Investment services: application of conduct of business rules (Directive 93/22/EEC)

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PURPOSE: to present a Communication from the Commission on the application of conduct of business rules under Article 11 of the Investment Services Directive (93/22/EEC). CONTENT: This Communication provides a survey of the way in which Article 11 has been implemented in Member States and provides orientations on how conduct of business rules could be applied so as to facilitate cross-border provisions of service. It suggests how conduct of business protection can be tailored to prevailing market reality and impending changes in the legal environment. The Communication also considers the application of conduct of business rules to branches of investment firms. For a number of reasons, cross-border provision of investment services is unnecessarily complicated and made more costly than necessary by legal uncertainty and overlapping regulatory requirements. Against this background, the Commission suggests that: - with regard to article 11(1), the obligation of Member States to take account of the professional nature of the investor should not be seen as conditional on the prior harmonisation of the content of business protection; - with regard to article 11(2), the general good requires that national supervisory bodies take account of the nature of the investor and their "need for protection" before deciding whether to impose local conduct of business rules. Account must also be taken of the fact that conduct of business regimes in all Member States already offer sufficient and comparable protection to professional investors. Therefore, investment services provided to professional investors could be governed exclusively by the conduct of business rules in force in the country of the service provider ("home country") without prior harmonisation. With respect to retail investors, differences persist between national conduct of business protection: host country authorities may thus impose local business rules for such investors in accordance with Treaty principles and secondary legislation.