46/EC also concerns payments, allowing **non-bank institutions to issue electronic money**, and safeguarding their financial integrity and competitiveness with other financial institutions.

Tax Savings

The banking sector is closely affected by **the coordination of national tax systems** as set out in Directive 2003/48/EC. The purpose of the directive is to make it possible for interest on savings accounts held by non-residents to be taxed under the law of the state where the depositor is a resident, and thereby remove barriers to the free movement of capital in the single market.

Financial Services Action Plan

Accepted by the European Commission in a Communication on 05/11/1999, the **Financial Services Action Plan** represents a strategic realignment of European regulation of financial services and will have a medium-term impact. It is aimed at creating an internal market in financial services, and at an overall increase in EU productivity. It covers the entire financial market, not just the banking sector.

Full implementation of the Action Plan was scheduled for completion by the end of 2005 — the deadline set at the Lisbon summit in March 2000. As of November 2003, when the most recent report on progress in instituting the plan was published, a total of 36 legislative measures had been adopted and more were being drafted. Progress in implementing the Action Plan is evaluated every six months in the form of progress reports.

The objectives of the Action Plan include: facilitation of access to investment capital for viable and promising projects; the introduction of a “European passport” for all types of financial services and for all markets and Member States; the removal of barriers to investment in pension funds; promotion of the integration and transparency of government bond markets; facilitation of cross-border repo operations; and increased comparability of corporate financial statements.

Application of EU Law in the Czech Republic

The European Association Agreement between the Czech Republic and the EU went into effect on February 1, 1995. One aim of that agreement was to provide a framework for the gradual integration of banking services in the internal market of the Union. In Articles 69 and 70, the Czech Republic undertook to approximate its law in general, including its banking legislation. This process was further aided by the **White Book for Integrating Central and Eastern European Nations to the Single Market**, which was published by the European Commission in 1995.

The requirements of the European Agreement for adapting the law were extended during the course of the negotiations on the accession of the Czech Republic to the EU. As part of negotiations on the free movement of services chapter, the Czech Republic did not request a derogation, and committed to coordinating all legislation by the date of entry. This commitment was fulfilled through several partial amendments to the Banking Act. Finally, the main **harmonising amendment in the form of Act No. 129/2002 Coll.** went into effect at the beginning of May, 2002. With the passage of this amendment and the subsequent adoption of new supervisory measures by the Czech National Bank, the Czech legal system was fully harmonised with current EU banking and banking supervision law, and was to a large extent also brought into line with other acknowledged international standards.

The main pillars of the amendment are:

1. **A more detailed description of requirements for supervision on a consolidated basis** – Full enforcement of regulations will be pursued at the level of individual banks parent companies of banking subsidiaries (the law also includes transitional provisions).
2. **Changes in the deposit-guarantee scheme** – Compensation for authorised parties is provided at 90%, but with a maximum of EUR 25,000 per authorised party and bank. The possibility for third parties with a link to account funds to receive compensation, an expansion of insurance on foreign currency accounts, deposit certificates, adjustment of the procedure for paying compensation so as to conform to EU directives, the principle of insurance in the home country of the bank, and the possibility of insuring branches.
3. **The principle of a single banking licence** – A mechanisms for recognising banking licences issued by EU states and states of the European Economic Area in our country as well as abroad; the possibility exists of penalizing parties that abuse a licence.
4. **A more exact specification of the law's applicability**, including allowing foreign branches of Czech banks or Czech banks that are a part of a foreign conglomerate to fulfil their obligations to foreign supervisory bodies.
5. **A basis for cooperation between bank supervisory authorities** in the Czech Republic and counterpart offices in other states, and for fulfilling other obligations and exercising other rights concerning bank oversight that stem from Czech EU membership (consultation and information procedures, the right to on-site inspection, specification of professional secrecy rights exactly according to European requirements, etc.)
6. **Regulation of the activities of electronic money institutions** – Authorisation to issue electronic money is limited to banks, foreign bank branches and branches of foreign electronic money institutions active in the Czech Republic that hold the single licence (these institutions must fulfil the requirements set out in Directive 2000/46/EC and submit to similar banking supervision).
7. A new obligation of banks to **take effective action in resolving client complaints** – banks and foreign bank branches are obliged to introduce effective procedures for resolving client complaints and to inform all departments in writing in the corporate language or that of the state where the bank is operating.
8. **Amendment of several other provisions** of the Bank Act such that the law reaches the same results as those intended by the EU directives, even in circumstances and cases that are currently uncommon.

Some of the provisions of the amending act will not take effect until the day of Czech accession to the EU. These are, among others, the doctrine of the single banking licence, the principle of control and supervision by the home state, information disclosure obligations to the European Commission and cooperation with the supervisory bodies of other Member States.

A positive aspect of this legislation is the fact that it extends jurisdiction to additional states in the event of new international agreements with the EU (as the agreement with the EU anticipates), and at the same time ensures that the licence's advantages will not be accessible to banks that are expressly excluded by European directives or banks from states that in the future negotiate derogations.

Deposit Insurance

Deposit insurance issues are touched on only minimally by banking amendment No. 129/2002 Coll. The reason for this lies in the fact that the main block of coordinating provisions in this area was accepted last year in autumn as part of a **parliamentary amendment to the Bank Act** (Act No 319/2001 Coll.). The more recent amendment therefore involves only an adjustment of a few small additional amendments ensuring the full harmonisation of the law with the directive on deposit-guarantee schemes (Directive 94/19/EC). Worth mentioning is the possibility of insurance at the Deposit Insurance Fund for branches of banks from European Union Member States. It will usually involve branches from

countries that are not required to guarantee insurance to a limit of EUR 20,000. The law also reflects the requirement of this directive that forbids making use of differences in insurance schemes for claims on deposits in advertising.

Payments

During the preparation of the European coordinating amendment to the bank act, it was decided to consider payments as its own legal rule and to create a law solely on payments. European legislation on payments concerns more subjects than just banks, so it therefore appeared more appropriate to create the **special law on payments** (124/2002 Coll.) that went into force on January 1, 2003.

Its contents concern the implementation of the EU directives on cross-border transfers (97/5/EC), on settlement finality in payment and securities settlement systems (Directive 98/26/EC), and part of the directive on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (Directive 2000/46/EC).

The purpose of the new legislative adjustments is to increase **the legal security of bank clients** and other institutions making payment transfers and **the security of payment systems** (with the law's protection of certain payment systems from the effect of client insolvency).

The law creates conditions for respecting the EU recommendation on transactions executed through electronic payment methods with the aim of increasing customer confidence and deepening public trust in electronic payments.

The law (for the first time in Czech legislation) defines **what electronic payments are**, considering them to be either the classic means of accessing an account (e.g. a standard card), or electronic money (e-money).

A prime example of protection of a client who uses any kind of electronic payment is the principle of **standard commercial terms and conditions**. The law empowers the Czech National Bank to issue standard terms and conditions of business for the use of electronic payments, and obliges their issuers to include information in their terms and conditions as to the extent to which the latter correspond to the standards of the CNB.

Another example of greater protection and legal security of clients is the newly instituted **obligation for customer compensation**. The institution that sent an order, regardless of guilt or how mistakes were made in effecting the transfer, always bears responsibility for errors or non-execution of the transfer, and also for errors by the facilitating institution serving as an intermediary in the transfer (the institute initiating the transfer subsequently has right of recourse to the transferring institution that actually committed the mistake).

The law also provides for the resolution of disputes arising between transferring institutions and clients in special out-of-court arbitration hearings with an **ombudsman**, which began operating on January 1, 2003 (on the basis of a special law).

A key source of information on the complex adjustment of payments to EU legislative requirements and other requirements in accession countries is the **Blue Book**¹, "Payment and Securities Settlement Systems in Accession Countries", which was published by the European Central Bank in August, 2002. This document numbers nearly 600 pages, and discusses and dissects all relevant areas concerning payments for accession countries.

Money Laundering

After years of discussion, which considering the acuteness of the problem, seemed to be overly drawn out, Act 61/1996 Coll. was passed on January 7, 1996. This includes several measures against the legalisation of income from criminal activities with the aim of effectively eliminating money laundering. It can definitely be said that the basic principles and regulations that are part of the global fight against money laundering, as well as the form of the fight that has been developed in the EU, are present in the Czech law. It can be said that in a number of details the requirements of European Council Directive 91/308/EEC of June 1991, which are relatively general, are not merely met, but exceeded, especially regarding identifying money-laundering cases and handing over responsible parties to the criminal justice system. In this sense one can be convinced that Czech legal rules create adequate support for flexible and timely apprehension and conviction.

As part of European coordination amendment No 126/2002 Coll. of May, 2002, **bearer savings books were completely abolished** as of the beginning of 2003. This measure stemmed from the requests of the OECD and the European Union as part of the fight against money laundering.

¹ More information on <http://www.cnb.cz/pdf/BLUEBOOKACCESS2002.PDF>

Bankruptcy Law

The financial sector is also affected by bankruptcy law, which will have to be adapted to EU law. The purpose of the newly prepared law on insolvency will be to set a solution for debtor insolvency (arrangement of assets) such that creditors are equitably and relatively compensated from the bankruptcy estate. Current law regarding insolvency does not take into account differences in the nature of the debtor who is bankrupt or the number of his creditors. Czech bankruptcy law basically does not allow any other effective solution of debtor insolvency apart from winding up. This should be corrected by the new bankruptcy law.

The draft of the new law implements the relevant EU legislation including Directive 1998/26/EC on settlement finality in payment and securities settlement systems, Directive 1993/22/EEC on investment services in the security field, Council Regulation No 1346/2000 on insolvency proceedings, Directive 2001/17/EC on the reorganisation and winding up of insurers, and Directive 2001/24/EC on the reorganisation and winding up of credit institutions.

Key Legal Rules in the Banking Sector

The taking up and pursuit of the business of credit institutions

Directive 2000/12/EC which is amended by Directive 2000/28/EC and consolidates Directive 73/183/EEC, Directive 77/780/EEC, Directive 89/299/ECC, Directive 89/646/EEC, Directive 89/647/EEC, Directive 92/30/EEC and Directive 92/121/EEC.

<http://europa.eu.int/scadplus/leg/en/lvb/l24234.htm>

The objective of the directive is to consolidate most of the directives concerning the taking up and pursuit of the business of credit institutions by combining them in a single text. The Directive constitutes the essential instrument for achieving the single market from the point of view of both freedom of establishment and freedom to provide services in the field of credit institutions. The approach adopted is to achieve sufficient harmonisation to secure mutual recognition of authorisations and prudential supervision systems, thereby making it possible to grant a single licence.

Main points of the directive:

- It applies to all undertakings whose business is to receive deposits and other repayable funds from the public and to grant credits for their own account or to an electronic money institution. The directive does not apply to the central banks of Member States, post office giro institutions, etc.
- The directive designates the rules for the granting of authorisations: initial capital of at least EUR 5 million; presence of at least two persons who effectively direct the business of the credit institution (and who are of sufficiently good repute and have sufficient experience to perform such duties); notification to the competent authorities of the identities of the shareholders or members, and the amounts of their holdings. All authorisations must be notified to the Commission and a list of authorised credit institutions published in the Official Journal.
- A credit institution wishing to establish a branch in another Member State must notify the authorities of its home Member State. The home Member State must provide this information to the host Member State within three months. A credit institution wishing to exercise the freedom to provide services on the territory of another Member State must notify the authorities of its home Member State. Such notification must be forwarded to the host Member State.
- Member states are not allowed to apply more advantageous conditions to branches of foreign banks with headquarters outside the EU than to foreign branches of banks with headquarters in another Member State.
- In principle, supervision is carried out by the home Member State. The competent authorities of the Member States concerned cooperate closely.
- The directive designates specific criteria for appraising solvency that a credit institution must fulfil (capital adequacy, large exposures to single clients, the amount of own funds), and specifies how they are to be calculated.

The directive amends Directive 2002/87/EC, which concerns supplementary supervision of credit institutions, insurance undertakings and investment companies in a financial conglomerate.

The directive has itself been amended by Directive 2001/24/EC, which addresses the insolvency of credit institutions: if a credit institution with branches in other EU Member States goes bankrupt, winding-up proceedings will apply to all creditors and investors.

An amendment is being prepared which is intended to strengthen the framework for investment services and financial market supervision with the objective of better protecting investors and the integrity of the market through a harmonisation of rules regulating the activity of financial intermediaries. Another objective is to promote the creation of a just, transparent, effective and integrated financial market.

Capital adequacy of investment firms and credit institutions

Directive 93/6/EEC amended by Directive 98/33/EC and Directive 98/31/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24037.htm>

The main objective of the directive is to achieve equality of treatment between credit institutions and investment firms by harmonising capital requirements. Furthermore it introduces a framework for measuring the market risks to which credit institutions and investment firms are subject.

Main points of the directive:

- Investment firms which hold clients' money and/or securities and which receive, transmit and/or execute investors' orders for financial instruments and/or manage portfolios of investments in financial instruments must have a minimum capital of EUR 125,000. All other investment firms must have initial capital of EUR 730,000.
- Capital requirements applicable to credit institutions are laid down in Council Directive 89/646/EEC, which sets the minimum capital requirement at EUR 5 million.
- Investment firms and credit institutions are required to assess their positions daily at market prices.
- The directive also lays down a "base" requirement according to which each investment firm is required to hold own funds equivalent to one quarter of the previous year's fixed overheads. This requirement is intended to cover all the risks to which an investment firm is exposed, e.g. the risk that market turnover collapses, reducing a firm's broking income to a level insufficient to cover its expenses.
- The directive includes additional requirements for covering market risk, foreign-exchange risk and counterparty risk.

Reorganisation and winding-up of credit institutions

Directive 2001/24/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24008.htm>

The objective of the directive is to ensure, where a credit institution with branches in other Member States fails, that a single winding-up procedure is applied to all creditors and investors. As matters stand, if a credit institution with branches in other Member States has to be wound up and its assets divided among its creditors, the authorities in each Member State where the institution is represented can initiate separate insolvency proceedings. This can lead to conflicts of jurisdiction and means that creditors are not always treated equally. Similarly, if an institution has to be reorganised, the approaches can differ from one Member State to another. The directive is designed to guarantee consumer protection in such instances.

Main points of the directive:

- If a credit institution with branches in other Member States fails, the winding-up will be subject to a single bankruptcy proceeding initiated in the Member State where the credit institution has its registered office (known as the home State) and will thus be governed by a single bankruptcy law. This approach is consistent with the home country control principle that is the basis for the banking directives (codification Directive 2000/12/EC).
- The decision must be made public in the home Member State, and known creditors established in other Member States must be similarly informed (equal rank and treatment). They must be informed rapidly and individually in the official language or one of the official languages of the home Member State.
- The administrative or judicial authorities of the home Member State will be required without delay to inform, by any available means, the competent authorities of the Member State in which the branch is established of their decision to open winding-up proceedings.
- A credit institution must be wound up in accordance with the laws applicable in its home Member State insofar as the directive does not provide otherwise. If the head office of the institution is in a third country, the Member State in which the branch is established will be regarded as the home Member State.

Deposit-guarantee Schemes

Directive 94/19/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24012b.htm>

The objective of the directive is to protect throughout the territory of the European Union the depositors of all credit institutions and to safeguard the stability of the banking system as a whole.

Main points of the directive:

- The directive requires each Member State to ensure that within its territory one or more deposit-guarantee schemes are introduced and officially recognised.
- It establishes the procedure to be followed where a credit institution does not comply with the obligations incumbent on it as a member of a deposit-guarantee scheme.
- Deposits held when the authorisation of a credit institution is withdrawn must continue to be covered by the guarantee scheme.
- The directive provides that deposit-guarantee schemes shall normally cover the aggregate deposits of each depositor up to EUR 20,000 in the event of deposits being unavailable.
- However, certain depositors or deposits may be excluded or granted a lower level of guarantee by Member States. In addition, higher or more comprehensive coverage is permitted in certain cases, e.g. on social considerations.

Taxation of Savings Income in the Form of Interest Payments

Directive 2003/48/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l31050.htm>

The objective of the directive is to enable interest on savings received in one Member State by individuals who are residents for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State, and thereby remove barriers to the free flow of capital on the single market.

Main points of the directive:

- Member States must participate in an automatic exchange of information concerning interest payments on deposits, and the directive specifies which information they must provide.
- During a transitional period, Belgium, Luxembourg and Austria are not required to exchange the information on savings income covered by this directive if they apply a withholding tax to this income. The withholding tax is at a rate of 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter.
- As regards revenue sharing, the directive lays down that Member States levying withholding tax shall retain 25% of their revenue and transfer 75% of the revenue to the Member State of residence of the beneficial owner of the interest. The Member State of residence for tax purposes of the beneficial owner is to ensure the elimination of any double taxation, which might result from the imposition of the withholding tax.
- Contributions to pension funds and life insurance are not covered by this directive.

Cross-border Credit transfers

Directive 97/5/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24023.htm>

The objective of this directive is to establish minimum information and performance requirements for cross-border credit transfers so as to ensure that funds can be transferred from one part of the Community to another rapidly, reliably and inexpensively.

Main points of the directive:

- The directive applies to transfers of up to EUR 50,000 effected in the currencies of the Member State and in euro.
- The directive specifies what information credit institutions must provide their customers concerning cross-border credit transfers: the time needed for the funds to be credited to the account of the beneficiary's institution; the method used to calculate any commission fees and charges payable by the customer to the institution; the reference exchange rates used; a reference enabling the customer to identify the transfer; the original amount of the transfer; the amount of any commission fees and charges payable by the customer, etc.
- The beneficiary's institution must make the funds transferred available to the beneficiary within the time limit agreed with him. If the agreed time limit is not complied with, or in the absence of any such time limit, and if, at the end of the bank business day following the day on which the funds were credited to the account of the beneficiary's institution, they have still not been credited to the beneficiary's account, the beneficiary's institution must provide him with compensation. No compensation is payable if the beneficiary's institution can establish that the delay is attributable to the originator or the beneficiary.
- If the originator's institution accepts a transfer order but the relevant amount is not credited to the account of the beneficiary's institution, the originator's institution must credit the originator with the amount of the order, plus interest and the transfer charges paid by him. A ceiling of EUR 12,500 applies. In the event of an intermediary institution chosen by the originator failing to process a transfer order that institution and the other institutions involved must endeavour to refund the amount of the order.
- Institutions involved in processing cross-border credit transfer orders are released from the obligations set out in the directive if they can show that any failure to comply with orders was due to circumstances beyond their control.

The directive was amended by Regulation No. 2560/2001/EC on cross-border payments in euro. While Directive 97/5/EC concerns only cross-frontier "transfers", this Regulation relates more generally to "payments" of up to EUR 50,000 (except for transactions between institutions for their own account) and hence to card transactions. The aim of the regulation is to eliminate differences between different fees with a Member State as well as between Member States.

Main points of the regulation:

- The charges for euro transactions in the internal market will be the same for payments that cross a border and for payments that take place within a Member State.
- This provision will apply from July 1, 2002 to card payments and withdrawals from ATMs and from July 1, 2003 to transfers and cheques.
- Customers will have to be correctly informed in advance of the charges they will have to pay on cross-border transfers and of any change in charges.

Prevention of the Use of the Financial System for the Purpose of Money Laundering

Directive 91/308/EEC amended by Directive 2001/97/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24016.htm>

The objective of the directive is to prevent the use of the financial system for money laundering without impeding the freedom of capital movement and the freedom to supply financial services. The directive unifies procedure against money laundering in all EU Member States.

Main points of the directive:

- Member States must ensure that money laundering is prohibited.
- Credit and financial institutions must require identification of their customers and are required to keep a copy or the references of the evidence required for a period of at least five years after the relationship with their customer has ended, as well as supporting evidence and records of transactions for a period of at least five years following execution of the transactions.

- This directive concerns legal rules and has little to do with harmonisation: all Member States are obligated to uphold the set of requirements, but individually the Member States may adopt or retain in force stricter provisions to prevent money laundering.
- Credit and financial institutions must cooperate fully with the authorities responsible for combating money laundering. The directive goes on to set out their relationship with these authorities as well as their obligations to them.
- The amendments to the directive (2001/97/EC) extend the prohibition on money laundering not only to drug trafficking but also to all serious offences (including fraud involving the Community budget), such as organised crime and the financing of international terrorism. In addition, certain obligations in the directive are extended to non-financial professions (such as auditors, accountants, real estate agents, notaries, lawyers, solicitors, dealers in high-value goods, cash-in-transit companies and casinos).

The Taking-up, Pursuit and Prudential Supervision of the Business of Electronic Money Institutions

Directive 2000/46/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24236.htm>

The directive allows non-bank institutions to issue electronic money while preserving their financial integrity and operating on a level playing field with other credit institutions.

Main points of the directive:

- It defines this new mode of payment neutrally as a surrogate for coins and banknotes, which is stored on an electronic device (chip card or computer memory) and intended for making payments of limited amounts.
- Electronic money institutions may be granted the "European passport" (single licence) if they comply with the principles laid down in the First Banking Directive as regards mutual recognition of the licence and prudential supervision and with the principle of home Member State supervision (77/780/EEC amended by Directives 89/646/EEC and 2000/12/EC).
- To ensure consistency in terms of the prevention of organised crime, electronic money institutions must also comply with the objectives of the directive on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC).
- Initial capital of electronic money institutions must be at least EUR 1 million, and the directive does not address deposit insurance.

Annual Accounts and Consolidated Accounts of Banks and Other Financial Institutions

Directive 86/635/EEC amended by Directives 2001/65/EC and 2003/51/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24009.htm>

The objective of the directive is to harmonize the format and contents of the annual accounts of all financial institutions within the Community.

Main points of the directive:

- Standard balance sheet layout. Assets and liabilities are presented in decreasing order of liquidity.
- Two standard profit-and-loss account layouts: there is a vertical layout and a horizontal layout.
- Special provisions for certain accounting items such as cash in hand, treasury bills, loans and advances to credit institutions amounts owed to credit institutions, receivable, income from securities, net profit or loss on financial operations, etc.

- Valuation rules for assets, financial fixed assets, securities held by credit institutions, transferable securities, loans and advances, variable-yield securities, and assets and liabilities denominated in foreign currency.
- Separate provisions relating to the drawing up of consolidated accounts.

The directive is supplemented to a great degree by Regulation No. 1606/2002/EC on the application of international accounting standards, on the basis of which companies approved to operate on the regulated market are obliged to draft and publish consolidated accounts according to international accounting standards as of January 1, 2005.

Accounting documents of branches of foreign credit and financial institutions

Directive 89/117/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24010.htm>

The objective of the directive is to remove the need for branches of foreign banks and other financial institutions having their head office in another Member State or in a non-member country to publish separate annual accounts.

Investment Services

The liberalisation of securities operations was launched on January 1, 1996 when **two directives adopted in 1993** went into effect thereby creating new freedom in starting up companies and offering services in this sector.

- Directive 93/22/EEC and its amending Directives 97/9/EC and 95/26/EC setting rules for **investment services**.
- Directive 93/6/EEC and its amending Directives 98/33/EC and 98/31/EC defining the **capital adequacy of investment firms and credit institutions**.

The single market of the investment services branch is similar to those functioning in the other segments of the financial sector. Basic steps for unification include:

- **Harmonisation** of essential standards;
- **Mutual recognition** of national supervisory authorities in those states having registered offices of investment companies;
- **Coordination of supervisory authorities' activities** in the home and host Member State.

Initial steps on the road to formation of a single market in the investment services area date back to the beginning of the 1980's when directives regulating **the listing of securities at the stock exchange** were accepted (Directive 79/279/EEC, Directive 80/390/EEC and Directive 82/121/EEC – which were all subsequently consolidated into Directive 2001/34/EC.)

The principle of home state supervisory authority control and the mutual recognition of licenses by the supervisory authorities of other Member States (the so-called **"European passport"**) where the company is active was first set down in legislation in Directive 85/611/EEC, which harmonised existing regulations for the undertaking of investment companies.

Another milestone in the building of a single financial market was Directive 89/298/EEC, which established the **mutual recognition of the prospectuses** of publicly-traded securities.

Additional progress was made with Directive 88/627/EEC on **the information to be published when a major holding in a listed company is acquired or disposed of**, and Directive 89/592/EEC on the regulating of **insider trading**.

Investor protection was greatly increased with Directive 97/9/EC, which set rules for **investor-compensation schemes** (the adequate protection of depositors in a bank through the depositor-guarantee schemes).

But these legal rules did not prove to be fruitful enough, and the EU financial market continued to fail to function quickly and effectively enough. Reaction came at the European Council summit in Stockholm on March 23–24, 2001 where a series of reforms were proposed that were based on these new points:

- The establishment of two committees responsible for eliminating barriers to the integration and expansion of the financial market—Commission Decision 528/2001/EC establishing the **European Securities Committee** and Commission Decision 527/2001/EC establishing the **Committee of European Securities Regulators**.
- The new Directive 2003/6/EC seeking to **overcome and eliminate financial market manipulation** – in addition to combating insider trading the directive focuses on unauthorised manipulation of market prices. Advisory bodies are to aid the European Commission in initiating the **Action Plan for Investment Banking**.

A change for the better has also been seen in the area of **settlement of cross-border securities trading**, through Directive 98/26/EC.

A new directive is being prepared which should further facilitate cross-border securities trading by setting up the **clearing and settlement at a European level**.

The Application of EU Law in the Czech Republic

The application of a series of European directives and regulations affecting the investment services sector has already been mentioned in the section on banking. The incorporation of European legislation into the Czech legal system is to be primarily included in the **law on capital market business activity and the law on collective investment**.

Collective Investment

New rules for collective investment are to be established by the laws on collective investment and capital market business activity, and several new regulations are to be concurrently introduced. These laws are intended to adapt Czech legislation regarding collective investment to EU law. The basic principle and intention of the draft law on collective investment is to regulate Czech collective investment and protect investors. However, the law does not include any new regulation of SICAV funds and this will therefore be required as a part of future legislation.

If the new laws on collective investment or capital market business activity do not go into effect by the time of Czech accession to the EU, **the law on investment companies and investment funds** will be of vital importance to collective investment.

Investment Services

The **Securities Act** is currently the key legislation governing investment services. Its current version includes provisions, which will enter effect on the day of the Czech Republic's entry to the EU. This means that if the new law on capital market business activities fails to enter effect by the time of Czech accession, the Securities Act will be the main law on investment services in EU Member States.

Key Legal Rules in the Investment Services Sector

Collective Investment

Coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

Directive 85/611/EEC amended by Directive 88/220/EEC, Directive 95/26/EC, Directive 2001/107/EC and Directive 2001/108/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24036a.htm>

The objective of the directive is to achieve approximation at Community level of the conditions of competition between UCITS and to give unit-holders more uniform and more effective protection.

Main points of the directive:

- UCITS must be authorised by the Member State in which they are situated. The authorisation is valid for all Member States.
- At least 90% of the investments of a unit trust must consist of transferable securities listed on a stock exchange or on another regulated market, or of recently issued transferable securities.
- The directive sets requirements to publish a prospectus, regular reports, and information on the sale price of units.
- It addresses the designation of authorities responsible for authorisation and supervision in each Member State.

Under the Financial Services Action Plan, the Commission has proposed a new directive designed to strengthen the Community legislative framework for investment services and regulated markets, in order better to serve two overarching regulatory objectives:

- First, to protect investors and market integrity by establishing harmonised requirements governing the activities of authorised intermediaries; and
- Second, to promote fair, transparent, efficient and integrated financial markets.

Investment Services in the Securities Field

Directive 93/22/EEC amended by Directive 97/9/EC and Directive 95/26/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24036c.htm>

The objective of the directive is to liberalise access to stock exchange membership and financial markets in host Member States for investment firms authorised to provide the services concerned in their home Member States.

Main points of the directive:

- Criteria for granting and withdrawing authorisation of investment firms in the home Member State.
- Host Member States may not make the establishment of a branch or the provision of services by an investment firm authorised by its home Member State subject to further authorisation.
- The competent authorities in each Member State must ensure that the investment firm has sufficient initial financial resources for the proposed activities and the persons directing the business have sufficient professional integrity and experience.
- Whenever it appears to the Commission that a host Member State is not granting effective financial market access to investment companies it may initiate negotiations in order to secure comparable competitive opportunities.

Investor Compensation Schemes

Directive 97/9/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24038a.htm>

The objective of the directive is to protect investors following the failure of an investment firm.

Main points of the directive:

- The directive requires Member States to set up one or more investor compensation schemes. All investment firms supplying investment services must belong to such a scheme (credit institutions may be exempted provided that they already belong to a scheme which guarantees protection at least equivalent to that provided under a compensation scheme and that they fulfil certain specific conditions). Where an investment firm is also a credit institution, the Member State of origin decides which directive should apply to money claims: the above-mentioned directive or that which governs deposit-guarantee schemes.
- The compensation scheme operates where the competent authorities have determined that in their view an investment firm appears, for the time being, to be unable to meet its obligations arising out of investors' claims and has no early prospect of being able to do so.
- Cover must be provided for claims arising out of an investment firm's inability to repay money owed to or belonging to investors and held on their behalf in connection with investment business or return to investors any instruments belonging to them in connection with investment business.
- The directive sets a Community minimum level of compensation per investor of ERU 20,000, while at the same time authorising Member States to exclude certain categories of investors from the scheme's coverage or afford them a lower level of coverage.
- An investor's claim must be met within a maximum of three months of the establishment of the eligibility and the amount of the claim.

Settlement Finality in Payment and Securities Settlement Systems

Directive 98/26/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24039.htm>

The objective of the directive is to reduce the systemic risk inherent in payment and securities settlement systems and to minimise the disruption caused by the insolvency of a participant in such a system. The Directive contributes to the efficient and cost-effective operation of cross-border payment and securities settlement arrangements, thereby reinforcing the freedom of movement of capital and the freedom to provide services within the internal market.

Main points of the directive:

- Transfer orders and netting must be legally enforceable.
- Transfer orders may not be revoked once they have been entered into the system.
- The insolvency of a participant may not have retroactive effects.
- Collateral security provided to a system by a participant may not be affected by the opening of insolvency proceedings against that participant.

Under the Financial Services Action plan a directive is being prepared which will abolish onerous and complex administrative formalities in order to establish a clear framework that provides legal certainty for cross-border use of collateral in wholesale financial markets.

Prospectus of security

Requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public

Directive 89/298/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24033b.htm>

The directive is part of a Community policy of information on securities offered to the public for the first time in a Member State. It coordinates the legal requirements for drawing-up and distribution of prospectuses of securities when on offer to the public.

Main points of the directive:

- Prospectuses are to include all information needed to make an informed financial assessment of the securities.
- Cooperation between Member States and provisions for the mutual recognition of prospectuses.

Capital adequacy of investment firms and credit institutions

Directive 93/6/EEC amended by Directives 98/33/EC and 98/31/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24037.htm>

The goal of the directive is to achieve equality of treatment between credit institutions and investment firms by harmonising capital requirements. It also introduces a framework for measuring the market risks to which credit institutions and investment firms are subject.

Main points of the directive:

- Investment firms which hold clients' money and/or securities and which receive, transmit and/or execute investors' orders for financial instruments and/or manage portfolios of investments in financial instruments must have a minimum capital of EUR 125,000. All other investment firms must have initial capital of EUR 730,000.
- The requirements applicable to credit institutions are laid down in Council Directive 89/646/EEC, which requires minimum capital of EUR 5 million.
- The Directive also lays down a "base" requirement according to which each investment firm is required to hold own funds equivalent to one quarter of the previous year's fixed overheads. This requirement is intended to cover all the risks, to which an investment firm is exposed, e.g. the risk that market turnover collapses, reducing a firm's broking income to a level insufficient to cover its expenses.
- Investment firms and credit institutions are required to assess their positions daily at market prices.
- The directive includes additional requirements for covering market risk, foreign-exchange risk and counterparty risk

Stock exchange listing of securities

Admission of securities to official stock exchange listings and on information to be published on those securities

Directive 2001/34/EC codifying the existing Directives 79/279/EEC, 80/390/EEC, 82/121/EEC and 88/627/EEC and amended by Directive 2003/71/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24032.htm>

The goal of the directive is to coordinate the conditions for the admission of securities to official stock exchange listings and the information to be published on those securities in order to provide equivalent protection for investors at Community level.

Main points of the directive:

- The coordination introduced by the directive concerns all securities admitted to official listing, irrespective of the legal nature of their issuer. It thus also applies to securities issued by non-member countries or their regional or local authorities or by public international bodies.
- The directive harmonises requirements for the provision of information when securities are presented on the stock exchange, which includes information on the issuer as well as the security itself. The information supplied to investors must be adequate and regular, such that investors receive appropriate information throughout the entire period during which the securities are listed. Issuers must make their final accounts, annual reports and interim reports on operations during the first six months of the financial year available to investors.
- This coordination of information is ensured by the mutual recognition of listing particulars, a principle already enshrined in Directive 89/298/EEC coordinating the requirements for the drawing up of prospectuses. Nevertheless, the mutual recognition of a prospectus does not in itself confer a right to admission to official listing.

Insider dealing and market manipulation (market abuse)

Directive 2003/6/EC and supplemental Directive 2003/124/EC, Directive 2003/125/EC and Regulation No EC 273/2003

<http://europa.eu.int/scadplus/leg/en/lvb/l24035.htm>

The objectives of the directive are to strengthen the integrity of financial markets by limiting opportunities for insider dealing and market manipulation, to define common standards to increase investor confidence and to strengthen cooperation between the appropriate national authorities within the European Union.

Main points of the directive:

- The directive is intended to address the two main categories of market abuse — insider dealing (hitherto regulated in Directive 89/592/EEC) and manipulation of market prices.
- The definition of what constitutes market abuse is general and is flexible enough to remain valid for a reasonable length of time. Market abuse may arise in circumstances where investors have been unreasonably disadvantaged, directly or indirectly, by others who have used information which is not publicly available (insider trading), have distorted the price-setting mechanism of financial instruments, or have disseminated false or misleading information.
- The directive requires that each Member State designate a single regulatory and supervisory authority with a common minimum set of responsibilities. These authorities are to cooperate with each other.
- Directive 2003/124/EC establishes rules for making important information public, and the concept of market manipulation.
- Directive 2003/125/EC sets rules for the fair presentation of investment recommendations and the disclosure of conflicts of interest.
- Regulation No 2273/2003/EC sets out the circumstances under which exemptions for buy-back programmes and stabilisation of financial instruments can occur.

Accounting documents of branches of foreign credit and financial institutions

Directive 89/117/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24010.htm>

The goal of the directive is to remove the need for branches of foreign banks and other financial institutions having their head office in another Member State or in a non-member country to publish separate annual accounts.

The Insurance Sector

The formation of a single market in the insurance sector has been a priority of the EU for a long time. EU policy has the following two priorities:

- Providing EU citizens with access to the **widest possible range of insurance services and products**;
- Ensuring that an insurer authorised to operate in one Member State can perform its activities in all other Member States by guaranteeing **freedom of establishment of branches and right to supply services**.

In order to fulfil these conditions and in consideration of their specific characteristics, life insurance and non-life insurance, which play important roles in long-term savings and insurance schemes, have been dealt with separately in EU legislation.

Life Insurance

The goal of the first directive establishing rules for life insurance (Directive 79/267/EEC, which was replaced by the new Directive 2002/83/EC) was to facilitate the **establishment of branches in any EU Member State**. This directive left space for the second directive on life insurance (90/619/EEC, replaced by Directive 2002/83/EC) to create **effective freedom to provide services**. This matter was further clarified by the third directive on life insurance (92/96/EEC) whose main points were the single licence and that supervision be carried out by the supervisory authority of the Member State of the registered office.

Non-life Insurance

In 1973 the Commission accepted the first directive (73/239/EEC), which established a suitable legal framework creating **freedom to establish branch offices** in the EU non-life insurance sector. **The effective freedom to provide non-life insurance services** was guaranteed in the second directive (88/357/EEC). However, a number of industry branches and operations were excluded from its scope. The third non-life insurance directive (92/49/EC) concerns the **coordination of national rules on investment**, the placement of assets covering an insurer's premium reserves, and additional regulations for supervision of the insurance sector, premium conditions, the establishment and ownership of insurance undertakings. The directive makes domestic control the guiding principle of supervision. In 1998, Directive 98/78/EC was adopted and it is mainly focused on **supervision of insurance companies** that are part of **insurance holding companies**.

Regarding non-life insurance, special emphasis is placed on **mandatory motor vehicle liability insurance**, which is dealt with in three directives independently of each other. The main goal of Directive 90/618/EEC (amending Directive 73/239/EEC and Directive 88/357/EEC) is to bring requirements for mandatory motor vehicle liability insurance into harmony with the second non-life insurance directive (88/357/EEC). Gaps that existed in mandatory passenger liability insurance are covered by Directive 90/232/EEC. Directive 2000/26/EC (amending Directive 73/239/EEC and Directive 92/49/EEC) sets rules for **accidents outside the victim's state of residence**, and it sets out to guarantee comparable treatment to victims of automobile accidents in regard to settlement of claims regardless of the Member State where the accident took place.

Specific Areas

In addition to the aforementioned primary directives, there exist directives regulating other individual segments of the non-life insurance market or areas of insurance company activity.

- **Annual accounts of insurers** (Directive 91/674/EEC amended by Directive 2003/51/EC) – the directive harmonises the financial statements of insurance companies operating in the EU with the aim of making them more comparable.
- **Legal expenses insurance** (Directive 87/344/EEC) – with the goal of coordinating national requirements for insurance against the costs connected to legal proceedings.
- **Credit and suretyship insurance** (Directive 87/343/EEC amending Directive 73/239/EEC) – with the goal of providing supplemental financial guarantees for credit insurance.

- **Export insurance** (Directive 98/29/EC) – with the goal of eliminating distortions in the level-playing field through the harmonizing of rules of export insurance in individual Member States.

The **Insurance Committee** (91/675/EEC) was created to aid the Commission in its task of collaborating with national supervisory authorities of the insurance sector.

The winding-up and restructuring of insurance companies is regulated by Directive 2001/17/EC which aims at ensuring that, in the event of the insolvency or restructuring of an insurer with branches in other EU Member States, the winding-up proceedings will apply equally to all insured parties, policyholders, authorised parties and creditors without regard to which Member State they are situated in.

Increased protection of small clients in the consumer market is supported by Directive 2002/92/EC, which sets rules for **intermediaries in the insurance industry**.

The **exemption of the insurance sector from certain EU legal requirements for a level-playing field** was set out in Regulation No. 1534/91/EEC, which enumerates certain categories of agreements, decisions and concerted practices in the insurance sector that are exempt in this way.

Key Legal Rules in the Insurance Sector

Life Insurance

Directive 2002/83/EC amending Directive 79/267/EEC (first directive), Directive 90/619/EEC (second directive), Directive 92/96/EEC (third directive), Directive 95/26/EC ("post-BCCI" directive), Directive 2000/64/EC and Directive 2000/12/EC (solvency margin directive)

<http://europa.eu.int/scadplus/leg/en/lvb/l24027a.htm>

The goal of the directives is to recast special rules relating to freedom to provide cross-frontier services in the life insurance field with a view to simplify existing legislation in this field.

Mains points of the directives:

- Insurers authorised to operate in life insurance in one Member State can operate in all other EU Member States. In order for this to be viable, the directives harmonise the national systems.
- The supervisory authority of the home Member State has exclusive oversight jurisdiction. Supervision includes verifying the solvency of the insurer and the level and form of allocated funds for financial guarantees for covering liabilities from premium payments in accordance with the regulations set out in this directive.
- An insurer can operate in life insurance and non-life insurance at the same time, but the accounting and management of these activities must be performed separately.
- The freedom to provide life insurance services in the entire EU is not extended to agencies or branches of insurers with registered offices outside the EU.
- Insurance contracts are subject to the law of the Member State where the policy holder is a resident.
- The directives also set out the framework for cooperation between supervisory authorities of individual Member States and the Commission.
- The directives unify accounting procedures and procedure for calculating funds for guaranteeing coverage of liabilities.

Second Non-life Insurance Directive

Coordination Of Laws, Regulations And Administrative Provisions Relating To Direct Insurance Other Than Life Insurance And Laying Down Provisions To Facilitate The Effective Exercise Of Freedom To Provide Services

Directive 88/357/EEC amending Directive 73/239/EEC, and amended by Directives 90/618/EEC and 92/49/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24028a.htm>

The directive's purpose is to establish rules for cross-border non-life insurance, which balance the needs of freedom of services and consumer protection.

Third Non-life Insurance Directive

Coordination of Laws, Regulations and Administrative Provisions Relating To Direct Insurance Other Than Life Insurance

Directive 92/49/EEC amending Directives 88/357/EEC and 73/239/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24028b.htm>

The directive's purpose is to introduce a single authorisation system whereby any insurance undertaking whose head office is in one of the Member States of the Community can establish branches in other Member States and carry on business by way of provision of cross-border services under the supervision of the Member State in which its head office is situated.

Main points of the directive:

- Harmonisation of the rules governing insurance in the following areas: supervision of insurance undertakings; technical provisions and investments; rules for solvency and liquidity; and insurance contract and policy terms and conditions.
- The directive provides that an insurance undertaking which wishes to establish a branch in another Member State must notify the authorities in its home Member State and must provide certain information when making the notification.
- The directive abolishes domestic insurance monopolies, establishes rules for cross-border insurance taxation, and guarantee access to advertising, winding up, etc.

Also important is Directive 2002/13/EC amending Directive 73/239/EEC, which concerns the solvency requirements for non-life insurance companies.

Approximation of the laws of the member states relating to insurance against civil liability in respect of the use of motor vehicles

Directive 90/232/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24026b.htm>

The directive's goal is to fill the gaps that existed in the compulsory insurance coverage of passengers across the Community.

Main points of the directive:

- All passengers of vehicles, other than a driver or passenger who has knowingly and willingly entered a stolen vehicle, must be covered by compulsory civil liability insurance.
- Member States must take the necessary steps to ensure that all compulsory insurance policies covering civil liability in respect of the use of vehicles cover the entire territory of the Community. The Directive seeks to ensure that a motorist using his vehicle outside his home country will never have less than his home country's insurance cover.
- The directive imposes stricter conditions for the use of the guarantee fund to compensate the victims of accidents caused by uninsured or unidentified vehicles.

A draft amendment will make it easier to take out insurance cover for a temporary stay in another Member State. It permits short-term insurance cover for vehicles purchased outside the owner's Member State of residence. The proposal also updates certain provisions governing the minimum amount of cover that motorists must have.

Motor vehicle liability insurance

Directive 90/618/EEC amending Directive 73/239/EEC and Directive 88/357/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24026a.htm>

The goal of the directive is to bring compulsory third-party motor vehicle insurance within the scope of the second non-life insurance Council Directive 88/357/EEC. It sets out the cross-border relationships and conditions of mandatory motor vehicle liability insurance in the EU.

Motor Vehicle Liability Insurance: Accidents outside the Victim's State of Residence

Approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles

Directive 2000/26/EC amending Directives 73/239/EEC and 92/49/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24001.htm>

The directive's aim is to guarantee motor vehicle accident victims comparable treatment, with regard to the settlement of claims, irrespective of where in the Community accidents occur. The proposed Directive is intended to supplement the rules introduced by Directives 72/166/EEC, 84/5/EEC and 90/232/EEC (the First, Second and Third Motor Insurance Directives), which were chiefly limited to the question of traffic accidents occurring in the victim's Member State of residence.

Main points of the directive:

- In order to facilitate the settlement of claims, all insurance undertakings established in the Community must appoint in each Member State a "claims representative" responsible for collecting all information necessary in connection with compensation.
- Within three months of the date on which the victim presents a claim for compensation, the insurer or its representative must make an offer of compensation or provide an appropriate reply if liability has not been clearly determined and the damages not fully quantified.
- Provision must be made in national law for penalties to be imposed on the insurer of the person causing the accident if it fails to fulfil its obligation to offer compensation or provide information.
- The proposed directive also requires each Member State to set up an "information centre" and a "compensation body". Their task will be to ensure that victims are able to claim compensation as quickly as possible, even in cases where an insurer refuses to cooperate.

Credit and suretyship insurance

Directive 87/343/EEC amending Directive 73/239/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24025.htm>

The aim of this directive is to provide additional financial guarantees for credit insurance and to abolish the provisions permitting Germany to prohibit suretyship insurance from being combined with other classes of insurance.

Main points of the directive:

- Abolition of the German specialisation requirements.
- Obligation on the part of Member States to require underwriters to furnish additional financial guarantees for credit insurance.
- Annex containing the four permitted methods of calculating the equalisation reserve for credit insurance.

Legal expenses insurance

Coordination of laws, regulations and administrative provisions relating to legal expenses insurance

Directive 87/344/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24024.htm>

The directive's aim is to coordinate national requirements for insurance against legal costs. This directive does not apply to risks in connection with sea-going vessels.

Main points of the directive:

- In the event of a conflict of interest or a disagreement over settlement of the dispute, the insurer must inform the insured person of his/her right to choose his/her lawyer freely and of the possibility of using the arbitration procedure.

Export credit insurance**Harmonisation of the main provisions concerning export credit insurance for transaction with medium and long-term cover**

Directive 98/29/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24041.htm>

The directive's purpose is to eliminate distortions of competition resulting from differences between official medium and long-term export credit insurance systems.

Main points of the directive:

- The provision by public authorities of export credit guarantee or insurance schemes at premium rates which are inadequate to cover the operating costs and losses of the schemes constitutes an export subsidy that is prohibited by the rules agreed within the GATT framework.
- The annex to the directive sets out the general principles for export credit insurance, scope of cover, causes of loss and exclusions of liability, and indemnification of claims due to importer default.
- A distinction is drawn between four types of risk: commercial risk, political risk, manufacturing risk and credit risk.

Supplementary supervision of insurance undertakings in an insurance group

Directive 98/78/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24022b.htm>

The directive's aim is to make insurance supervisors better equipped to ascertain the true solvency of an insurance undertaking that is part of an insurance group.

Main points of the directive:

- The Directive requires Member States to extend supervision ("supplementary supervision") to all other entities that could have a bearing on the financial and operating position of a supervised insurance undertaking, including undertakings related to or participating in the insurance undertaking. It includes the following enterprises: reinsurance undertakings, holding companies and non-member-country insurance and reinsurance undertakings.
- Where the competent authorities of a Member State wish to verify information concerning an insurance undertaking situated in another Member State, they must ask the competent authorities of that other Member State to have such verification carried out.
- The directive is amended by Directive 2002/87/EC, which is concerned with "supplementary supervision" of credit institutions, insurers and investment companies that are part of a financial conglomerate.

Reorganisation and winding-up of insurance undertakings

Directive 2001/17/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24022c.htm>

The directive's goal is to ensure, where an insurance undertaking with branches in other Member States fails, that a single winding-up procedure is applied to insured persons, policyholders, beneficiaries and creditors. As matters stand, if an insurance undertaking with branches in other Member States has to be wound up, the authorities of each Member State in which the undertaking is represented may open separate winding-up proceedings. This can lead to conflicts of jurisdiction, and policyholders are not always treated equally. Similarly, if an undertaking has to be reorganised, the approaches may differ from one Member State to another. The Directive is designed to guarantee consumer protection, irrespective of the place of residence.

Main points of the directive:

- The Directive applies to undertakings having their head office inside the Community, Community branches of insurance undertakings having their head office in a third country and creditors residing in the European Union.
- If an undertaking with branches in other Member States fails, the winding-up is to be subject to a single bankruptcy proceeding initiated in the Member State where the insurance undertaking has its registered office (known as the home State). This approach is consistent with the home country control principle that is the basis for the Community insurance directives (life and non-life insurance).
- Only the competent authorities of the home Member State are empowered to take decisions on winding-up proceedings (principle of unity). All the assets and liabilities of the insurance undertaking should as a general rule be taken into consideration in such proceedings (principle of universality).

Insurance mediation

Directive 2002/92/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24237.htm>

The goal of the directive is to improve the working of the single market in insurance by ensuring that retail markets are accessible and secure. The means to this is the liberalisation of insurance intermediaries in the insurance industry.

The most important points of the directive:

- "Insurance intermediaries" means insurance brokers, banks and motor car dealers who can carry on cross-border business.
- The measure establishes a system of registration for all insurance or reinsurance intermediaries in the Member State of origin (where the insurance firm's registered office is located), enabling them to carry on business in other Member States by way of freedom to provide services or by opening a branch.
- Registration is subject to strict requirements as regards professionalism and competence and general, commercial and professional knowledge and ability. They must also be of good repute. They must also be covered by professional indemnity insurance for professional negligence. Lastly, insurance intermediaries who handle customers' money must have sufficient financial capacity.
- It requires that insurance intermediaries provide customers with clear explanations of the reasons underlying their advice when selling a specific insurance product.

Annual accounts and consolidated accounts of insurance undertakings

Directive 91/674/EEC amended by Directive 2003/51/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24022a.htm>

The directive's aim is to provide for the same layout and the same item headings for the balance sheets of all Community insurance companies in order to ensure comparability.

Main points of the regulation:

- The Directive applies to all insurance companies or firms except small mutual associations.
- Precise layouts for the balance sheet and profit-and-loss account are prescribed. There are special provisions relating to certain balance-sheet items and certain items in the profit-and-loss account.

- Member States may either impose a specific set of rules or leave companies a choice between alternative rules stated in the Directive.
- A number of provisions are included on the presentation of consolidated accounts.

The directive is complemented by Regulation No 1606/2002/EC on the application of International Accounting Standards. The regulation states that companies accepted for listing on the regulated market are obliged to draw up and publish consolidated accounts according to International Accounting Standards as of January 1, 2005.

Exemption for certain agreements, decisions and concerted practices in the insurance sector

Regulation No 1534/91/EEC implemented by regulation 358/2003/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l26097.htm>

The directive's purpose is to exempt, subject to certain conditions, certain categories of agreement, decision and concerted practice among insurers.

Main points of the regulation:

- The regulation applies to categories of agreement relating to: the exchange of information for the purpose of calculating risks; the joint definition of standard conditions; the formation of insurance pools to cover large or exceptional risks; and the preparation of technical specifications for the installation and maintenance of security devices. Such agreements are not covered by Article 81(1) of the EC Treaty and do not need to be notified to the Commission before they come into effect.
- For each of the above-mentioned four categories, Regulation No. 358/2003 lays down the conditions for exemption from requirements to notify the Commission.
- The Regulation expires on March 31, 2010.

Establishment of an insurance committee

Directive 91/675/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24029.htm>

The directive's purpose is to establish an insurance committee to assist the Commission in its work in the insurance field with a view to establishing closer cooperation between the national supervisory authorities and the Commission.

Other Financial Services

Besides the directives and regulations clearly applying to the banking, the insurance or investment services sectors, there are **several other areas of EU financial legislation**.

Consumer protection is the focus of Directive 87/102/EEC (amended by Directive 90/88/EEC and Directive 98/7/EC), which harmonises **rules of consumer credit**. Directive 2002/65/EC is also concerned with consumer protection (amending Directive 98/27/EC, Directive 97/7/EC and Directive 90/619/EEC) as it introduces an appropriate, harmonised legal framework for **distance marketing of commercial financial services**.

Reacting to ever stronger globalisation trends which are also occurring in the financial sector, Directive 2002/87/EC (amending Directive 2000/12/EC, Directive 98/78/EC, Directive 93/22/EEC, Directive 93/6/EEC, Directive 92/96/EEC, Directive 92/49/EEC, Directive 79/267/EEC and Directive 73/239/EEC) introduces special legislation for **supervision of financial conglomerates**, and also develops legislation for supervisory activities in the sector for credit institutions, insurers and finance companies.

A component EU non-discrimination law is Regulation No 3604/93/EC, which forbids certain types of interaction between private and public institutions as being privileged access.

The finance sector is also affected by Directive 69/335/EEC (amended by Directive 73/79/EEC, Directive 74/553/EEC and Directive 85/303/EEC). This directive is aimed at **approximation of legislation concerning indirect taxes on the raising of capital** and on fees connected to the issuance of securities.

2003 saw the adoption of Directive 2003/41/EC, which for the time being is the sole instrument regulating **institutions for occupational retirement provision (IORPs)**.

Among the legislation concerning the financial sector is Regulation (EC) No. 2558/2001, which modifies the **classification of settlements under swaps arrangements and under forward rate agreements** in the European System of Accounts (ESA).

Other Key Financial Legal Rules

Consumer credit

Approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

Directive 87/102/EEC, amended by Directive 90/88/EEC and Directive 98/7/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l32021.htm>

The directive's objective is to harmonise the rules governing consumer credit while ensuring a high level of consumer protection.

The directive does not cover certain types of loans, including: credit agreements for the purpose of acquiring or retaining property rights in land or a building; interest-free consumer credit agreements; credit agreements involving amounts less than EUR 200 or more than EUR 20,000; credit agreements whereby the consumer undertakes to repay the credit either within three months or by a maximum of four payments within a 12-month period.

Main points of the directive:

- Any credit-related advertising, which indicates some aspect of the cost of the credit, must also include a statement of the annual percentage rate of charge.
- Credit agreements are to be made in writing. Besides the essential terms of the contract, an agreement must state the annual percentage rate of charge and the conditions under which it may be amended.
- Any change in the annual rate of interest or in the relevant charges, during the period of the agreement, must be notified to the consumer at the time it occurs.
- Where the creditor's rights are assigned to a third person, the consumer's rights remain unaffected and action to enforce any claim may be taken against that third person.

Distance marketing of consumer financial services

Directive 2002/65/EC amending Directive 98/27/EC, Directive 97/7/EC and Directive 90/619/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l32035.htm>

The directive's purpose is to establish an appropriate harmonised legal framework for distance contracts pertaining to financial services while ensuring an appropriate level of consumer protection. It is complementary to Council Directive 97/7/EC, which ensures appropriate consumer protection in respect of most products and services other than financial services.

Main points of the directive:

- The directive covers contracts for retail financial services (banking, insurance and investment services, including pension funds) that are negotiated at a distance (e.g. by telephone, fax or over the Internet).
- The directive gives the consumer the right to reflect before concluding a contract with a supplier. The supplier is thus required to transmit a draft contract to the consumer and the reflection period lasts for 14 days.
- The directive sets out the circumstances under which the consumer may withdraw from the agreement, the period of reflection, and the conditions for entitlement to reimbursement.
- The directive prohibits the provision of services without the consumer's express and valid consent.

Supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate

Directive 2002/87/EC amending Directive 2000/12/EC, Directive 98/78/EC, Directive 93/22/EEC, Directive 93/6/EEC, Directive 92/96/EEC, Directive 92/49/EEC, Directive 79/267/EEC and Directive 73/239/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l24038c.htm>

The directive's purpose is to introduce specific prudential legislation for financial conglomerates so as to amplify the sectoral prudential legislation for credit institutions, insurance companies and investment firms.

Main points of the directive:

- The directive provides for closer coordination between the supervisory authorities for individual sectors, and for the exchange of information between them.
- Financial conglomerates must have adequate capital of their own. The parent firm is no longer permitted to issue loans to finance its regulated subsidiaries.
- The directive defines methods for calculating solvency ratios and capital adequacy at group level.
- The proposal imposes requirements as to the reputation and experience of directors and managers.

Application of the prohibition of privileged access to financial institutions

Regulation No 3604/93/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l25010.htm>

The regulation's aim is to specify the types of acts concerned by the prohibition of measures establishing privileged access.

Main points of the directive:

- "Measure establishing privileged access" means any binding measure adopted in the exercise of public authority which obliges financial institutions to acquire or to hold liabilities of public sector institutions or bodies or confers tax advantages or financial advantages which may benefit only financial institutions acquiring or holding such liabilities.
- Privileged access is not regarded as being established by those measures which give rise to: obligations for funding social housing, or obligations to finance the repair of disaster damage, among others.

The following institutions do not form part of the financial institutions covered by the Regulation: the European Central Bank and national central banks; post office financial services when they form part of the general government sector or when their main activity is to act as the financial agent of government; the institutions which are part of the general government sector or the liabilities of which correspond completely to a public debt.

Indirect taxes on the raising of capital

Approximation of the laws of the Member States concerning indirect taxes on the raising of capital

Directive 69/335/EEC, amended by Directive 73/79/EEC, Directive 74/553/EEC and Directive 85/303/EEC

<http://europa.eu.int/scadplus/leg/en/lvb/l26044.htm>

The directive's aim is to harmonise the laws relating to duty chargeable on contributions of capital to capital companies and to stamp duty on securities representing capital, shares and bonds in order to reduce discrimination, double taxation and barriers to the movement of capital within the single market.

Institutions for occupational retirement provision (IORPs)

Directive 2003/41/EC

<http://europa.eu.int/scadplus/leg/en/lvb/l24038b.htm>

The directive's purpose is to establish a specific legal framework for institutions for occupational retirement provisions (IORPs) and to guarantee security and financial accessibility. It also abolishes barriers to investment by pension funds.

Main points of the directive:

- The proposal covers all IORPs, which operate on a funded basis (private supplementary pensions) and are outside the social security systems.
- Pensioners participating in the system must have sufficient information on the rules of the pension scheme, on the institution's financial situation and on their rights.
- The directive establishes investment rules adapted to the characteristics of IORPs and rules permitting cross-border management of IORP pension schemes.
- IORPs are permitted to manage the schemes of firms established in other Member States by applying the prudential rules of the Member State where they are established (country of origin control).
- The pension fund has the right to make use of the services of any authorised administrator in the EU without limitation.
- There must be a legal separation between a sponsoring undertaking that the fund operates and the IORP itself.

Reclassification of settlements under swaps arrangements and under forward rate agreements

Regulation 2558/2001/EC amending Regulation 2223/96/EC

http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_344/l_34420011228en00010004.pdf

Regulation 2223/96/EC establishes the European System of Accounts (ESA), containing the reference framework of common standards, definitions, classifications and accounting rules for drawing up accounts in order to obtain comparable statistical results between Member States. The objective of Regulation 2558/2001 is a change in the classification of settlements under swaps arrangements and under forward rate agreements in the ESA.