



EUROPEAN COMMISSION

Internal Market and Services DG

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**FORMAL MANDATE TO CESR FOR TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING
MEASURES CONCERNING THE DIRECTIVE ON THE HARMONISATION OF TRANSPARENCY
REQUIREMENTS FOR SECURITIES ISSUERS**

(3RD MANDATE)

The present formal 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 formal mandate relates to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC¹ (hereinafter the "Transparency Directive").

This mandate calls for technical advice on the role of the officially appointed mechanism for the central storage of regulated information under Article 21(2) of the Transparency Directive in light of the forthcoming electronic network at EU level referred to under Article 22(1), and the filing of regulated information by electronic means with the competent authorities under Article 19(1) of the Transparency Directive. The facilitation of access to information to be disclosed under Directive 2003/6/EC², Directive 2003/71/EC³ and the Transparency Directive is also covered to the extent that it is related to these two issues. This technical advice should facilitate the possible adoption of implementing measures in accordance with Articles 21(4)(b) and 19(4)(a)

¹ OJ L 390/38, 31.12.2004.

² Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJK L96/16, 12.4.2003.

³ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC; OJ L345/64, 31.12.2003.

This mandate is limited to those technical details which are indispensable for the effective transposition of the Transparency Directive in all the Member States in connection with the above mentioned issues. It builds on the Progress Report presented by CESR to the Commission on 17/18 March 2005 clarifying, in CESR's view, how to move forward on this matter. The mandate should be completed by June 2006 at the latest. To the extent that the CESR has already undertaken substantial work on these issues to prepare the Progress Report, this deadline should be achievable.

This mandate is the third of the kind in connection with the Transparency Directive. It supplements the two mandates granted in June 2004 on (i) the priority areas where implementing measures are needed to complete the Transparency Directive, and (ii) on equivalence of financial statements prepared under third country accounting standards. The possibility to issue this third mandate was explicitly mentioned in the text of the first mandate issued in June 2004.

1. CONTEXT

1.1. Level 1 directive

In its conclusions of 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, and includes a Directive on the Harmonisation of Transparency Requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

For this purpose, the Transparency Directive follows the so-called Lamfalussy 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 the Committee of European Securities Regulators (CESR), in its capacity as an independent advisory group, in its preparation of draft implementing measures.

The Level 1 Directive was agreed by the European Parliament on 30 March 2004. The ECOFIN Council approved the text voted by the EP on 11 May 2004. It was formally adopted on 15 December 2004. It will have to be transposed by 20 January 2007.

1.2. Deadline for CESR's technical advice at Level 2

This formal mandate takes into account the fact that CESR needs sufficient time to prepare and deliver its technical advice but also that significant work has already been done to prepare the progress report. Furthermore, under the Lamfalussy arrangement, the European Parliament will require three months to consider the draft implementing measures. Finally, Member States also need adequate time to transpose new EU-legislation once the Level 2 measures have been adopted. In order to respect the necessary deadlines, the current mandate should therefore be completed within eleven months at the latest.

Indicative Timetable

Deadlines	Actions
July 2005	Third mandate sent to CESR
June 2006	Technical advice from CESR
July 2006	Publication of a working document on possible Level 2 legislation on the Commission's web site/ Public call for comments
September 2006	Commission proposal(s) for Level 2 legislation sent to ESC and published on the Internet
November/December 2006	Vote in the European Securities Committee on Level 2 proposals
20 January 2007	Transposition period for Level 1 directive expires
January 2007	Formal adoption of Level 2 measures by the Commission

In order to facilitate the implementation process, the Commission may, whenever justified, consider proposing the adoption of decisions or regulations for the implementation of Level 2 measures for a number of provisions which are covered by the present formal mandate. The Stockholm European Council, the European Parliament itself and the Lamfalussy report all urged the use of regulations whenever possible. The Commission will consider this issue at a later stage and its proposal will depend on the content of CESR's advice.

On the basis of the formal technical advice which CESR will deliver pursuant to this mandate, the Commission will determine adequate deadlines for the implementation of any ensuing Level 2 measures. This is without prejudice to the deadline for the transposition of the Level 1 directive, which is 20 January 2007. All provisions of the Level 1 Directive must have been transposed by Member States by that date. This includes the provisions of article 21(2) on storage of regulated information and the electronic filing of such information with the competent authority, which Member States will transpose on the basis of the Level 1 text alone, pending the adoption of the future level 2 measures referred to in this mandate.

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 to be followed by CESR, the mandate should be implemented on the basis of the following approach:

- CESR should take account of 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 draft Directive or other parts of Community legislation, which they should consider of relevance to the preparation of its technical advice.
- The technical advice submitted by CESR to the Commission should 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, in a easily understandable language respecting whenever possible legal terminology used in the field of European securities markets and company law.
- 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 an 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.

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 provisional mandate will also be posted on DG Internal Market’s 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 will publish 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 its 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. All such comments will in turn be made public on the above website.

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.

3. CESR IS INVITED TO PROVIDE ADVICE BY JUNE 2006 ON THE FOLLOWING ISSUES

In providing the advice in reply to the following requests, it is appropriate that CESR takes into consideration, the possibility to address part of these issues at level 3.

3.1. Preliminary issues

In the light of the discussions held at the European Securities Committee (ESC) meeting of 26 May 2005, the Commission considers that the future European architecture for the storage of regulated information is likely to consist of a type of integrated network⁴ of national databases allowing for sufficient flexibility and scalability, with the final objective of offering a one-stop-shop for end users. On this basis, CESR is invited to provide an opinion on two preliminary issues related to possible implementing measures for the setting up of a storage mechanism.

(1) Agreement on interoperability

CESR should examine how an agreement on technical requirements to allow technical interoperability of Officially Appointed Mechanisms (OAMs) could be obtained and how to conduct ongoing control/supervision over such a joint project;

(2) Cost and funding

CESR should in particular make an analysis of the cost and funding implications for the Member States at the initial stages of the creation of such a EU-wide network.

3.2. Role of the officially appointed mechanism for the central storage of regulated information (Article 21(2) of the Transparency Directive)

DG Internal Market requests CESR to provide technical advice on possible implementing measures on the Role of the OAM for the central storage of regulated information (Article 21(2) of the Transparency Directive). The technical advice should concentrate on the following issues:

(1) Minimum quality standards of security to be complied with by the OAM. This issue should at least address the following points:

⁴ A first sketch of such an architecture is presented in CESR's Progress Report of April 2005 (§159 and seq.).

- (a) which should be the security standards should regulated information be sent to the storage mechanism only in electronic form and should regulated information be stored only in electronic form?
 - (b) whether special or additional security standards should be in place if an electronic network of national OAMs at EU level is created?
- (2) **Minimum quality standards of certainty as to the information source** to be complied with by the OAM, taking into consideration how the filing procedure with the OAM could take place. This issue should at least address the following points:
 - (a) Whether it would appropriate to require issuers to file regulated information through electronic means only, types of electronic means that could be suitable taking into consideration the need to achieve certainty as to the source of information and the need to ensure integrity of content of regulated information
 - (b) In this connection, how best to ensure authenticity of origin, in particular (but not only) if the information is to be filed with the OAM by an agent or representative of the issuer or other indirect methods;
- (3) **Minimum quality standards of time recording** to be complied with by the OAM, taking into consideration the organisation of the filing procedure with the OAM. This issue should at least address the following points:
 - (a) Whether it would be desirable in order to facilitate automatic processing of the regulated information, including the time recording procedure, to require issuers to use input standards (such as XBRL or similar formats⁵) and templates (such as standard forms) for regulated information as a condition for the filing of information with the OAM;
 - (b) The implications of any “content checking” procedure especially potential resulting delays.
- (4) **Minimum quality standards of easy access by end users** to be complied with by the OAM, taking into consideration the organisation structure of OAM and the filing procedure. This issue should at least address the following points:
 - (a) whether there should be different minimum standards depending on the type of information to be accessed (e.g. regulated information under Directive 2003/6/EC and the Transparency Directive, and possibly additional information, such as the one to be disclosed under Directive 2003/71/EC, to the extent this non regulated information would be stored in the OAM) that may be obtained from an OAM;

⁵ E.g. a format which, while being able to be read naturally as a document in the native language of the issuer or in a common commercial language, has the additional capability of carrying and transmitting automatically to freely available analytical tools, quantitative data in standard structures.

- (b) minimum standards regarding the language regime of the access points for end users of interconnected OAMs at EU level in order to move towards a “one stop shop” for end users;
 - (c) minimum standards in terms of technical accessibility to the OAM, including the type of technology used in the interface with end users (e.g. it should possibly be an easily accessible technology), the operational hours, the service support etc;
 - (d) minimum standards in terms of the format of the information that can be accessed by end users, including in particular whether end users may be entitled to require receiving from the OAM a printed version of regulated information or may be entitled to obtain an electronic version only;
 - (e) whether, in this regard, it would be appropriate to require issuers to use input standards (such as XBRL or similar formats) and templates (such as standard forms) for regulated information as a condition for the filing of information with the OAM to the extent that this would facilitate the searching of information, its subsequent manipulation by end users or by added value service providers.
 - (f) minimum standards in terms of timely access to the regulated information, in particular whether the easy access principle requires that stored information, including price sensitive information, should be made accessible to end users without delay after reception by the OAM (see also paragraph 3(b));
 - (g) minimum standards in terms of cost of access to regulated information for end users;
- (5) **Role of Competent Authorities** in supervising OAMs’ compliance with quality standards, for instance in the cases where two or more Member States would decide to officially appoint a joint mechanism for the central storage of regulated information. The technical advice could also give consideration as to whether competent authorities should have any role in adapting standards over time in case of technical developments and similarly.

3.3. Costs and funding

DG Internal Market requests CESR to provide an assessment of the costs of setting up and operating OAMs that meet the standards listed in paragraphs 3.2.(1) to (4), and to deliver an interim report on this issue in April 2006.

3.4. The filing of regulated information by electronic means with the competent authorities (Article 19(1) of the Transparency Directive)

DG Internal Market requests CESR to provide technical advice on possible implementing measures on the filing of regulated information by electronic means with the competent authorities (Article 19(1) of the Transparency Directive). The technical advice should concentrate on the following issues:

- (1) **Minimum quality standards** to be complied by the competent authorities, in particular in terms of security; of certainty as to the information source and of time recording. This issue should at least address the following points:
 - (a) whether it would be appropriate to require filers (issuers, holders of voting rights etc) to use electronic means only for filing regulated information with the competent authorities, types of electronic means that could be suitable taking into consideration the need to achieve certainty as to the source of information and the need to ensure integrity of content of regulated information;
 - (b) in this connection, how best to ensure authenticity of origin, in particular (but not only) if the information is to be filed with the competent authority by an agent (or similar) of the issuer or other indirect methods
 - (c) whether it would be appropriate to require filers to use input standards and templates for drafting regulated information.
 - (d) Implications of any validation procedure of regulated information on the recording of the filing.

- (2) **Alignment of this procedure with the filing with the OAM.** This issue should at least address the following points:
 - (a) Possibility that the competent authorities act as interface for filing of regulated information with the OAM, whether the OAM is operated by the competent authority or not;
 - (b) Interaction between the powers of the competent authorities to examine regulated information and take appropriate measures (cf. Article 24(4)(h)) and the availability of information to end users (see also section 3.2, paragraph 3(b)).