Investment services: upgrading Directive 93/22 /EEC

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PURPOSE : to open an extensive consultation on the possible upgrading of the Investment Services Directive (ISD:93/22/EEC). CONTENT : the Lisbon European Council has underlined the strategic importance of sustaining the greater reliance on market-based financing as a critical element for strengthened economic prosperity in the EU. The present Communication, foreseen by the Financial Services Action Plan, defines orientations and seeks public comments for a substantive overhaul of the Investment Services Directive (ISD:93/22/EEC). The ISD is the cornerstone of the EU legislative framework for investment firms and securities markets. In the five years since its entry into force, it has eliminated a first set of legal obstacles to the single market for securities. The single passport conferred on authorised investment firms is widely used. Access to "regulated markets" and exchanges has been liberalised. Pan-European dealing in nationally-listed securities has been facilitated. The ISD nevertheless needs modernisation to meet the demands of the new securities trading environment. Market forces, amplified by the single currency, are driving demand for an integrated financial market. Information technology is revolutionising business practices and paving the way for the emergence of a new generation of service providers. The drive to enhance performance, reduce costs and establish a pan-European presence is stimulating profound restructuring of the securities trading infrastructure. Proposals for mergers and alliances between exchanges are the most visible manifestation of these profound changes. Consolidation of clearing and settlement, which can substanially improve efficiency of European securities trading - is gathering pace. The four key priorities for the ISD upgrading include: 1) an effective passport for investment firms; 2) new forms of service provision; 3) effective competition between exchanges and trading platforms; 4) the growing cross-border dimension of clearing and settlement. Europe needs financial services legislation that will stand the test of time. Prescriptive, inflexible rules which are quickly overtaken by financial innovation or market developments must be avoided. Framework legislation that enshrines high-level principles could provide the legal bed-rock for a dynamic, orderly and stable single financial market. Such high level principles must be accompanied by mechanisms which provide supplementary guidance and ensure uniform interpretation. Without this, framework rules will remain a dead-letter. An updated ISD must provide a common legal basis for "straight-through" supervision and enforcement. Regulatory and supervisory cooperation through Forum of European Securities Commissions (FESCO) is already paying dividends but must be stepped up. The Commission, acting within the Treaty provisions and the Union's institutional framework, and guided by the analysis of the Committee of Wise Men on securities markets will consider how best to respond to these needs in developing legislative proposals to update the ISD.