II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 March 2006

setting up a European Securities Markets Expert Group to provide legal and economic advice on the application of the EU securities Directives

(2006/288/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas:

(1) Fully integrated and efficient financial markets are fundamental to the functioning of modern economies. Completing the single market in financial services is therefore a crucial part of the Lisbon economic reform process and essential for the EU's global competitiveness.

(2) The White Paper on Financial Services Policy 2005-2010 (White Paper) [1] presents the European Commission's financial services policy priorities up to 2010. One of the objectives of the Commission's financial services policy is to implement, enforce and continuously evaluate the existing legislation and to apply rigorously the better regulation agenda to future initiatives.

(3) The White Paper identifies various practical steps to understand better how Community law is applied in practice, and to ensure that the level of legal coherence that markets need is in fact being delivered in line with the Commission's better regulation agenda. Since the first sectoral consistency check will be in the securities field, it has been decided to set up a group of securities markets practitioners and experts to assist the Commission in analysing the main problems in this field. This necessarily involves studying the transposition and application of Community law at the national level, to understand better how Community law is applied in practice, and to ensure that the level of legal coherence that cross-border investment services and securities markets need is in fact being delivered.

(4) In addition to the advice of practitioners on issues related to the legal evaluation of EU securities Directives, the Commission considers it important to receive the expert group's analysis on the economic impact of the EU securities Directives as well as their practical implementation and application in the Member States. Consequently, the expert group will also assist the Commission to prepare its reports on the application of various provisions of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC [2], 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 [3], Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [4] and Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in

[1] White Paper on Financial Services Policy (2005-2010), COM(2005) 629 final, 1 December 2005.

[2] OJ L 145, 30.4.2004, p. 1, as corrected by OJ L 45, 16.2.2005, p. 18.

[3] OJ L 345, 31.12.2003, p. 64.

[4] OJ L 96, 12.4.2003, p. 16.

relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC [1]. The expert group will also provide technical advice on the Commission's request on issues of contemporary relevance in the EU securities markets, such as credit rating agencies and financial analysts.

(5) The expert group should be made up of persons having legal expertise or direct commercial experience in respect of the matters covered by the mandate. Provision shall be made for the participation of experts or observers from other expert groups or consumers/investors associations.

(6) This Decision gives effect to the Commission's commitment in the White Paper to create the expert group, and defines procedures for its composition and methods of operation.

(7) Considering that the duration of expert group's activities should be limited, the expert group will commence in 2006 and continue until the end of 2009 unless the Commission decides to prolong the mandate of the expert group,

HAS ADOPTED THIS DECISION:

Article 1

A European Securities Markets Expert Group hereinafter referred to as 'the group' is hereby set up by the Commission.

Article 2

Task

The group shall:

— provide advice to the Commission for its analysis of the legal coherence of the EU framework and, where appropriate, its implementation in national law, by carrying out a sectoral consistency check of the EU securities directives, reading across the relevant law to identify — from the perspective of the regulated community and users of the securities markets — points of legal uncertainty in the legislative framework which impair the functioning of those markets;

— assist the Commission by providing advice that will contribute to the Commission's reports on the application of various provisions of Directive 2004/39/EC, Directive 2003/71/EC and Directive 2004/109/EC and on the operation of Directive 2003/6/EC. The advice of the group will also require an analysis of the economic impact of those Directives;

— provide technical advice on the Commission's request on issues of contemporary relevance in the EU securities markets, such as credit rating agencies and financial analysts. As regards credit rating agencies, the Commission intends to gauge the opinions of market participants, and especially those purchasing complex financial instruments, by requesting advice of the group on specific issues related to the functioning of credit rating agencies. In relation to financial analysts, the group could be asked for its views as to whether the existing regulatory requirements are adequate.

The group shall report regularly to the Commission summarising its analysis and advice. The Commission is not bound by the advice of the group and the advice is without prejudice to the advice of other Commission expert groups on related issues covered by the mandate. The group will ensure appropriate coordination with those other relevant Commission expert groups in order to avoid duplication of work.

Article 3

Composition — Appointment

1. The group shall comprise a maximum of 20 members.

2. The members of the group shall be appointed by the Commission on the basis of applications in response to a call for expressions of interest by high level experts with practical experience from business and academic communities and civil society, including consumers or investors representatives, involved in the investment services and the securities industry.

3. The Commission shall assess the eligibility of individual experts who have responded to the call for expression of interest against the following criteria:

— proven expertise and recent practical experience, including at European or international level, in areas relevant to the investment services and securities industry and/or, in the impact of the EU securities directives in those areas;

— the ability of the individual expert to shape the views of the business and academic communities and civil society in respect of the matters covered by the mandate;

[1] OJ L 390, 31.12.2004, p. 38.

— responses to the call for interest should be accompanied by material demonstrating that the individual expert meets the conditions mentioned above;

— individual experts should also be proficient in a language which is customary in the sphere of finance at a level which allows them to contribute to discussions and report drafting in that language.

4. In selecting experts, the Commission shall also have regard to the need to encompass expertise covering all the relevant functions and products within the securities industry.

In addition, the Commission shall ensure a broad geographical representation in the group with experts who have direct knowledge of a broad range of EU markets, including national markets, to the greatest extent possible on the basis of the responses received.

5. The following provisions shall apply:

— the members are appointed in a personal capacity, excluding the possibility for participation of alternates/substitutes in the group's deliberations, and are required to advise the Commission independently of any professional connections or other outside influence;

— the members are appointed for a two-year renewable mandate;

— the members are expected to participate actively in the group's meetings and in at least one of the subgroups mentioned in Article 4(2);

— the members who are no longer able to contribute effectively to the group's deliberations, who resign or who do not respect the conditions of this Article or Article 287 of the Treaty establishing the European Community may be replaced by the Commission for the remaining period of their mandate;

— the names of members appointed by the Commission will be published on the Internet site of DG Internal Market and Services. The names of members are collected, processed and published in accordance with the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [1].

Article 4

Operation

1. The Commission shall organise and chair the meetings of the group. The group will meet four times a year in plenary and several times within the sub-group(s) structure.

2. The Commission may set up one or more sub-groups to examine specific questions and define its terms of reference; any such sub-group shall be disbanded as soon as its specific function has been fulfilled.

3. The Commission shall set out a work programme for each calendar year. The programme should determine the subjects for discussion by the group or one of its sub-groups and set out a time-table for discussion of draft reports in the plenary meeting of the group. The advice and analysis of the group will enable the Commission to make the required assessment.

4. The Commission may ask other experts or observers with specific competence on a subject on the agenda to participate in the deliberations of the group or a sub-group if this is useful or necessary. This provision may be used for inviting experts from other Commission expert groups or observer(s) from associations representing consumers or investors.

5. An expert or observer may not divulge information obtained through participation in the deliberations of the group or a sub-group if the Commission classifies that information as confidential.

6. The group and its sub-groups shall normally meet on Commission premises in accordance with the procedures and schedule established by the Commission. The Commission shall provide secretarial services.

7. The group shall adopt its rules of procedure on the basis of a draft presented by the Commission.

[1] OJ L 8, 12.1.2001, p. 1.

8. The Commission shall publish on the Internet site of DG Internal Market and Services, in the original language of the document concerned, the group's conclusions and reports as well as the summaries of its meetings or of its sub-group(s).

Article 5

Meeting expenses

1. The Commission shall reimburse travel and subsistence expenses for members in connection with the group's activities in accordance with the provisions in force at the Commission. The members shall not be paid for their duties.

2. Meeting expenses are reimbursed within the limits of the appropriations allocated to the department concerned under the annual procedure for allocating resources.

Article 6

Entry into force

The decision shall take effect on the day of publication in the *Official Journal of the European Union*. It is applicable until the end of 2009 unless the Commission decides, before that date, to prolong the mandate of the group and of any sub-groups which might have been established.

Done at Brussels, 30 March 2006.

For the Commission

Charlie McCREEVY

Member of the Commission