



EUROPEAN COMMISSION

Internal Market DG
Director General

Brussels, 29/11/2004
MARKT/G/2 MV D(2004) 6662

MEMBERS OF THE EUROPEAN SECURITIES COMMITTEE

Dear ESC Member,

Following discussions in the ESC meetings of 18/10/04 and 18/11/04, please find attached copy of an addendum to the formal request for technical advice on possible implementing measures on the Directive on Markets in Financial Instruments addressed to the Committee of European Securities Regulators (CESR) by DG Internal Market by letter of 25 June 2004. The Commission has decided to accept the request formulated by CESR by letter of 1 October 2004 and extend the deadline granted to CESR for preparing advice on article 22 (1) to 30/4/2005.

Yours sincerely,

A. SCHAUB
signé

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Annexe:

Addendum to the CESR formal mandate



EUROPEAN COMMISSION
Internal Market DG
FINANCIAL MARKETS
Securities markets

Brussels,
MV/ MAM D(2004)

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

The present request supplements the formal request for Technical Advice on Possible Implementing Measures on the Directive on markets in financial instruments (Directive 2004/39/EC) presented on 25/6/2004 to CESR. The purpose of this addendum is to grant CESR an extension of the deadline concerning the request for technical advice on article 22 (1) (client order handling rules) by April 2005. In the provisional mandate presented on 20/01/2004 the deadline for delivering advice on this point was initially set by 31 January 2005; this deadline was confirmed in the formal mandate.

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

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

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

- by 31 January 2005 with a view to adopt implementing legislation on Articles 13, 18, 19(2),(3),(7), (8), 21, 22, 25, 28, 29, 30, 39, 43, 44, 56 and 58; and
- by 30 April 2005 with a view to adopt implementing legislation on Articles 4 (4), (7), (17) and Annex I Section C, 19 (1) and (4-6), 22 (2) , 24 and 27.

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

In a letter addressed to the Commission dated 1 October 2004, the CESR Chairman alleges that the Expert Group which is preparing the CESR advice on article 22 (1) (client order handling rules) considers that this issue can not be dealt with in isolation from others issues related to best execution (article 21) and the general obligation to act fairly, honestly and professionally (article 19 (1)). The deadline for delivering advice on article 22 (1) has been set by 31 January 2005; the respective deadline for Articles 21 and 19 (1) are 30 April 2005. For this reason, he asked the Commission to consider the possibility of extending the deadline of the request related to article 22 (1) to 30/4/2005.

The Commission considers that CESR's request is reasonable and justified. The alignment of the deadline will allow CESR to address adequately a number of horizontal issues which interact between these provisions in order to ensure overall coherence.

For these reasons, following CESR's request and after having consulted the European Securities Committee in its meeting of 18/10/2004, the Commission has decided to accept the request formulated by CESR and extend the deadline granted to CESR for preparing advice on article 22 (1) (client order handling rules) to 30/4/2005.