

DFH/FM/nd/22/13/1

22 May 1998

Mr John Mogg,
Director-General DG XV,
European Commission,
C 107 06/72,
200 rue de la Loi,
1049 BRUXELLES

Dear Sir,

RE: IMPLEMENTATION OF THE INVESTMENT SERVICES DIRECTIVE

In UNICE's view, items of Community legislation such as the Second Banking Directive (SBD) and the Investment Services Directive (ISD) are central to the establishment of the European single market in financial services and it fully supports the basic principles enshrined in these Directives.

However, if these instruments are to bring about a competitive single market for financial services, the manner in which they are implemented nationally is of paramount importance. Recognising this in the context of the SBD, the Commission adopted in June last year an interpretative communication, a move which interested circles greatly welcome.

Regarding implementation of the ISD, some of the sector organisations concerned have drawn UNICE's attention to the fact that a range of problems have arisen. Five main practical problems have thus been identified.

- Burdensome rules and restrictions which were previously not applicable to cross-border dealings between professional participants in the market (conduct of business and marketing rules).
- Inconsistency between home and host state regulators as to whose rules apply to cross-border dealings.
- Failure to take into account the professional nature of the market for swaps and other privately negotiated derivatives.
- Failure to take into account the international nature of the market.
- Failure to take into account the manner in which cross-border business is conducted, particularly in relation to the use of professional intermediaries and the use of modern means of communication.

As you well know, the establishment of a single market in financial services is of great importance to the entire business community and UNICE believes that the above-mentioned problems hamper this process and add to legal uncertainties and costs for derivatives dealers and their customers, including companies in general as users of these products.

UNICE is aware of the fact that the London Investment Banking Association (LIBA) and the International Swaps and Derivatives Association (ISDA) have called upon the Commission to publish an interpretative communication on the ISD which addresses these difficulties, as was done last year regarding the SBD.

UNICE strongly supports these organisations' request for an interpretative communication which could provide guidance and encourage a consistent approach by individual member states on proper implementation of the ISD, especially in relation to inter-professional transactions.

I would very much appreciate receiving your views on the above suggestion.

Yours sincerely,

Dirk Hudig
Secretary General