

EUROPEAN COMMISSION
Internal Market and Services DG

Director-General

Brussels, 21.03.05 1381
DG/MV/eb/D(2005) 3522

MEMBERS OF THE EUROPEAN SECURITIES COMMITTEE

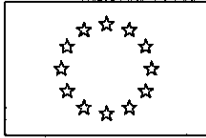
Dear ESC Member,

Following discussions in the ESC meeting of 23/2/05, please find attached copy of an addendum to the formal request for technical advice on possible implementing measures on the Directive on Markets in Financial Instruments addressed to the Committee of European Securities Regulators (CESR) by DG Internal Market by letter of 25 June 2004. The Commission has decided to accept the request formulated by CESR to extend the deadline granted for preparing advice on articles 19 (7) (professional client agreements), Articles 13 (3) and 18 (investment research) and Article 40 (admission of financial instruments to trading by 30 April 2005.

A. SCHAUB

Annex: Addendum to the CESR formal mandate

Contact: Maria Velentza, e-mail: maria.velentza@cec.eu.int



EUROPEAN COMMISSION
Internal Market DG

FINANCIAL MARKETS
Securities markets

Brussels, 11/3/05
MV D(2005)

ADDENDUM TO THE FORMAL REQUEST FOR TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING MEASURES ON THE DIRECTIVE ON MARKETS IN FINANCIAL INSTRUMENTS (DIRECTIVE 2004/39/EC)

The present request supplements the formal request for Technical Advice on Possible Implementing Measures on the Directive on markets in financial instruments (Directive 2004/39/EC) presented on 25/6/2004 to CESR. The purpose of this addendum is to grant CESR an extension of the deadline concerning some issues linked to the requests for technical advice on articles 19 (7) (professional client agreements), Articles 13 (3) and 18 (investment research) and Article 40 (admission of financial instruments to trading) by 30 April 2005. In the provisional mandate presented on 20/01/2004 the deadline for delivering advice on these points was initially set by 31 January 2005; this deadline was confirmed in the formal mandate.

Along the same lines as the provisional mandate presented on 20/01/2004 and the formal mandate presented on 25/6/2004, this additional request follows the agreement on implementing the Lamfalussy recommendations reached with the European Parliament on 5 February 2002. In this agreement, the Commission committed itself to a number of important points, including increasing transparency. For this reason, this request for technical advice will be made available on DG Internal Market's web site once it has been sent to CESR.

By letter of 25 June 2004, DG Internal Market sent to the Committee of European Securities Regulators (CESR) a formal request for technical advice on possible implementing measures on the Directive on Markets in Financial Instruments. This formal mandate, on the one hand, confirmed the provisional mandate for technical advice presented to CESR on 20th January 2004 and, on the other hand, included new requests which were not covered in the provisional mandate because there were still on-going negotiations in the European Parliament and Council on those issues in the context of the co-decision procedure.

DG Internal Market requested the Committee of European Securities Regulators (CESR) to provide technical advice:

- by 31 January 2005 with a view to adopt implementing legislation on Articles 13, 18, 19(2),(3),(7), (8), 21, 22, 25, 28, 29, 30, 39, 43, 44, 56 and 58; and

- by 30 April 2005 with a view to adopt implementing legislation on Articles 4 (4), (7), (17) and Annex I Section C, 19 (1) and (4-6), 22 (2) , 24 and 27.

For reasons of coherence between the different rules that are designed to ensure a high degree of competition and efficiency in European markets and in particular between the transparency and best execution provisions of the Directive the Commission, in its formal mandate, decided to extend the deadline granted to CESR in the provisional mandate requesting advice on articles 21 (best execution), 28 (post-trade transparency disclosure by investment firms), 29 (pre-trade transparency requirements for MTFs), 30 (post-trade transparency requirements for MTFs), 44 (pre-trade transparency requirements for Regulated Markets) and 45 (post-trade transparency requirements for Regulated Markets) to 30/04/2005.

A further extension was granted to CESR with respect to Article 22 (1) (client order handling rules) in order to align the deadline for delivering this part of the advice (initially set by 31 January 2005) to the deadline granted for preparing the advice on Article 21 (best execution) and 19 (1) (general obligation to act fairly, honestly and professionally); the deadline for these requests has been set by 30 April 2005. The Commission accepted the alignment of the deadline to 30 April 2005 in order to allow CESR to address adequately a number of horizontal issues which interact between these provisions and to ensure overall coherence.

By letter of 31st January 2005, CESR delivered the first part of its technical advice to the Commission on the first set of mandates; in this same letter, following informal discussions with the Commission, CESR announces that concerning three issues, linked to the requests for technical advice on articles 19 (7) (professional client agreements), Articles 13 (3) and 18 (investment research) and Article 40 (admission of financial instruments to trading), which form part of the first set of mandates, CESR will deliver its advice by the end of April 2005, together with the rest of the technical advice under MiFID.

The Commission considers that CESR's request is reasonable and justified. The issues for which the extension of deadline is requested are extremely complicated; delivering quality advice on these issues relies largely on additional analysis that CESR will need to conduct during this additional period of time. Furthermore, the Commission considers that this extension of deadline does not delay the process of the preparation of level 2 implementing legislation and its adoption through comitology by the Commission.

For these reasons, after having consulted the European Securities Committee in its meeting of 23/2/2005, the Commission has decided to accept to extend the deadline granted to CESR for preparing advice on articles 19 (7) (professional client agreements), Articles 13 (3) and 18 (investment research) and Article 40 (admission of financial instruments to trading) by 30 April 2005.