



Brussels, 25 June 2004
G2 D(2004)

**FORMAL MANDATE TO CESR FOR TECHNICAL ADVICE ON IMPLEMENTING MEASURES
ON THE EQUIVALENCE BETWEEN CERTAIN THIRD COUNTRY GAAP AND IAS/IFRS**

The present mandate takes into consideration 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. The European Parliament has also been duly informed.

This mandate focuses on a technical issue which is common to both the adoption of Level 2 Regulation (EC) 809/2004 implementing Directive 2003/71/EC (the Prospectus Directive which entered into force on 31 December 2003) and the Transparency Directive (approved by the European Parliament on 30 March 2004 and by the Council on 11 May 2004; formal adoption pending): it relates to the recognition of financial statements prepared in accordance with third country GAAP as being equivalent to those prepared in accordance with IAS/IFRS, as endorsed under the IAS Regulation.

The legal base for future implementing measures are (a) Article 7 of Directive 2003/71/EC (Level 1), in conjunction with Article 35 (5) of Commission Regulation (EC) No 809/2004 implementing this provision in respect of disclosure of information prior to the admission of securities to a regulated market/prior to a public offer of securities, as well as (b) Article 19 (3a) of the Transparency Directive.

1. CONTEXT

1.1. Legal context

In its conclusions in March 2000, the Lisbon European Council emphasised that in order to accelerate completion of the internal market for financial services, steps should be taken to set a tight timetable so that the Financial Services Action Plan is implemented by 2005. For this purpose, both the Prospectus Directive and the Transparency Directive follow the four-level approach (essential principles, implementing measures, co-operation and enforcement), as endorsed by the Stockholm European Council in March 2001 and the European Parliament in February 2002. The Commission is assisted by CESR, in its capacity as an independent advisory group, in its preparation of draft implementing measures.

On the Prospectus Directive, the Level 1 measure (Directive 2003/71/EC) entered into force on 31 December 2003 (date of its publication in the Official Journal). It will be applicable as from 1 July 2005 (as well as the related Level 2 measure).

On the Transparency Directive, the Level 1 Directive has been fully agreed by the European Parliament on 30 March 2004. The ECOFIN Council has approved the text voted by the EP on 11 May 2004. Its formal adoption is not expected before autumn 2004. (The Commission also granted a mandate to CESR for preparing its technical advice on other level 2 measures, including on the equivalence of drawing up management reports.)

The new EU legislation agreed under the FSAP requires the Commission to set up a mechanism for assessing equivalence under the comitology framework and to take the necessary decisions as to whether a given third country GAAP (Generally Accepted Accounting Principles) is equivalent to IAS/IFRS (International Accounting Standards, or International Financial Reporting Standards), as endorsed under the IAS-Regulation. Under Article 35 of the Prospectus Regulation, the Commission should decide prior to 1 January 2007 in accordance with the comitology framework. In the absence of such a decision, third country issuers who wish to have their securities admitted to trading on a regulated market will have to restate their financial statements under IAS according to Regulation 1606/2002¹ because the transitional arrangements will expire on the date above.

In its meeting of 19 April 2004, the European Securities Committee (ESC) invited the Commission to consider adopting a single decision covering both the Prospectus and the Transparency Directive and granting to CESR a single and specific mandate in order to receive a technical advice in advance of such a decision.

1.2. Mechanism for assessing the equivalence

The Commission is not only required to take decisions on the equivalence but also to set up the appropriate mechanism for assessing such equivalence of third country GAAP (Article 35 (5) of the Level 2 Prospectus Regulation; Article 19 (3) of the future Transparency Directive). To this end, the Commission intends to apply, in full agreement with the European Securities Committee, the following mechanism:

- the European Securities Committee will assist the Commission as the regulatory committee under the existing comitology framework (Article 24 of the Prospectus Directive, Article 23 of the future Transparency Directive);
- in accordance with the arrangements recommended by the Lamfalussy Report and endorsed by the Stockholm European Council in March 2001 and by the European Parliament in February 2002, CESR should provide a technical advice for the assessment of the equivalence between IAS (IFRS), as adopted at EU-level, and third country GAAP.

1.3. Deadline for CESR's technical advice: JUNE 2005

¹ See the Level 2 – Prospectus Regulation, in particular Annex I item 20.1., Annex IV item 13.1; Annex VII items 8.2., Annex X items 20.1. and Annex XI, item 11.1.; as well as Article 19 (1) of the future Transparency Directive

This mandate takes into consideration that CESR needs enough time to prepare its technical advice. Furthermore, under the Lamfalussy arrangement, the European Parliament will benefit from three months to consider the draft implementing measures. The June 2005 deadline is based on the following timetable:

Deadline	Action
June 2005	CESR technical advice
July 2005	Publication of a first working document by Commission services on possible Level 2 legislation + public call for comments
July 2005	1 July: Level 1 and 2 rules on prospectuses become applicable in the EU
September	Formal Commission proposal for level 2 legislation sent to ESC and published on the Internet
December 2005	Vote in the European Securities Committee on level 2 proposals
December 2005	Formal adoption of Level 2 measure by the Commission
November 2006 (?)	Transposition period for Transparency Directive (Level 1) expired
January 2007	Transitional arrangements under Article 35 (4) of the Prospectus Regulation (Level 2) expire on 1 January

In order to facilitate the implementation process, the Commission may, whenever justified, consider proposing the adoption of directly applicable decisions or regulations for the issue covered by the present mandate. The Stockholm European Council, the European Parliament itself and the Lamfalussy report all urged the use of regulations whenever possible. The Commission will have to consider this issue at a later stage, depending on the content of the advice that CESR is going to provide to the Commission services.

2. THE PRINCIPLES THAT CESR SHOULD TAKE ACCOUNT OF

2.1. The working approach agreed between DG Internal Market and the European Securities Committee

On the working approach, CESR is invited to take account of following principles:

- The principles set out in the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001;
- CESR should provide comprehensive advice on the subject matters described below covered by the delegated powers included in the relevant comitology provision of the level 1 Directive, in the corresponding recitals as well as in the relevant Commission request included in the mandate;

- CESR should address to the Commission any questions they might have concerning the clarification on the text of the two Directives or other parts of Community legislation, which they should consider of relevance to the preparation of its technical advice;
- The technical advice given by CESR to the Commission will not take the form of a legal text. However, CESR should provide the Commission with an “articulated” text which means a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current legal terminology used in the field of securities markets and company law at European level;
- CESR should provide advice which takes account of the different opinions expressed by the market participants (practitioners, consumers and end-users) during the various consultations. CESR will provide a feed-back statement on the consultation justifying its choices vis-à-vis the main arguments raised during the consultation;

2.2. Consultation of the public

The Stockholm European Council endorsed the Lamfalussy recommendations on consultation and transparency. In particular, it invited the Commission to make use of early, broad and systematic consultation with the institutions and all interested parties in the securities area, especially by strengthening its dialogue with consumers and market practitioners. It also stated that CESR should “*consult extensively, in an open and transparent manner, as set out in the final report of the Committee of Wise Men and should have the confidence of market participants*”.

Article 5 of the Commission Decision establishing the CESR provides that “*before transmitting its opinion to the Commission, the Committee [CESR] shall consult extensively and at the early stage with market participants, consumers and end-users in an open and transparent manner*”.

In this context, DG Internal Market draws CESR’s attention to the European Parliament’s Resolution on the implementation of financial services legislation of 5 February 2002 and the Commission’s formal Declaration in response.

Moreover, CESR could take into account the particular nature of this mandate when carrying out its public consultations.

DG Internal Market will ensure that the Stockholm European Council recommendations on consultation have been fully met. In particular, it will satisfy itself that CESR has consulted all interested parties on its technical advice in accordance with the CESR Public Statement on Consultation Practices. This mandate will also be posted on DG MARKT website.

Once the Commission has received the CESR’s advice, it will draw up draft working documents to put forward to the ESC and the European Parliament. It simultaneously publishes those texts on its Internet site. If the Commission amends its draft to reflect discussions in the ESC, those amended drafts will also be made public on the website.

Interested parties will have the opportunity to comment on published draft working documents. The Commission has set up a dedicated e-mail address (Markt-ESC@cec.eu.int), allowing all interested parties to send their contributions to the Chairman of the ESC.

Interested parties will have sufficient time to participate in this exercise because the ESC will not be asked for a vote until at least three months have elapsed from the publication of initial draft implementing rules. This will also allow the European Parliament to follow the process and, if it so wishes, to make its views known.

2.3. Enabling investors to take informed investment decisions

In giving its advice, CESR should take full account of the following key objectives:

- When assessing as to whether financial statements prepared under third country GAAP provide a true and fair view of the issuer’s financial position and performance, the priority should lie on assuring the protection of investors;
- A global and holistic assessment of the quality of the financial information provided by the accounting system in question should be carried out from a technical point of view and independently from any international convergence project aiming at a single set of accounting standards, such as the project currently conducted by the International Accounting Standard Board and the US-Financial Accounting Standard Board.
- The global and holistic assessment should be based on the entirety of the third country GAAP in force as of 1 January 2005. The assessment should focus only on the significant differences between IAS/IFRS as endorsed at EU level and the third country GAAP in question.
- The assessment should not relate as to whether the third country GAAP in question might be conducive to the European public good. This is a criterion for endorsing IAS/IFRS at European level pursuant to Article 3 (2) of the IAS-Regulation, but not for assessing equivalence.
- The assessment should also be carried out independently of whether the third country concerned already recognises IAS/IFRS as equivalent to their domestic GAAP.

3. CESR IS INVITED TO PROVIDE TECHNICAL ADVICE BY JUNE 2005

3.1. Scope of the assessment

CESR is invited to assess the equivalence of the following GAAP by June 2005:

- a) US-GAAP
- b) Japanese GAAP, and
- c) Canadian GAAP.

The assessment should encompass standards applicable to annual and interim financial reporting as well as the objective and conditions for preparing

consolidated financial statements, as they should be applied by issuers as from June 2005.

3.2. Objective of the assessment

CESR is invited

- a) to undertake a global assessment as to whether the financial statements prepared under the third country GAAP mentioned above provide equivalently sound information to investors when those investors make investment decisions on regulated markets across Member States. Investors should be able to take economic decisions on the basis of understandable, relevant, reliable, and comparable information about the issuer's assets and liabilities, financial position and profit or loss;
- b) to advice on an early warning mechanism in case of significant changes to the third country GAAP occurred after 1 January 2005; and
- c) to describe the mechanisms (outside the areas of audit and of corporate governance) provided for at least in the US, Canada and Japan ensuring that the third country GAAP mentioned above are respected.

3.3. Remedies

In case where equivalence cannot be confirmed in respect of one the third country GAAP mentioned above, CESR is invited to consider what kind of remedies should be applied by the competent authority of the home Member State:

- a) Do the third country issuers concerned have to restate their financial statements in all cases?
- b) Are there cases in which more limited remedies should be provided for? If so, what should be the reconciliation items or what should be explained further by notes or other explanatory material?