



EUROPEAN COMMISSION  
Internal Market and Services DG

Director-General

Brussels, **13 FEB. 2009** - 24291  
MARKT/G/A/SJ/nd D(2009) 24644

**Subject: Provisional request for a technical advice on the new UCITS Directive implementing measures**

Dear Mr Wymeersch,

I would like to request the advice of the Committee of European Securities Regulators on the preparation of the level 2 measures foreseen in the new UCITS Directive (see attached provisional request for advice).

The provisional nature of this request stems from the fact that the new UCITS Directive still awaits its final adoption. It is however based on the compromise text which has been approved by the European Parliament on 13 January 2009. Considering that COREPER indicated on 17 December 2008 that this text would also be agreeable to Council, there is now political agreement of both institutions around it. The formal adoption by Council should take place in April/May of this year. My services will keep you informed of any development in this respect, including any changes introduced at the level of the legal revision of the text.

The extended scope of the powers granted to the Commission as well as their importance for the good functioning of the UCITS Directive justifies that the preparatory work for the level 2 provisions starts as quickly as possible.

We are aware that this request represents a significant workload and a many-fold challenge for CESR. We recognize that this is an ambitious and complex mandate covering new areas like fund mergers and master feeder structures or requiring more comprehensive and in-depth approach like on the issue of risk management.

Mr Eddy Wymeersch  
Chairman of the Committee  
of European Securities Regulators  
Avenue de Friedland  
F-75015 Paris

A key element of this challenge is the fact that, for many of the powers granted to the Commission, a compulsory deadline has been imposed (1<sup>st</sup> of July 2010). There will therefore be limited flexibility as to the adoption of the level 2 provisions. Member States also made clear during the negotiation of the new UCITS Directive that they would need at least a year to implement level 2 provisions that would take the form of EU Directives. This implies that these provisions should be adopted before July 2010 if we want them to become applicable at the same time as the level 1 text (July 2011). On the Commission's side, we will reflect on the possibility to use regulations instead of directives in order to avoid these national implementation processes. It is however too early to decide on the appropriate legal form of the future UCITS Level 2 implementing measures.

It is up to CESR to organise and prioritise its work with a view to delivering its advice. To help in that process, we have divided our request into three parts. This division of the mandate in three parts is function to a natural grouping of the issues based on substance and deadlines imposed on the Commission. It should help us to think about prioritisation of our work should this be needed.

- First part relates to the imposition on UCITS managers of new sets of prudential, organisational, conduct of business and risk management rules. These are important for the good functioning of the management company passport. The Commission is under the obligation to adopt these by the 1<sup>st</sup> of July 2010.
- Second part deals with the Key Investor Information which is an essential chapter of the new Directive. Implementing measures in this field are a necessary complement to the Level 1 principles. The Commission is under the obligation to adopt them (although not subject to a given deadline).
- Third part deals with the new fund notification rules and the new freedoms (mergers and master/feeder) provided by the new directive. No deadline was imposed on the Commission's implementing powers in these fields. Most of these measures may however appear as an important complement to the good functioning of the Level 1 text.

I believe that every effort should be made to complete part I by 30 October 2009 as related measures are compulsory and will require careful translation into Community law. They will have to be implemented in the context of different national supervisory structures as this will be the first generation of harmonisation of these complex issues. These measures will also have the potential of strengthening the current UCITS legislative framework and may be seen as an important contribution to the response to the financial crisis.

Work on part II (KII) is already well advanced so every effort should be made to complete it on the basis of the same deadline (30 October 2009).

There may greater scope for prioritisation and flexibility on timing of CESR advice in respect of part III. Although these measures are important for the good functioning of the Directive, additional time could be granted to CESR to deliver its advice on them but only to the extent that this would not compromise the timely implementation of the Level 1 Directive.

The Commission services are looking forward to working closely with CESR on this important project. We are confident in CESR's capacity to deliver this important piece of work within the ambitious deadline we set for it. We will in any case remain at your disposal to provide the assistance you may find necessary during that process.

Yours sincerely,



Jörgen HOLMQUIST

Enc:                   1. Provisional request for advice  
                          2. Text of the new UCITS Directive as adopted by the European  
                          Parliament – provisional edition P6\_TA-PROV(2009)0012

cc.:                   N. de Basaldua (Cab), D. Wright, E. Paulis, M. Merlin, H. Mørch,  
                          M. Velentza, M. Feluch, MARKT G4.