

**DRAFT SUMMARY RECORD OF THE 43RD MEETING OF THE EUROPEAN SECURITIES
COMMITTEE/MEMBERS
26 JUNE 2006**

Working document ESC/35/2006

The first part of the meeting (agenda items 1 to 4) was chaired by Alexander Schaub, Director General, DG Internal Market and Services. The rest of the meeting was chaired by David Wright, Director of Financial Markets.

1. ADOPTION OF THE DRAFT AGENDA

The draft agenda was adopted.

2. ADOPTION OF THE SUMMARY RECORD OF THE MEETING OF 8-9 JUNE 2006

Adoption of the summary record was postponed to the following meeting.

Comitology Issues

3. MiFID – IMPLEMENTING LEGISLATION

The Commission services presented for voting Working Documents ESC/7/2006-rev4 and ESC/8/2006-rev4. The Chairman reminded delegations that these texts had already been informally agreed by ESC delegations in the previous ESC meeting on 8- 9 June. He also recalled that the European Parliament had adopted a resolution on 15th June supporting both draft implementing measures in their entirety.

Before the vote the following remarks were made:

- One delegation requested that article 15.3 of the implementing directive be changed to reflect the fact that its constitution does not allow competent authorities to publish a "policy statement" as this article requires; the new wording of Art. 15 par. 3 of the draft Directive is: "*Member States shall publish or require competent authorities to publish a statement of policy...*". This change was unanimously agreed by all delegations.
- One delegation declared that, taking into account the fact that the system for the exchange of information between competent authorities is not precisely defined in the Regulation, they will remain vigilant so that the system which is established does not impose excessive costs in Member States.

The Chairman then invited delegations to vote on the two draft measures separately. First, delegations voted on the Directive; then on the Regulation. The vote on both

measures took place on the entire text and not on each Article. The texts were unanimously agreed by all 25 delegations. No abstention was recorded on either text.

The Commission also made the following declarations:

1. Directive 2000/12/EC, as re-cast by 2006/48/EC and Directive 2004/39/EC share a common approach to the regulation of the internal systems, resources and procedures of the investment firms and credit institutions which fall within their scope, even if the requirements relevant to that regulation which are imposed by each Directive are formulated in a different way. Taking into account that both Directives apply to investment firms and to credit institutions when carrying on investment services or activities and as both sets of rules have similar objectives, it would be disproportionate to require investment firms and credit institutions to distinguish between those internal systems, resources and procedures which they are required to maintain under the different Directives.

In the interests of uniform, effective and proportionate regulation for investment firms and credit institutions, a common approach to the parallel requirements of Directive 2000/12/EC, and Directive 2004/39/EC should be adopted to the extent that those requirements overlap.

By virtue of Article 1(2) of the Directive 2004/39/EC organisational requirements under Article 13 of that Directive also apply to credit institutions authorised under Directive 2000/12/EC, when providing one or more investment services and/or performing investment activities

Investment firms and credit institutions (when they carry on investment services or activities) which comply with the requirements of Directive 2004/39/EC and its implementing measures should be treated as having satisfied the requirements of Article 22 of Directive 2000/12/EC to which they are subject by virtue of Article 34 of Directive 93/6/EEC. No further organisational requirement in relation to Article 22 of Directive 2000/12/EC should be imposed on investment firms by Member States and competent authorities, for the purposes of Directive 2004/39/EC and Directive 2000/12/EC. However, in order to ensure prudent management of investment firms and in order to appropriately address the risks they are exposed to as a result of their specific risk profile and operating environment, investment firms and credit institutions when providing investment services shall comply with the provisions of Article 22 of Directive 2000/12/EC in respect of the risks set out in paragraphs 3 to 15 of Annex V of that Directive.

Member States and competent authorities for the purposes of Directive 2004/39/EC and Directive 2000/12/EC, should not impose any organisational requirements on investment firms and credit institutions when providing investment services under Article 123 of Directive 2000/12/EC, other than those that deal with the strategies and processes to assess the amounts, types and distribution of internal capital that investment firms need to maintain on an ongoing basis in order to adequately cover the nature and level of risks to which they are or might be exposed. In particular, no further requirements should be imposed relating to the organisational structure of an investment firm, other than those regulated in Directive 2004/39/EC and its implementing measures, upon investment firms under that Article.

2. The coordinative activity between national securities regulators should be subject to discussion within the Committee of European Securities Regulators in particular with respect to the following matters:

- the design and establishment of arrangements for the exchange of transaction information between the national competent authorities as required by Directive 2004/39/EC in accordance with Article 13(1) of the draft implementing regulation; and
- the determination of and the discussion between national competent authorities on the most relevant market in terms of liquidity or its alternative in accordance with Articles 9 and 10 of the draft implementing Regulation and the resolution of potential conflicts on such issues between competent authorities.

3. Member States should deploy the best efforts to provide the Committee of European Securities Regulators with the means and resources necessary to assist putting Directive 2004/39 and its implementing measures into effect, so as to ensure consistent implementation and application throughout the European Union.

Other Issues

4. CESR ANNUAL REPORT

The Chairman of CESR, Mr. A. Docters van Leeuwen, presented CESR's annual report. He emphasised that the nature of CESR's work is shifting from preparation of Level 2 advice to the Commission, towards its major L3 role to make the Directives work on a day by day basis. Their work, he said, was becoming more operational. He cited a number of initiatives of an operational nature, e.g. strengthening of the Review Panel, the shift towards a more operational role for the permanent groups (CESR-Pol and CESR-Fin), the implementation of transaction reporting systems, the creation of a mediation mechanism, etc.

He stressed that the home/host principle could not be made to work unless the powers of the different regulators were broadly equivalent. How could one regulator trust another to do the job properly if he knew that the other regulator did not have the same powers as he had himself?

Looking ahead, Mr. Docters van Leeuwen said that, as markets integrated and the process of consolidation speeded up, legitimate national interests would inevitably be touched upon. This could give rise to serious tensions. The only solution, he felt, was to somehow find a balance between market forces and political factors.

In response to a question from one delegation, he cited the Market Abuse Directive as an area where co-operation between regulators worked fairly well, although co-ordination became difficult when it came to the imposition of penalties because the legal systems in the different Member States varied considerably.

5. ENFORCEMENT AND 8. LEVEL 4 OF THE LAMFALUSSY PROCESS - Transposition by Member States (these points were merged during the discussion)

The Commission services made a presentation on the Commission's policy with respect to enforcement and Level 4. The presentation referred to both monitoring transposition before the entry into force of the securities directives but also launching infringements with respect to lack of transposition or incorrect implementation of EU directives; synergies with other tools and structures were also explained (role of CESR at level 3, SOLVIT, Fin-net etc); finally the Commission services explained their timetable for the coming months with respect to checking transposition by Member states for the Market Abuse and Prospectus Directives . The presentation was circulated to delegations. On item 8, there was a brief reference to the Lamfalussy league table and the importance of timely transposition of securities directives by Member States.

6. MiFID REVIEWS – REPORT ON PROFESSIONAL INDEMNITY INSURANCE

The Commission services presented a summary of the responses to the questionnaire. They said that they had received only seventeen responses (fifteen Member States and Lichtenstein and Romania) and they urged Member States who have not yet done so to send in their responses as soon as possible. They then set out the next steps, i.e. drafting a discussion paper for consultation before the summer holidays and consultation of ESME and CESR in autumn.

7. EUROPEAN SECURITIES MARKETS EXPERT GROUP (ESME)

The Commission services reported that the response to their call for applications had been very good: the selection of the experts from over 120 candidates had been a very difficult exercise. As a result, the Commission had been able to designate 20 top-class experts for ESME (taking account of both the need to cover the main areas and geographical and gender balance) and the list of names has been published on the DG Internal Market's website. The first meeting of ESME would take place in the near future. The Commission services promised to provide the ESC with the work programme for ESME at the next ESC meeting (13 July) or after the summer. CESR stated that it would like to have observer status in ESME.

9. A.O.B.

9.1 Indicative remaining work program for the ESC in 2006 (Working document ESC/18/2006-rev2)

This point was not discussed.

9.2 ESC Newsletter (Working document ESC/31/2006)

The Commission services said that the newsletter would be sent out before the next meeting.

9.3 ESC Mailing list

The Commission services promised to update delegations on this point at the next meeting.

