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Final Report by the Review Panel on the Common Implementation Review of CESR's Cold Calling Standards

Background

Following the decision by CESR to conduct a common review of the implementation of the Investor Protection Standards related to Standards 18 to 24 on cold calling (Ref. CESR/01-014d), and the approval of the General Methodology for undertaking such implementation reviews (Ref. CESR/04-711b), the Review Panel established a sub-group, co-ordinated by Mrs Eleftheria Apostolidou from the Hellenic Capital Market Commission, which has been working on defining the additional assessment criteria to be used to this exercise. In a first step, the sub-group developed detailed assessment criteria, which were approved by the Review Panel and which form an additional basis for the common implementation review by the Review Panel. (The assessment criteria are presented in Annex II.) Then all CESR Members were invited to reconsider their self-assessment and to make any changes necessary, in particular, in light of the detailed assessment criteria. Thereafter, the sub-group commonly reviewed the self-assessments of all CESR Members as to whether the Standards on cold calling were fully implemented, partially implemented or not implemented. (The detailed results per Member are presented in Annex I.) These assessments were presented to the Review Panel for approval.

Given possible incompatibilities between CESR Rule 24 on cold calling and the DMD, the Review Panel decided not to assess the implementation of that Rule.

In line with the General Methodology, the group checked to what extent these Standards have been affected by the EU Directive on distance marketing of consumer financial services. The group also considered the work undertaken by CESR at Level 2 under the MiFID concerning, in particular, the issue of tied agents as provided for in Standard 19 in the review. These issues are discussed in detail further below.

Furthermore, the Review Panel has taken note that the inclusion of areas such as compliance and internal control mechanism would be crucial for the assessment of practical implementation. At the same time the thin line between the mandate of CESR at Level 3 and the Commission's prerogative rights relating to MiFID Level 1 and 2 measures has to be emphasised.

Methodological Approach

The detailed assessment criteria are based on a number of considerations, which are set out below for a better understanding:

According to the General Methodology:

- a. "An implementation review covers the review of the implementation of CESR measures (such as CESR Standards and/or Level 3 Measures or Guidelines) and the day-to-day application of the technical aspects of EU Directives and Regulations and of the European Commission's Recommendations by the Members of CESR."

- b. “The level of detail of each implementing measure should be equivalent to the level of detail of the Measure. Therefore, a general principle alone is only considered as implementing a Measure with respect to the corresponding general principle of an element. With respect to a detailed Measure, only if there is clear indication that requirements (e.g. case law, the regulator’s manuals for licensing or supervision, etc.) provide for further detail to a general principle of national law the level of detail of which is equivalent to the corresponding Measure, it would be considered as an implementing measure.”
- c. “If an implementing measure is considered as going beyond the requirements of the Measure, this fact would be indicated in an appropriate form in the comments. As regards the assignment of one of the categories of implementation in such cases, this has to follow a case-by-case approach taking into account considerations, such as the level of harmonisation intended by the Measure in question, its regulatory objective, or compliance with relevant EU law.”
- d. “The Methodology is going to be used primarily to verify the actual implementation of the CESR Measures in Member States, the day-to-day application of the technical aspects of EU Directives and Regulations and the practical implementation of the European Commission’s recommendations by the Members of CESR. The Methodology does not aim to extend or change the scope of CESR Measures, but to lead to their consistent application after adoption and implementation in each Member State.”
- e. “If an implementing measure is not in force but has already been formally adopted, and a concrete date of its coming into force is stated in the correspondence table, it will be assessed as if it had been in force at the time of the review, provided that implementing measure comes into force within a reasonable period of time after the review process has started.”
- f. “If an implementing measure as to a Measure is in the process of being drawn up, this has to be stated in the correspondence table, provided that the implementing measure is already in a concrete stage (e.g. a proposal to Parliament or publication of a consultation paper).”

Therefore, the additional detailed assessment criteria should be read in conjunction with the General Methodology.

In assessing the Investor Protection Standards related to cold calling, it had to be established whether there were specific implementing measures applicable to cold calling activities of investment firms. These should be clear from their content and provide for explicit limitations to this kind of activity, in particular by ensuring that customers are never put in a position that could result in undue pressure being exerted upon them to enter into a contract.

The rules of the assessed Member’s jurisdiction should also give the supervisory authorities adequate powers and resources to enforce the implementing measures covering cold calling activities and to sanction the infringement of these measures.

Furthermore, the practical implementation of the said implementing measures was verified to ascertain whether cold calling is efficiently supervised and infringements of these implementing measures are effectively enforced. Clearly, such an assessment has its limits where a CESR Member did not provide relevant information regarding this issue. Any such shortcomings might be overcome though input from interested parties, as provided for in the General Methodology.

Interaction with MiFID and Distance Marketing Directive

1. MiFID:

To start with, it has to be stressed that the MiFID and implementing measures thereto are not yet transposed or still under preparation, respectively. Therefore, the following assessment of the impact of the MiFID and possible Level 2 measures can only be of preliminary nature.

The group considers that the MiFID does not have a direct impact on Rule 19 requiring this Rule to be changed. This Directive requires investment firms that decide to appoint tied agents to assume full responsibility for their actions or omissions (Article 23/2). In addition, it requires Member States to ensure that only tied agents of sufficiently good repute and with appropriate general, commercial and professional knowledge are registered (Article 23/3). It allows Member States to impose more stringent requirements in relation to tied agents.

Rule 19 is in line with the first two requirements and is not construed as reinforcing or adding specific requirements for tied agents. The definitions of tied agents in the MiFID (Article 2/25) and in the Standards are also deemed to be in line (see also Recital 26 of the MiFID), and the group considers that the definition in the Standards should be read in the light of the MiFID.

There are no comitology powers under Article 23 of the MiFID. The mandates under Articles 13/2 (compliance and personal transactions), 13/3 and 18 (conflicts of interests), 19/2 (fair, clear and not misleading information), 19/8 (information to clients), among others, refer to tied agents but do not require changes to Rule 19, insofar as they deal with different issues.

2. Distance Marketing Directive of Consumer Financial Services (2002/65/EC):

An analysis of the impact of the Distance Marketing Directive (“DMD”) on the cold calling Standards, which is set out in full in Annex III, came to the following conclusion:

As a general point, CESR Standards go further than the DMD insofar as they cover also door-to-door selling of investment services and retail customers that are not consumers in the sense of the DMD, which would be an extension permissible under the DMD.

No changes are considered necessary as to Standard 18, Rules 19, 20, 22 and 23.

Rule 21 could require an amendment regarding its reference to the frozen period set out in Rule 24.

As to Rule 24, it seems appropriate to amend this Rule in order to remove the inconsistencies with the DMD and to clarify its application to non-distance contracts.

Observations

With respect to Member’s jurisdictions providing for a general prohibition on cold calling for the purpose of consumer protection, this is considered “not implemented”. The fact that the jurisdictions in question provide for a general prohibition is noted in the assessment.

The issue of super-equivalence was considered, however, it did not appear to be a significant issue for this exercise.

Given possible incompatibilities between CESR Rule 24 on cold calling and the DMD, the Review Panel decided not to assess the implementation of that Rule. The Review Panel recommends that consideration should be given to amending Rule 24.

The cold calling Standards do not only apply to telecommunication with consumers, but also to door-to-door selling activities. Apparently, in a number of Members’ jurisdictions the implementing measures do not cover door-to-door selling.

Moreover, in a number of responses the issue of monitoring and sanctioning powers of the competent authorities was not covered fully adequately, which might partly explain the negative results of the review.

According to the assessment of the responses from Members, out of 27 Members’ jurisdictions, four provide for a general prohibition of cold calling. One Member’s jurisdiction has fully implemented and eleven have partially implemented the Standards. Eleven either do not regulate or have not implemented the Standards. It can be mentioned that at least five of them have already taken steps to (fully) implement the Rules. (For a detailed overview of the results, please be referred to Annex I.)

Annex I: Final Results for each Member

<i>COUNTRIES</i>	<i>Standard 18</i>			<i>Rule 19</i>			<i>Rule 20</i>			<i>Rule 21</i>			<i>Rule 22</i>			<i>Rule 23</i>		
	Implem.	Part.Imp.	Not Impl.	Implem.	Part.Imp.	Not Impl.	Implem.	Part.Imp.	Not Impl.	Implem.	Part.Imp.	Not Impl.	Implem.	Part.Imp.	Not Impl.	Implem.	Part.Imp.	Not Impl.
Belgium			√			√			√			√			√			√
Czech Republic		√				√		√			√			√				√
Denmark			√			√			√			√			√			√
Germany			√			√			√			√			√			√
Estonia			√			√			√			√			√			√
Greece	√			√					√	√			√					√
Spain			√			√			√	√					√			√
France	√			√					√	√					√		√	
Ireland		√			√			√			√			√				√
Italy	√			√					√	√			√			√		
Cyprus	√			√			√			√			√			√		
Latvia			√			√			√			√			√			√
Lithuania		√				√			√		√			√				√
Luxembourg			√			√			√			√			√			√
Hungary		√				√			√		√				√			√
Malta			√		√			√				√		√				√
Netherlands			√			√			√			√			√			√
Austria			√			√			√			√			√			√
Poland			√			√			√			√			√			√
Portugal	√			√					√	√					√		√	

Slovenia			√			√			√			√			√			√
Slovakia			√			√			√			√			√			√
Finland		√		√					√			√			√		√	
Sweden			√			√			√			√			√			√
United Kingdom	√					√	√			√			√			√		
Iceland			√			√			√			√			√			√
Norway			√			√			√			√			√			√

Detailed assessment of each Member's jurisdiction

JURISDICTION: AUSTRIA

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes									Implemented <input type="checkbox"/>	Cold calling is prohibited.
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 19										
Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 20										
Yes									Implemented <input type="checkbox"/> Partially implemented	

No										<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 21											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No											
Question	1	2	3	4	5					Assessment	Observations
Rule 22											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No											
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 23											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/>	

No										<div> <input type="checkbox"/> </div> <div>Not implemented</div> <div> <input checked="" type="checkbox"/> </div>	
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JURISDICTION: BELGIUM

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes									Implemented <input type="checkbox"/>	Note from assessor: Door-to-door selling of financial instruments and UCITS is prohibited by the Law. The above rule is interpreted in a Circular issued by the Banking and Finance Commission as also including the “unsolicited selling” made through telephone campaigns. The transposition of the Distance Marketing Directive should bring some substantial changes in the existing legislative framework.
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

Question	1	2	3	4					Assessment	Observations
Rule 20										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓					Not implemented <input checked="" type="checkbox"/>	
Rule 21										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓	✓		Not implemented <input checked="" type="checkbox"/>	
Rule 22										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓				Not implemented <input checked="" type="checkbox"/>	

Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓	✓		Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: CZECH REPUBLIC

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓							Implemented <input type="checkbox"/>	<p><u>Note from assessor:</u> the Czech Securities Commission published a document, called “Cold Calling”, informing potential customers about modalities and risks of cold callings and how to act in case of receiving such calls. However, this document, which is not available to the assessor, cannot be considered as an implementing measure, since it does not appear to be enforceable. Moreover, the Czech Securities Commission did not provide the assessor with the relevant provisions on monitoring and enforcement and, therefore, the answers to the relevant question for each standard and rule have been assessed as “not implemented”.</p>
No									Partially implemented <input checked="" type="checkbox"/>	
			✓	✓	✓	✓			Not implemented <input type="checkbox"/>	
Rule 19										

Yes	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>						Implemented <input type="checkbox"/>	
No		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			Partially implemented <input type="checkbox"/>	
									Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4					Assessment	Observations
Rule 20										
Yes	<input checked="" type="checkbox"/>								Implemented <input type="checkbox"/>	<u>Note from assessor:</u> an investment firm can promote its services by means of direct addressing of clients only from 8 a.m. to 7 p.m.
No		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					Partially implemented <input checked="" type="checkbox"/>	
									Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						Implemented <input type="checkbox"/>	
No					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Partially implemented <input checked="" type="checkbox"/>	
									Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22										

Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>								Implemented <input type="checkbox"/>	
No			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					Partially implemented <input checked="" type="checkbox"/>	
										Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 23											
Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>					Implemented <input type="checkbox"/>	
No			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			Partially implemented <input type="checkbox"/>	
										Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: CYPRUS

Question	1	2	3	4	5	6				Assessment	Observations
Standard 18											
Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				Implemented <input checked="" type="checkbox"/>	
No										Partially implemented <input type="checkbox"/>	
										Not implemented <input type="checkbox"/>	

Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Question	1	2	3	4					Assessment	Observations
Rule 20										
Yes	✓	✓	✓	✓					Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes	✓	✓	✓	✓	✓	✓	✓		Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	

Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes	✓	✓	✓	✓	✓				Implemented <input checked="checked" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Rule 23										
Yes	✓	✓	✓	✓	✓	✓	✓		Implemented <input checked="checked" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	

JURISDICTION: DENMARK

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes									Implemented <input type="checkbox"/>	Note from the assessor: Cold calling is prohibited by the general consumers contracts act.

No										Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓				Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6				Assessment	Observations
Rule 19											
Yes										Implemented <input type="checkbox"/>	
										Partially implemented <input type="checkbox"/>	
No										Not implemented <input checked="" type="checkbox"/>	
✓	✓	✓	✓	✓	✓	✓					
Question	1	2	3	4						Assessment	Observations
Rule 20											
Yes										Implemented <input type="checkbox"/>	
										Partially implemented <input type="checkbox"/>	
No										Not implemented <input checked="" type="checkbox"/>	
✓	✓	✓	✓	✓							
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 21											
Yes										Implemented <input type="checkbox"/>	
										Partially implemented	

No									<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes									Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No										
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes									Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No										

JURISDICTION: ESTONIA

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										

Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓			Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes									Implemented <input type="checkbox"/>	Reference is made to a guideline that was not accessible
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓			Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4					Assessment	Observations
Rule 20										
Yes									Implemented <input type="checkbox"/>	Reference is made to a guideline that was not accessible
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓					Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes									Implemented <input type="checkbox"/>	Reference is made to a guideline that was not accessible
									Partially implemented <input type="checkbox"/>	

No										Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5					Assessment	Observations
Rule 22											
Yes										Implemented <input type="checkbox"/>	Reference is made to a guideline that was not accessible
No										Partially implemented <input type="checkbox"/>	
										Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 23											
Yes										Implemented <input type="checkbox"/>	Reference is made to a guideline that was not accessible
No										Partially implemented <input type="checkbox"/>	
										Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: FINLAND

Question	1	2	3	4	5	6				Assessment	Observations
Standard 18											

Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			Implemented <input type="checkbox"/>	Door-to-door selling is not included in the scope of the implementing measures.
No									Partially implemented <input checked="" type="checkbox"/>	
									Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
									Not implemented <input type="checkbox"/>	
Question	1	2	3	4					Assessment	Observations
Rule 20										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
									Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										

Yes		✓	✓		✓	✓	✓		Implemented <input type="checkbox"/>	Door-to-door selling is not included in the scope of the implementing measures.
No	✓			na					Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes									Implemented <input type="checkbox"/>	Door-to-door selling and telephone calls are not included in the scope of the implementing measures.
No	✓	✓	✓	✓	✓				Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes	✓	✓	✓	✓		✓	✓		Implemented <input type="checkbox"/>	Door-to-door selling is not included in the scope of the implementing measures.
No					✓				Partially implemented <input checked="" type="checkbox"/> Not implemented <input type="checkbox"/>	

JURISDICTION: FRANCE

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/> X	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Rule 19										
Yes	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/> X	KQ 1 – The rule is substantially complied with, as the firm is responsible for the actions of the tied agent
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Rule 20										
Yes			✓	✓					Implemented <input type="checkbox"/> Partially implemented	

No									<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes									Implemented <input checked="" type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	KQ 1 and 2 – A Decret from the Conseil d'État will clarify the issue in relation to the application of the rules to telephone conversations.
No										
Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes									Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No										
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes									Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/>	

No					✓					<input checked="" type="checkbox"/> Not implemented <input type="checkbox"/>	
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JURISDICTION: GERMANY

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18									Implemented <input type="checkbox"/>	Note from the assessor: Cold calling is prohibited by the general competition law ("advertising by means of cold calling") and by a general order issued by the BAWe in 1999 and addressed to investment services firms.
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6			Assessment	Observations
Rule 19									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4					Assessment	Observations
Rule 20										

Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓					Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓	✓		Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓				Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										

Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓	✓	✓		Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: GREECE

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/>	Law 2251/94 (art 4.º §6 and art. 9.º §10) and further amendments by Joint Ministerial Decision of 10 May 2005; Presidential Decree 131/2003(art. 6.º). The HCM authority (securities supervisor) also has the powers to enforce such provisions.
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	

Question	1	2	3	4					Assessment	Observations
Rule 20										
Yes									Implemented <input type="checkbox"/>	Nevertheless, art. 4a §10 of Law 2251/94 provides that “Technical means of communication should be used in a way that the private life of the consumer is not infringed”.
No	✓	✓	✓	✓					Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes	✓	✓	✓	✓	✓	✓	✓		Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes	✓	✓	✓	✓	✓				Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	

Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes	✓								Implemented <input type="checkbox"/>	See above indications that the concept of “undue pressure” is regulatory recognized.
No		✓	✓	✓	✓	✓	✓		Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: HUNGARY

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓							Implemented <input type="checkbox"/>	
No									Partially implemented <input checked="" type="checkbox"/> Not implemented <input type="checkbox"/>	
			✓	✓	✓	✓				
Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes									Implemented <input type="checkbox"/>	
									Partially implemented	

No										<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4						Assessment	Observations
Rule 20											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No											
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 21											
Yes										Implemented <input type="checkbox"/> Partially implemented <input checked="" type="checkbox"/> Not implemented <input type="checkbox"/>	
No											
Question	1	2	3	4	5					Assessment	Observations
Rule 22											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/>	

No									<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
									Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: ICELAND

[illegible]

Yes	<input checked="" type="checkbox"/>								Implemented <input type="checkbox"/>	Indirect answer to question 1.
No		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4					Assessment	Observations
Rule 20										
Yes									Implemented <input type="checkbox"/>	Change in progress.
No	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes									Implemented <input type="checkbox"/>	Change in progress.
No	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22										

Yes									Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	Change in progress.
No	✓	✓	✓	✓	✓					
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes									Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	Change in progress.
No	✓	✓	✓	✓	✓	✓	✓			

JURISDICTION: IRELAND

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓							Implemented <input type="checkbox"/>	

No										Partially implemented <input checked="" type="checkbox"/>	
			✓	✓	✓	✓				Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6				Assessment	Observations
Rule 19											
Yes	✓	✓	✓							Implemented <input type="checkbox"/>	
No										Partially implemented <input checked="" type="checkbox"/>	
				✓	✓	✓				Not implemented <input type="checkbox"/>	
Question	1	2	3	4						Assessment	Observations
Rule 20											
Yes	✓									Implemented <input type="checkbox"/>	
No										Partially implemented <input checked="" type="checkbox"/>	
		✓	✓	✓						Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 21											

Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					Implemented <input type="checkbox"/>	
No					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Partially implemented <input checked="" type="checkbox"/>	
					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						Implemented <input type="checkbox"/>	
No				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				Partially implemented <input checked="" type="checkbox"/>	
				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				Implemented <input type="checkbox"/>	
No			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Partially implemented <input type="checkbox"/>	
			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: ITALY

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Rule 19										
Yes	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Rule 20										
Yes		✓	✓	✓					Implemented <input type="checkbox"/> Partially implemented	

No										<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 21											
Yes	✓	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
No											
Question	1	2	3	4	5					Assessment	Observations
Rule 22											
Yes	✓	✓	✓	✓	✓					Implemented <input checked="" type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
No											
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 23											
Yes	✓	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/> Partially implemented <input type="checkbox"/>	

No									<input type="checkbox"/> Not implemented <input type="checkbox"/>	
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JURISDICTION: LATVIA

Question Standard 18	1	2	3	4	5	6			Assessment	Observations
Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question Rule 19	1	2	3	4	5	6			Assessment	Observations
Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question Rule 20	1	2	3	4					Assessment	Observations

Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓					Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21									Implemented <input type="checkbox"/>	
Yes									Partially implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓	✓	✓		Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22									Implemented <input type="checkbox"/>	
Yes									Partially implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓				Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23									Implemented <input type="checkbox"/>	
Yes									Partially implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓				Not implemented <input checked="" type="checkbox"/>	

Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓	✓	✓		Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: LITHUANIA

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓							Implemented <input type="checkbox"/>	
No									Partially implemented <input checked="" type="checkbox"/> Not implemented <input type="checkbox"/>	
			✓	✓	✓	✓				
Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

Question	1	2	3	4					Assessment	Observations
Rule 20										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓					Not implemented <input checked="" type="checkbox"/>	
Rule 21										
Yes	✓	✓	✓	✓					Implemented <input type="checkbox"/>	
No									Partially implemented <input checked="" type="checkbox"/>	
					✓	✓	✓		Not implemented <input type="checkbox"/>	
Rule 22										
Yes	✓	✓	✓						Implemented <input type="checkbox"/>	
No									Partially implemented <input checked="" type="checkbox"/>	
				✓	✓				Not implemented <input type="checkbox"/>	

Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓	✓		Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: LUXEMBOURG

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes									Implemented <input type="checkbox"/>	Standard 18 will be considered as implemented when the draft law will come into force.
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓			Not implemented <input checked="" type="checkbox"/>	
Rule 19										
Yes									Implemented <input type="checkbox"/>	Rule 19 will be considered as implemented when the draft law will come into force.
									Partially implemented	

No										<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4						Assessment	Observations
Rule 20											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No											
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 21											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No											Rule 21 will be considered as implemented when the draft law will come into force.
Question	1	2	3	4	5					Assessment	Observations
Rule 22											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No											Rule 22 will be considered as implemented when the draft law will come into force.

No									<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes									Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	Rule 23 will be considered as implemented when the draft law will come into force.
No										

JURISDICTION: MALTA

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓							Implemented <input type="checkbox"/>	Indication that further rules will be introduced.
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 19										
Question	1	2	3	4	5	6			Assessment	Observations

Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Implemented <input type="checkbox"/>	Not enough information provided to answer all the questions
No									Partially implemented <input checked="" type="checkbox"/>	
									Not implemented <input type="checkbox"/>	
Question	1	2	3	4					Assessment	Observations
Rule 20										
Yes	<input checked="" type="checkbox"/>								Implemented <input type="checkbox"/>	There is a timing restriction and a proposal that Sunday and local national holidays will be excluded.
No		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					Partially implemented <input checked="" type="checkbox"/>	
									Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes	<input type="checkbox"/>	<input type="checkbox"/>							Implemented <input type="checkbox"/>	It's not clear whether the disclosure of identity must be made at the beginning of the call.
No			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Partially implemented <input type="checkbox"/>	
									Not implemented <input checked="" type="checkbox"/>	Indication that further rules will be introduced.
Question	1	2	3	4	5				Assessment	Observations
Rule 22										

Yes		✓							Implemented <input type="checkbox"/>	Proposed future changes to bring them more in line with CESR standards
No	✓		✓	✓	✓				Partially implemented <input checked="" type="checkbox"/>	
									Not implemented <input type="checkbox"/>	Indication that further rules will be introduced. Indication that further rules will be introduced.
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes	✓	✓	✓	✓					Implemented <input type="checkbox"/>	Indication that further rules will be introduced.
No					?	?	?		Partially implemented <input type="checkbox"/>	
									Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: NETHERLANDS

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes									Implemented <input type="checkbox"/>	Cold calling, as defined by CESR standards, are not permitted within this jurisdiction. (The provision of written/electronic information is allowed).
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/>	
									Not implemented <input checked="" type="checkbox"/>	

Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes									Implemented <input type="checkbox"/>	Cold calling requires a license but cold calling as defined by CESR standards is not permitted – this therefore has not been implemented.
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 20										
Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓					Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 21										
Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓	✓	✓		Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓				Not implemented <input checked="" type="checkbox"/>	
Rule 23										
Yes									Implemented <input type="checkbox"/>	There are implicit measures to prevent undue pressure on clients but they do not specifically mention the concept of 'undue pressure'.
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓	✓	✓	Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: NORWAY

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes									Implemented <input type="checkbox"/>	There are no specific rules covering cold calling.

No										Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓				Not implemented <input checked="" type="checkbox"/>	
Rule 19	Question	1	2	3	4	5	6			Assessment	Observations
Yes										Implemented <input type="checkbox"/>	A 'co-operating' entity may be wider than a 'tied agent'.
No										Partially implemented <input type="checkbox"/>	
										Not implemented <input checked="" type="checkbox"/>	
Rule 20	Question	1	2	3	4					Assessment	Observations
Yes										Implemented <input type="checkbox"/>	
No										Partially implemented <input type="checkbox"/>	
										Not implemented <input checked="" type="checkbox"/>	
Rule 21	Question	1	2	3	4	5	6	7		Assessment	Observations

Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/>	
	✓	✓	✓	✓	✓	✓	✓		Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22									Implemented <input type="checkbox"/>	
Yes									Partially implemented <input type="checkbox"/>	
No									Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23									Implemented <input type="checkbox"/>	
Yes									Partially implemented <input type="checkbox"/>	
No									Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: POLAND

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 19										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 20										
Yes									Implemented <input type="checkbox"/> Partially implemented	

No									<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes									Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No										
Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes									Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
No										
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										

Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: PORTUGAL

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓	✓	✓	✓	na			Implemented <input checked="" type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/> Partially implemented	

No										<input type="checkbox"/> Not implemented <input type="checkbox"/>	
Question	1	2	3	4						Assessment	Observations
Rule 20											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
No	✓	✓	✓	✓						<input type="checkbox"/>	
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 21											
Yes	✓	✓	✓	✓	✓	✓	✓			Implemented <input checked="" type="checkbox"/>	
No										Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5					Assessment	Observations
Rule 22											
Yes										Implemented <input type="checkbox"/> Partially implemented	

No										<input type="checkbox"/>	
	✓	✓	✓	✓	✓					Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 23											
Yes	✓	✓	✓	✓		✓	✓			Implemented <input type="checkbox"/>	
No					✓					Partially implemented <input checked="" type="checkbox"/>	
										Not implemented <input type="checkbox"/>	

JURISDICTION: SLOVAKIA

Question	1	2	3	4	5	6				Assessment	Observations
Standard 18											
Yes										Implemented <input type="checkbox"/>	
No										Partially implemented <input type="checkbox"/>	
										Not implemented <input checked="" type="checkbox"/>	The concept of Cold Calling in financial markets is not currently recognised. New legislation is expected soon to deal with Consumer Protection in Distance Selling of Financial Services
Question	1	2	3	4	5	6				Assessment	Observations
Rule 19											

Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox" value="X"/>	
Question Rule 20	1	2	3	4					Assessment	Observations
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox" value="X"/>	
Question Rule 21	1	2	3	4	5	6	7		Assessment	Observations
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox" value="X"/>	
Question Rule 22	1	2	3	4	5				Assessment	Observations

Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: SLOVENIA

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes									Implemented <input type="checkbox"/>	Cold Calling is not defined by law
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 20										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 21										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Rule 23										
Yes									Implemented <input type="checkbox"/>	
No									Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	

JURISDICTION: SPAIN

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes			✓		✓				Implemented <input type="checkbox"/>	KQ 1/2 - The self assessment exercise explains that there are no specific provisions but

No										Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	<p>that general civil and commercial legislation consecrates general duties such as “bona fide”. These “measures” were not included. As rule 18 require “specific measures” I considered this rule not implemented</p> <p>KQ 3 – reference is made to supervisory practices</p> <p>KQ 4 – as there are no specific rules applicable, the sanctioning powers are also general</p> <p>KQ 5 – there is a reference in the document to the general powers and supervisory practice</p> <p>KQ 6 - na</p>
Question	1	2	3	4	5	6				Assessment	Observations
Rule 19											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	<p>KQ 1 – although no specific provisions exist for cold calling, the self assessment exercise qualifies this as “investment service or ancillary service” thereby requesting tied agents or employees</p> <p>KQ 2 – a reference is made to general rules compelling firms to undertake such control</p> <p>KQ 3 – public registry, contract and power of attorney can be requested.</p>
No											
Question	1	2	3	4						Assessment	Observations
Rule 20											
Yes										Implemented <input type="checkbox"/> Partially implemented	

No										<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 21											
Yes										Implemented <input checked="" type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	KQ 1/2 - Article 39 and article 40 of the mentioned legislation refers to “in the beginning of the conversation” and “before contracting” KQ 3 – 40/2 of referred legislation KQ 4 – article 40/1/f and 45 – not applicable to FS
No											
Question	1	2	3	4	5					Assessment	Observations
Rule 22											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	The self assessment exercise only refers to general conduct rules
No											
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 23											
Yes										Implemented <input type="checkbox"/> Partially implemented <input type="checkbox"/>	Self assessment exercise only refers to general rules of conduct

[illegible]

JURISDICTION: SWEDEN

Question Standard 18	1	2	3	4	5	6			Assessment	Observations
Yes									Implemented <input type="checkbox"/>	No English translation of the implementing measure was provided.
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question Rule 19	1	2	3	4	5	6			Assessment	Observations
Yes									Implemented <input type="checkbox"/>	No English translation of the implementing measure was provided.
No	✓	✓	✓	✓	✓	✓			Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question Rule 20	1	2	3	4					Assessment	Observations

Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓					Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 21										
Yes									Implemented <input type="checkbox"/>	No English translation of the implementing measure was provided.
No	✓	✓	✓	✓	✓	✓	✓		Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5				Assessment	Observations
Rule 22										
Yes									Implemented <input type="checkbox"/>	
No	✓	✓	✓	✓	✓				Partially implemented <input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	
Question	1	2	3	4	5	6	7		Assessment	Observations
Rule 23										

Yes									Implemented <div></div>	
No	✓	✓	✓	✓	✓	✓	✓		Partially implemented <div></div> Not implemented <div>X</div>	

JURISDICTION: UK

Question	1	2	3	4	5	6			Assessment	Observations
Standard 18										
Yes	✓	✓	✓	✓	✓				Implemented <input checked="" type="checkbox"/>	Need for more detailed information in the responses as to the tools of the FSA to monitor compliance with the implementing measures and as to the effective enforcement.
No						na			Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
Question	1	2	3	4	5	6			Assessment	Observations
Rule 19										
Yes		✓	✓	✓	✓	✓			Implemented <input type="checkbox"/> Partially implemented	Non-real time financial promotions (e.g. e-mails) can be provided by non-authorised persons, provided that the promotion is approved by

No	<input checked="" type="checkbox"/>									<input type="checkbox"/> Not implemented <input checked="" type="checkbox"/>	an authorised person. This could be tied agents in the sense of the Standards, but would not be limited to them.
Question	1	2	3	4						Assessment	Observations
Rule 20											
Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						Implemented <input checked="" type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	The implementing measures also provide for a prohibition of cold calling at times that the investment firm knows that the customer would not wish to be called.
No											
Question	1	2	3	4	5	6	7			Assessment	Observations
Rule 21											
Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			Implemented <input checked="" type="checkbox"/> Partially implemented <input type="checkbox"/> Not implemented <input type="checkbox"/>	
No				na							
Question	1	2	3	4	5					Assessment	Observations
Rule 22											
Yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					Implemented <input checked="" type="checkbox"/> Partially implemented <input type="checkbox"/>	

No									<input type="checkbox"/> Not implemented <input type="checkbox"/>	
<div>Question</div> <div>Rule 23</div>	1	2	3	4	5	6	7		Assessment	Observations
Yes	✓	✓	✓	✓	✓	✓	✓		Implemented <input checked="" type="checkbox"/> X Partially implemented <input type="checkbox"/>	
No									Not implemented <input type="checkbox"/>	

Annex II - Detailed Assessment Criteria for the Cold Calling Review

In the following, the detailed assessment criteria for Standard 18 to Rule 23 are provided. As mentioned above, given possible incompatibilities between CESR Rule 24 on cold calling and the DMD, the implementation of that Rule is not being assessed.

Assessment Criteria for Standard 18

Standard 18

For the purpose of protecting customers from undue pressure to enter into a contract, cold calls can only be made to potential customers in accordance with the rules set out below.

Key Issues

1. Limits to cold calling activities of investment firms should be clearly established in the implementing measures.
2. The implementing measures should be clearly designed in order to ensure that customers are always adequately protected from undue pressure by investment firms to enter into a contract.
3. The implementing measures should establish adequate arrangements for the supervision of cold calling activities.
4. The implementing measures should give the supervisory authorities adequate enforcement and sanctioning powers in order to punish the infringement of the Rules regulating cold calling activities.

Key Questions

1. Do the implementing measures include specific provisions applicable to cold calling activities?
2. Are the implementing measures designed to protect customers from being put under undue pressure to enter into a contract?
3. Is the supervisory authority provided with adequate tools to monitor cold calling activities and detect possible infringements of the implementing measures?
4. Is there effective enforcement (including proportionate and dissuasive sanctions for violations) of provisions regulating cold calling activities?
5. Does the regulatory approach effectively meet the objective of the Standard?
6. If more than one supervisory authority is in charge of supervision, enforcement and sanctioning cold calling activities, does the sharing of these responsibilities avoid any supervisory gaps?

Benchmarks

Fully implemented

If a positive answer is given to questions 1 to 5 or, if applicable, 1 to 6.

Partially implemented

If a positive answer is given to all applicable questions except for questions 3, 4 and 5.

Not implemented

Inability to give a positive answer to questions 1 and 2.

Assessment Criteria for Rule 19

Rule 19

Cold calls may only be made by persons employed by, or appointed as tied-agents by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.

Key Issues

1. Implementing measures must ensure that customers are protected from receiving cold calls made by persons that do not have a specific connection to an investment firm. Therefore, the above Rule stipulates in very clear terms that cold calling can only be conducted under the responsibility of an investment firm, acting either through an employee or a tied-agent. The aims are, namely, to ensure that the rules on investor protection and conduct of business are fully applicable and complied with.
2. In addition to assuming the full responsibility for ensuring compliance with the provisions on cold calling by their employees or tied-agents, investment firms are also responsible for ensuring that they have appropriate knowledge, training and professional suitability to do so.
3. Supervisory Authorities should be granted adequate monitoring, enforcing and sanctioning powers to supervise cold calling activities.

Key Questions

1. Are there implementing measures that ensure that cold calling can only be undertaken by employees and/or tied-agents of the investment firm?
2. Do the implementing measures oblige investment firm to have in place means for controlling cold calling contacts undertaken by employees and/or tied-agents?
3. Are there implementing measures in effect which ensure that employees and/or tied-agents of the investment firm act under the full responsibility of the firm?
4. Are there implementing measures in effect which ensure that employees and/or tied-agents involved in cold calling have the appropriate knowledge, training and professional suitability (competence) as required for conducting that activity?
5. Is the supervisory authority provided with adequate tools to monitor cold calling activities and detect possible infringements of the implementing measures?

6. Is there effective enforcement (including proportionate and dissuasive sanctions for violations) of provisions implementing Rule 19?

Benchmarks

Fully implemented

If a positive answer is given to questions 1 to 6.

Partially implemented

If a positive answer is given to questions 1 to 3.

Not implemented

Inability to provide affirmative answer to questions 1 to 4.

Assessment Criteria for Rule 20

Rule 20

An investment firm cold calling customers may do so only between the hours of 9:00 a.m. and 9:00 p.m. Monday to Saturday (local time for the customer) and excluding local national holidays.

Key Issues

1. Implementing measures must ensure that customers are protected from receiving cold calls from investment firms outside the normal working days and outside a reasonable time window within those working days.
2. Investment firms must be able to demonstrate that they have taken adequate measures to ensure compliance with this Rule.
3. Supervisory authorities should be granted the adequate monitoring, enforcing and sanctioning powers to ensure compliance with this Rule.

Key Questions

1. Do the implementing measures explicitly state that the customer can only be cold called during specified periods in line with local customs equivalent to those indicated in the Rule?
2. Do the implementing measures stipulate that the investment firm should be able to give evidence of compliance with the Rule?
3. Is the supervisory authority provided with adequate tools to monitor compliance with Rule 20 and detect possible infringements of the implementing measures?
4. Is there effective enforcement (including proportionate and dissuasive sanctions for violations) of provisions implementing Rule 20?

Benchmarks



Fully implemented

If a positive answer is given to questions 1 to 4.

Partially implemented

If a positive answer is given to question 1.

Not implemented

Inability to answer positively to question 1.

Assessment Criteria for Rule 21

Rule 21

The identity of the person making the cold call, the investment firm on whose behalf the person is acting, and the commercial purpose of the cold call must be explicitly identified at the beginning of any conversation with the consumer. The caller must also make reference to the frozen period (see rule 24) during which orders may not be executed.

Key Issues

1. Implementing measures must be established and maintained that require investment firms to ensure that customers are adequately protected from undue conduct of business. To this end, whenever a cold call is made on behalf of an investment firm:
 - a) the identity of the person making the call
 - b) the identity of the investment firm on whose behalf the person is acting
 - c) the commercial purpose of the cold callmust be explicitly identified to the customer at the beginning of any conversation with him.
2. Whenever a cold call is made on behalf of an investment firm, the caller must inform the customer about any right to withdraw from contracts in investment services under certain conditions, if applicable. .
3. Investment firms must be able to demonstrate that they have taken measures in order to ensure compliance with this Rule.
4. Compliance with the implementing measures should be monitored, and provision made for enforcement action in the event of non-compliance.

Key Questions

1. Are there implementing measures in effect which require all persons making a cold call on behalf of an investment firm to explicitly inform the customer about their identity at the beginning of their conversation?
2. Are there implementing measures in effect which require all persons making a cold call on behalf of an investment firm to explicitly inform the customer about the identity of the firm on whose behalf the person is acting at the beginning of their conversation?

3. Are there implementing measures in effect which require all persons making a cold call on behalf of an investment firm to explicitly inform the customer about the commercial purpose of the cold call at the beginning of their conversation?
4. Are there implementing measures in effect which require all persons making such a cold call to inform the customer about any right to withdraw from contracts in investment services under certain conditions, if applicable?
5. Do the implementing measures require investment firms to have internal procedures in place to train their staff to provide the customer with the necessary information at the beginning of their conversation?
6. Is the supervisory authority provided with adequate tools to monitor compliance with Rule 21 and detect possible infringements of the implementing measures?
7. Is there effective enforcement (including proportionate and dissuasive sanctions for violations) of provisions implementing Rule 21?

Benchmarks

Fully implemented

If a positive answer is given to questions 1, 2, 3, 5, 6 and 7, or, if applicable, to questions 1 to 7.

Partially implemented

If a positive answer is given either to questions 1 to 3, or, if applicable, to questions 1 to 4.

Not implemented

Inability to answer positively to any of questions 1 to 3 or, if applicable, 1 to 4.

Assessment Criteria for Rule 22

Rule 22

The person making the cold call is also required to establish whether the potential customer wishes the cold call to proceed or not. An investment firm must abide by a request from the customer either to end the cold call and/or not to cold call again.

Key Issues

1. Implementing measures must be established and maintained that require investment firms to ensure that whenever a cold call is made on their behalf:
 - a) the person making the call establishes whether the customer who receives the call wishes it to proceed;
 - b) the call is ended if the customer requests this; and
 - c) if the customer requests that no further cold calls are made to him/her, no such calls are made by, or on behalf of, the investment firm to whose representative he/she made this request.

2. To ensure that the objectives of this Rule are fully achieved, the implementing measures established and maintained by each Member's jurisdiction should specify that:
 - d) the person making the call should establish whether the recipient wishes it to proceed *at the beginning of the communication* (see Rule 21);
 - e) the call should be ended *promptly* if the recipient requests;
 - f) investment firms must be able to provide evidence that they have taken measures in order to ensure compliance with this Rule; and
 - g) effective arrangements should be put in place to ensure that no further cold calls are made to any customers who request not to receive such calls. These might reasonably include placing some limit on the time period during which no cold calls must be made (to avoid the need for investment firms to maintain records indefinitely).
3. Compliance with the implementing measures should be monitored, and provision made for enforcement action in the event of non-compliance.

Key Questions

1. Are there implementing measures in effect which require all persons making a cold call on behalf of an investment firm to establish whether the recipient wishes the call to proceed?
2. Are there implementing measures in effect which require all persons making such a cold call to end it if requested to do so by the recipient?
3. Are there implementing measures in effect which place an obligation on investment firms to ensure that any investment firm to whom a customer has indicated that he/she does not wish to receive further cold calls complies with that request?
4. Is the supervisory authority provided with adequate tools to monitor compliance with Rule 22 and detect possible infringements of the implementing measures?
5. Is there effective enforcement (including proportionate and dissuasive sanctions for violations) of provisions implementing Rule 22?

Benchmarks

Fully implemented

If a positive answer is given to questions 1-5.

Partially implemented

If a positive answer is given to at least one of questions 1-3.

Not implemented

Inability to answer positively to any of questions 1-3.

Explanatory Note

The element of this Rule referred to in Key Issue 1(c) above does not specify whether any general request not to cold call again should be interpreted as relating only to the type of product/investment that was the subject of the original call or to all investments covered by Standard 18. For the purposes of this review, it has been assumed that it applies to all such investments (because this interpretation is more consistent with the objective of the Rule). It has also been assumed that, since this element of the Rule refers to 'an investment firm', there is no requirement for all other investment firms in a financial services group to abide by a request made to one group firm, where those do not have access to this information.

General requirements relating to respect for privacy, or the existence of a national register of persons who do not wish to receive cold telephone calls, would on its own not constitute effective implementing measures with respect to this Rule.

Assessment Criteria for Rule 23

Rule 23

An investment firm must not exert undue pressure on a potential customer during the course of a cold call, and must be able to demonstrate that this is not the case, for example, by recording any such telephone calls.

Key Issues

1. Implementing measures must be established and maintained that require investment firms to ensure customers are adequately protected against exertion of undue pressure during cold calling.
2. Investment firms must fully apply, and comply with, rules on investor protection and conduct of business, and must have internal policies and procedures in place to guard against the application of undue pressure in the sales process.
3. Employees and tied agents must be aware of such rules and procedures, with evidence such as signed statements, to support their awareness.
4. Recording of telephone calls may assist in assessing cold calling techniques.
5. Compliance with the implementing measures should be monitored, and provision made for enforcement action in the event of non-compliance.

Key Questions

1. Do the implementing measures require that investment firms' conduct of business rules recognise the concept of undue pressure?
2. Do the implementing measures prohibit employees and tied agents of investment firms from exerting undue pressure on customers?
3. Are there implementing measures in effect which ensure that employees and/or tied-agents involved in cold calling have the appropriate knowledge, training and professional competence required for conducting that activity (e.g. written procedures for training staff to avoid the use of undue pressure)?
4. Do the implementing measures require internal monitoring and control of employees and tied agents in respect of applying undue pressure?

5. Do the implementing measures require investment firms to demonstrate that employees and tied agents do not use undue pressure (e.g. by recording of calls)?
6. Is the supervisory authority provided with adequate tools to monitor compliance with Rule 23 and detect possible infringements of the implementing measures?
7. Is there effective enforcement (including proportionate dissuasive sanctions for violations) of provisions implementing Rule 23?

Benchmarks

Fully implemented

If a positive answer is given to questions 1 to 7.

Partially implemented

If a positive answer is given to questions 1, 2, and 6.

Not implemented

If a negative answer is given to any of questions 1, 2 or 6.

Explanatory Notes

The concept of undue pressure is difficult to define and measure for assessment and control purposes. Furthermore, an element of uncertainty currently surrounds the rule, since the MIFID and CESR's level 2 advice may have an impact on both the concept of undue pressure, and recording of telephone calls.

The proposed Unfair Commercial Practices Directive might also have a bearing on the use of undue pressure.

It will be important to monitor these developments during the assessment process.

ANNEX III

Analysis of impact of Distance Marketing Directive of Consumer Financial Services (2002/65/EC) on the CESR Standards on Investor Protection (Ref. CESR/01-014d) relating to Cold Calling (St. 18 to 24)

This analysis focuses on the impact of the Distance Marketing Directive (2002/65/EC) – “DMD” – and aims to serve as a basis for the common implementation review of the Cold Calling Standards of the CESR Investor Protection Standards (Ref. CESR/01-014d) undertaken by the Review Panel. In particular, it aims to facilitate the discussion of the Review Panel on the assessment of the Cold Calling Standards and on the possible need to change or amend them. This note does not expressly consider the impact on the Standards under review of other relevant EU legislation or proposals for EU legislation (such as the E-Commerce Directive, or the proposed Unfair Commercial Practices Directive) or the other obligations imposed by the DMD not directly related to cold calling.

The DMD was adopted in 2002 and had to be transposed by Member States by 9 October 2004. In a footnote to the Standards under review, it is stated by CESR that *“these rules [i.e. Cold Calling Standards] are without prejudice to any provisions of EU law governing the means whereby or conditions under which an investment firm or its tied-agent may initiate unsolicited contacts with a prospective customer.”* For this reason and pursuant to the legal force of EU law vis-à-vis CESR measures, the Standards have to be interpreted in light of the relevant provisions of the DMD.

1. Scope of the Standards

In the CESR Standards, “**cold calling**” is defined as:

“Any unsolicited interactive communication with a potential customer¹, for example, a personal visit or a telephone call initiated by a person acting on behalf of an investment firm, and which has not been requested or expressly permitted by the customer.”

In turn, “**interactive communication**” is defined as:

“Any oral communication either with the physical presence or at distance (example by telephone). It also includes any future form of interactive communication which becomes possible as a result of advances in technology.”

Finally, “**customer**” is defined as:

“Any current or potential customer of an investment firm”. Since CESR provides for a categorisation of professional investors to which the specific professional regime of the investor protection standards applies (cf. CESR/02-098b) to which the cold calling Standards do not apply, the term “customer” has to be understood as “retail customer”, i.e. excluding professional customers.

This can be contrasted with the provisions of the DMD:

First, pursuant to Art. 1 par. 1 and Recital 13 of the DMD², the DMD provides for maximum harmonisation, unless otherwise specifically indicated.

Secondly, the DMD applies to distance contracts which are contracts concluded by means of distance communications, i.e. contracts without the simultaneous physical presence of the parties concerned (Art. 2(a) and (e)).

¹ Potential customer should include existing customers who are cold called for investment services different from those agreed upon in the customer agreement.

² In the following, all quotations of provisions of the DMD are made without explicit reference to the DMD.

The CESR Standards have a wider scope, since they also cover oral communication with the physical presence (such as door-selling).

As the DMD harmonises only the law applicable to distance marketing and not to door-selling, it appears however permissible under the DMD to extend the scope to door-selling as provided in the Cold Calling Standards where appropriate.

Thirdly, the DMD applies to consumers, which are defined as natural persons acting for purposes outside his trade, business or profession (Art. 2(d)).

However, CESR Standards apply to retail customers, which do not only include consumers in the sense of the DMD, but also other natural persons (e.g. professionals that are not professional customers as categorised by CESR) and entities (e.g. legal persons).

Thus it could be concluded that “retail customers” should be interpreted in a narrow sense excluding retail customers not being consumers. Since the DMD harmonises the law applicable to consumer financial services and not for non-consumers, it appears, however, permissible under the DMD to extend the scope to retail customers not being consumers as foreseen in the Cold Calling Standards.

Fourthly, in principle the DMD applies to consumers irrespective of whether they are prospective customers or existing ones. However, Art. 1 par. 2 provides that in case of an initial service agreement followed by successive operations or a series of separate operations of the same nature, the Directive shall only apply to the initial service agreement. (An example given in Recital 17 is a portfolio management contract, where transactions made in the framework of that contract, such as the subscription to new units of the same fund, would be considered as “operations”, whereas adding new elements to it would be beyond mere “operations”, and form a new contract to which the DMD applies.) Thereby, existing customers are exempted to the extent that the transactions are operations in the sense of Art. 1 par. 2.

The Cold Calling Standards apply to potential customers, which according to the footnote to the definition of “customers” also include existing customers who are called for investment services different from those agreed upon in the customer agreement.

Since the DMD provides for maximum harmonisation, and no indication for the permissibility of additional national rules is given, the Cold Calling Standards have to be interpreted in the – possibly narrower – sense of the DMD as regards retail customers being consumers as defined in the DMD.

Finally, the DMD covers financial services, which are defined in Art. 2(b). The definition is rather broad and includes, *inter alia*, any service related to investment. The Cold Calling Standards cover investment services as defined in Art. 1 par. 1 of the ISD, which can be considered to fall under the definition of the DMD in their entirety.

To sum it up, the CESR Standards go further than the DMD insofar as they cover also door-selling of investment services and retail customers that are not consumers in the sense of the DMD, which would be an extension permissible under the DMD. As to the personal scope, the notion of “retail customers” as defined in the CESR Standards has to be understood in the – narrower – sense of the DMD.

2. Detailed analysis of the impact on the Cold Calling Standards

In the following a more detailed analysis Standard by Standard is provided.

Standard 18:

For the purpose of protecting customers from undue pressure to enter into a contract, cold calls can only be made to potential customers in accordance with the rules set out below.

Here, it can be referred to the general analysis above and the detailed analysis of Rules 19 to 24 below.

Rule 19:

Cold calls may only be made by persons employed by, or appointed as tied-agent³ by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.

Pursuant to Art. 2(c), the supplier of financial services means any person that, acting in his commercial or professional capacity, is the contractual provider of the financial service. According to Art. 3 par. 1 (1), information on the identity of the supplier has to be provided to the consumer, as well as on the identity of any representative of the supplier, and any other professional dealing with the consumer on the supplier's behalf. (Regarding voice telephony communications, the corresponding provisions are set out in Art. 3 par. 3.) In addition, it is clarified in Recital 19 that the obligations of the DMD also apply to an intermediary involved by the supplier in one of the marketing stages.

Rule 19 refers to "persons employed" as well as "tied agents", which can be interpreted in line with the aforementioned provisions of the DMD.

Regarding an investment firm's responsibility for persons employed as imposed by Rule 19, this is not directly addressed by the DMD. The provision of Rule 19 is therefore not contrary to the DMD in this respect.

Note should be taken of the relevant provisions in the MiFID and the CESR Level 2 Advice on the issue of outsourcing.

Rule 20:

An investment firm cold calling customers may do so only between the hours of 9.00 a.m. and 9.00 p.m. Monday to Saturday (local time for the customer) and excluding local national holidays.

The DMD does not refer to specific times when cold calls are permissible. Notwithstanding the maximum harmonisation effect of the DMD, Recital 26 provides that MSs should take appropriate measures to protect consumers for being contacted at times they do not wish.

The prohibition for calling at times other than those permitted in Rule 20 could therefore be regarded as in line with Recital 26, so that no change to Rule 20 is necessary.

Rule 21:

The identity of the person making the cold call, the investment firm on whose behalf the person is acting, and the commercial purpose of the cold call must be explicitly identified at the beginning of any conversation with the consumer. The caller must also make reference to the frozen period (see par. 24) during which orders may not be executed.

Pursuant to Art. 3 par. 1, the information requirements shall be provided "in good time before the consumer is bound by any distance contract", which includes information relating to the supplier (including the person making the cold call), the financial service, the distance contract and the redress mechanism. Pursuant to Art. 3 par. 2 the commercial purpose of the information referred to in par. 1 shall also be made clear. Regarding voice telephony communications, Art. 3 par. 3 sets out the information to be provided to a consumer.

The information to be provided according to the first sentence of Rule 21, is also covered by Art. 3. Rule 21 also requires the cold caller to provide the information at the beginning of the conversation.

³ This is without prejudice to the applicability of professional requirements, imposed at national level.

It could therefore be considered that it clarifies the meaning of “in good time before” of Art. 3 par. 1, so that the two provisions are not conflicting.

Regarding the reference to the “frozen period” required by Rule 24 in Rule 21, Art. 4 par. 2 gives MSs the possibility to maintain or introduce more stringent provisions on prior information requirements (provided it is in line with EU law).

Therefore, the requirement to inform a customer about the “frozen period” according to Rule 21 could be considered to be in line with the DMD. (The issue of admissibility of Rule 24 under the DMD is discussed further below.)

Rule 22:

The person making the cold call is also required to establish whether the potential customer wishes the cold call to proceed or not. An investment firm must abide by a request from the customer either to end the cold call and/or not to cold call again.

Pursuant to Art. 10 par. 1, unsolicited distance communication by way of automated calling machines or fax always requires the consumer’s prior consent. In addition, Art. 10 par. 2 provides that, as to other means of distance communication, MSs shall either not authorise communication unless the consent of the consumers concerned has been obtained, or shall authorise it only if the consumer has not expressed his manifest objection.

Art. 10 can be considered as providing for maximum harmonisation as to the means of communication for making a cold call. However, Rule 22 comes into play, when a cold call is already in progress, i.e. the cold caller and the customer are talking to each other, whereas Art. 10 applies to a point in time before a call is made.

Consequently, it can be assumed that Rule 22 is in line with Art. 10 and does not conflict with the maximum harmonisation effect of the DMD.

Rule 23:

An investment firm must not exert undue pressure on a potential customer during the course of a cold call and must be able to demonstrate that this is not the case, for example, by recording any such telephone calls.

There is no express provision in the DMD as to the issue of undue pressure or the requirement to be able to demonstrate that no such pressure was exerted on a potential customer. Since these issues were not intended to be covered by the DMD, it can be assumed that the maximum harmonisation effect of the DMD does not have an impact on the admissibility of Rule 23.

In this context, it has to be mentioned that the MiFID and the CESR Level 2 advice might have an impact on both aspects and that the proposed Unfair Commercial Practices Directive might have an impact on the issue of use of undue pressure.

Rule 24:

During the period for which the customer benefits from a right of withdrawal from the contract (as determined by Article 4.a of the Distance Marketing Directive), an investment firm shall not execute any customer orders in respect of financial instruments under the contract.

Art. 6 deals with the right of withdrawal from distance contracts in financial services. (Therefore, the reference in Rule 24 [which may reflect an earlier draft of the directive,] would have to be amended accordingly.) Member States may also provide that during the period, when the right of withdrawal applies, the enforceability of contracts relating to investment services is suspended for the same period. There is no reference in DMD to Member States being able to provide that performance of investment services contracts should not start during the withdrawal period (i.e. a

“frozen period”). Several articles appear expressly to contemplate performance of a contract (attracting the right to withdraw) before the withdrawal period has expired.

The right of withdrawal does not apply to all financial services: according to Art. 6 par. 2(a) no right of withdrawal applies to financial services whose price depends on fluctuations in the financial market outside the supplier’s control, such as services related to financial instruments covered by Section B of the Annex to the ISD. (Art. 6 par. 3 provides for the possibility of MSs that the right of withdrawal shall not apply to some other financial services, which however do not appear to be of primary relevance to investment services.)

Rule 24 introduces a period of suspended enforceability for the execution of customer orders regarding financial instruments during the period for which a right of withdrawal under the DMD applies. First, it is clear that Art. 6 par. 1 last sub-par. gives MSs the option to introduce such a period for contracts relating to investment services, but does not require them to do so. Therefore, a clarification of Rule 24 appears necessary in this respect, even if the footnote to the section on cold calling in the CESR Standards explicitly provides that these Standards were without prejudice to relevant EU law.

Art. 6 par. 2 excludes a right of withdrawal for certain financial services, which also includes investment services covered by the Annex to the ISD, on the one hand. The possibility to introduce a period of suspended enforceability applies only to investment services, on the other hand. As a consequence, it can be concluded that not all investment services would fall under the exemption of Art. 6 par. 2, otherwise the provision of Art. 6 par. 1 last sub-par. would become meaningless. (An obvious example of an investment service whose price would not depend on fluctuations could be a contract for investment advice.)

It would therefore have to be established whether the “execution of orders”, as provided for in Rule 24, is a financial service whose price depends on fluctuations in the financial market outside the supplier’s control as defined in Art. 6 par. 2(a) for which no right of withdrawal applies, or whether it would not fall under the exemption in that Article.

Execution of orders other than for own account is a core service under the ISD (Section A par. 1(a) of the Annex of the ISD), so that it can be considered as a financial service as defined in the DMD. In a wide interpretation of Art. 6 par. 2 (a), the price of the execution of orders always depends on fluctuations in the financial market outside the supplier’s control, as the price for the financial instrument is dependent on market fluctuations, so that the right of withdrawal does not apply to such contracts. Interpreted in a narrower sense, it could be considered that only the price to be paid for the financial service “executing an order” is relevant, which can either be a fixed price for which the price paid by the consumer for the financial instrument he gave an order for is without relevance, or a price related to the price paid by the consumer for the financial instrument. In the former case the price for the financial service would not depend on fluctuations in the financial market, so that the exemption of Art. 6 par. 2(a) would not apply; in the latter case the price would depend on fluctuations, so that the exemption would apply. The narrow interpretation would be supported by the fact that the wide interpretation could render the MSs’ option to introduce a period of suspended enforceability according to Art. 6 par. 1 last sub-par. meaningless.

Moreover, it has to be taken into account that often the execution of an order can be considered as an operation based on an initial service agreement, so that the right of withdrawal would only apply to the initial service agreement, but not to operations performed thereafter, provided that the conditions of Art. 1 par. 2 are fulfilled. In these cases the right of withdrawal could only apply to operations undertaken during the period for which the right of withdrawal applies to the initial service agreement, or could even be interpreted as applying only to the initial services agreement itself. (For example, a customer opens a bank account and agrees to pay both an initial fee and monthly fees. During the withdrawal period, the customer deposits some funds and then transfers some of these to another account. If the customer cancels the initial contract, that transfer of funds is not cancelled.)

To start with, since the DMD brings about maximum harmonisation as to the right of withdrawal and the enforceability of contracts during that period, Rule 24 cannot impose additional requirements in this respect.

The consequence of a wide interpretation of Art. 6 par. 2(a) would be that Rule 24 would not be applicable any more, so that it would have to be deleted in respect of distance contracts.

The consequence of a narrow interpretation would be that a distinction would have to be made between contracts that have a lump-sum fee to be paid for the service of executing an order and those that have the fee based on the price of the financial instruments for which an order was made. As to the former, the period of suspended enforceability provided for in Rule 24 could be relevant, if provided for by a Member State (Art. 7 par. 3 has to be considered too, which provides that during the period when the right of withdrawal applies payment for performance can only be required by the supplier when the performance of the contract was requested by the consumer before); as to the latter, no right of withdrawal would apply under the DMD.

As a consequence, in general it seems appropriate to amend Rule 24 in order to remove the inconsistencies with the DMD, and to clarify its application to non-distance contracts.