Introduction:

Euronext welcomes CESR’ consultation on these level 3 measures aiming at implementing the European Commission’s Regulation on Prospectuses.

As a general comment, we would first like to highlight that the recommendations should merely aim at ensuring an harmonised implementation of the Regulation throughout EU Member States. They should not serve to impose on issuers another layer of discloser obligations detailing further level 2 measures and making them inflexible.

We indeed believe that many of the recommendations are much too detailed and, in a number of instances, much too inflexible and not very practical. As they currently stand, some of the recommendations do not achieve an appropriate balance between, on the one hand, the right of investors to information (necessary for investor protection and confidence in markets) and, on the other hand, the burden that such information represent for the issuers. Such an appropriate balance is nevertheless key, in particular, in order to ensure that Europe’s markets remains attractive to issuers worldwide. With this in mind, Euronext is of the opinion that European markets’ regulators should not impose on issuers the inflexible and over-prescriptive disclosure requirements contained in some of the recommendations and should, under no circumstances, adopt stricter or additional national requirements.

We are also concerned that, if the recommendations do not focus more on ensuring an harmonised implementation, there will not be a level playing field for issuers in Europe. Disparities between Member States will prevail whereas a level playing field should be one of the main elements of the single financial market. For instance, recommendations / indications relative to profit forecast, doesn’t allow to foresee how the various national authorities will apply this requirement in practice.

Moreover, recommendations should be inspired from the main European markets’ activity/practises, in order to remain practical and able to be applied in a harmonised manner.

We wish also to point out that the list of specialist issuers as well as the requirements imposed on them should be reassessed over time.

Finally, it is also very important that the recommendations be fully in line with the IFRS/IAS. In some instances the recommendations seem to only duplicate IFRS, putting an unnecessary burden on issuers by creating a double level of requirements.
Detailed comments:

Financial information issues:

1) Selected financial information

We support the approach based on a selection of key indicators rather than summarized financial statements.

We also agree that it is a question of judgment to assess which specific information must be selected.

In this respect, we believe that it should remain within the issuers’ responsibility to determine which are the relevant data as concerns those indicators (which in practise is generally a mix of sectorial components, financial and non-financial information).

Concerning the comparability of historical financial information, even if in general they should indeed be comparable, we believe that there should be room for enough flexibility in practise. Regulators should adopt a pragmatic approach on a case by case basis. If comparable data are not available, issuers should then be allowed to provide with relevant explanations/justifications for such situation.

For this item IAS/IFRS has also to be kept in mind.

2) Operating and financial review

It is important that this item focuses on the issues, which the issuer considers to be significant in the circumstances of its business as a whole. We agree with CESR approach to require key performance indicators.

Again, as regards comparability of data, a flexible approach should be retained by CESR and issuers should be allowed to provide with relevant explanations/justifications when such data are not available.

3) Capital resources

We support CESR analysis on this item.

4) Profit forecasts or estimates (PFE)

We are quite concerned by the conclusion reached by CESR that this subject should be dealt with on a “case by case” basis, as it does not provide for the minimum legal certainty needed by issuers regarding the way the various regulators in the EU will apply this item.

More precise recommendations in this field are indeed necessary since the definition of PFE is very broad and may include information otherwise falling under other items. We understand CESR’s assumption that it is not easy to draw a clear border line between this item and others such as trends, but we also consider it is essential to be able to distinguish between such items. Indeed, without any further/clearer guidelines from CESR, an important risk remains that some regulators may challenge the fact that PFE should be made on a voluntary basis by issuers, whereas we consider the “voluntary” nature of such information as a key element.
This situation does not seem acceptable, especially as such PFE have to be audited which constitutes additional costs for the issuer: this difference in treatment would break the level playing field among issuers in Europe. We therefore urge CESR to find ways to circumvent the notion of PFE and distinguish it from other similar items.

Moreover, we consider that the requirements that PFE be understandable for investors risks to be conflicting with other requirements imposed that will imply a high level of refinement (i.e. give assumptions, separate those based on factors in the hands of managements and those which are not, etc). The reliability test is also not obvious since forecast and estimates are by nature hypothetical.

We do not consider appropriate to provide examples of what may or may not constitute a profit forecast or estimate for this might lead to further restrictions. We however think that a possible approach would be to define more precisely what the item “trends” covers and ensure that information covered by such item may not be considered as PFE.

Concerning comparability of data, we reiterate our view that flexibility should be ensured in that respect.

5) **Historical financial information**

We agree with CESR proposals including the bridge approach.

6) **Pro-format financial information**

Euronext is of the opinion that no additional recommendation is needed in that field.

If recommendations were to be finalised anyway, we would disagree with CESR’s approach that considers only one criterion of 25% as enough to reflect a gross change and believe that a “multicriteria” approach should be adopted.

The method stating that at least one of the indicators of size is more than 25% seems to us inappropriate and irrelevant since such threshold would apply to any and all indicators. It would be better to specify for key indicators thresholds above which the transaction would be considered as inducing a significant gross change (the period of time taken as reference should then be specified). We consider that the turnover, the net profit and the balance sheet total are in most cases key indicators of size.

Moreover, the definitions of indicators of size have to take into account the IFRS or relevant reporting standards.

7) **Financial data not extracted from the issuer’s audited financial statements**

We endorse CESR’s proposal on this issue.

8) **Interim financial information**

We would like to point out that this subject is covered by the IAS (clause 34). Moreover it seems inappropriate to make reference to article 5 of the Transparency Directive as this text has not yet entered into force and will be implemented at national level only 2 years after such entry into force.
9) **Working capital statements**

We agree in general with CESR’s proposal, but we would advocate for more flexibility in its implementation. Indeed, the approach to “clean” working capital statements, by giving indication of whether or not the working capital is sufficient on the basis of reasonable assumptions, seems too strict. There are cases where the issuer will not be in a position to give such statement. In such cases, issuers should be allowed to explain the reasons why they cannot give such information, rather than being obliged to provide with information which they are not comfortable with.

The requirements to indicate the time when the issuer expects to run out of working capital and additional amount needed appear over prescriptive.

10) **Capitalisation and indebtedness**

We are of the opinion that the information to be provided as stated in the form is too detailed. The information to be provided should be new material information that has not been formerly disclosed and equivalent to the information set out in an annual or half year reports.

**Non financial information item**

1 *Specialist issuers*

As a general comment, we would like to highlight that these requirements seem to us much too detailed and should be condensed. Besides, the list of specialist issuers as well as the requirements imposed on them should be reassessed over time.

Euronext agrees on the principle with the usefulness of requesting a valuation report. Nevertheless, we consider that valuation reports from independent experts may in some instances not be appropriate (in particular for property companies and start-up companies) since it will be very costly and raise confidentiality issues with respect to competition. An internal valuation report, specifying the criterion and methods used, could be sufficient in such situations. Considering the costs implied, a valuation report should be acceptable even if older than 60 days. We also question to what extent half yearly financial information and the IFRS in general cover the matter.

Moreover, there is a risk of hindering the implementation of a level playing field between companies if valuation reports are to comply with the national rules of the competent authorities.

The obligation to provide forecasts for start-up companies seems in contradiction with such type of companies for which developments are rather hypothetical.

**Property companies**

Each company, regardless of the amount of properties it holds, should be allowed to present a condensed valuation report. Separate valuation reports will amount to an overload of information especially for the non-qualified investor.

**Mineral companies**

The definitions provided in these recommendations seem adequate, but should nevertheless be harmonized with the existing definitions generally known and accepted within the sector.
Start-up companies
We do not agree with the specific disclosure requirements for start-up companies as set out by CESR. Start-up issuers might be obliged to disclose competitive information if they are to provide information on the strategic objectives in their prospectuses. We are also of the opinion that the definition of “start-up companies” should be more restricted to the extent that for example holding companies created through a merger will not come within the scope of the definition.

We would suggest that CESR adopts option (iv) proposed in the recommendation, stating that “the report would not be mandatory but the issuer would be free to include it”.

We would like to point out that it may be very difficult in practice to find an independent expert to assess a report in the case of start-up companies.

Shipping companies
Any company, regardless of the amount of vessels it holds, should be allowed to present a condensed valuation report. Separate valuation reports will amount to an overload of information especially for the non-qualified investor. Moreover, and as a consequence of the IFRS, additional disclosure requirements are to be included in the annual report.

2 Clarification of items
We are of the opinion that CESR’s recommendations as concerns the provisions to be included in the prospectus on these various items are very detailed and would prefer a more condensed approach. Some of those provisions seem over prescriptive or irrelevant, and sometimes already covered by the IFRS provisions.

Property, plans and equipment:
Separate descriptions will lead to an overload of information, especially for non-qualified investors. Therefore we would prefer a more condensed description.

Compensation:
This subject is covered by the IFRS and will be concluded in the financial statements. No additional information should thus be required and information should not be presented in different way.

Arrangements for the involvement of employees:
This subject is already covered by the IFRS (standards 19 and 26).

Nature of control and measures in place to avoid it being abused:
We agree with the relevancy of the proposed recommendations and think the information as set out is sufficient. Nevertheless, it might be useful for CESR to clarify the mention “de facto basis on which control is exerted” in order to avoid any confusion in interpretation.

Related parties transactions:
CESR should not make any recommendation in this field. We think it should be the national competent authority’s responsibility to decide whether a GAAP other than IFRS is accepted.
Legal and arbitration proceedings:
We agree with the CESR’s recommendations to the extent that it is not a comprehensive enumeration of items.

Acquisition rights and undertakings to increase capital:
We endorse CESR’s proposal to the extent that material information that has not been disclosed in the annual report, the OFR or the cash flow statements should be disclosed in the prospectus.

Options agreements:
We agree with CESR’s recommendations.

History of share capital:
The information with respect to the history of share capital is covered by the IFRS.

Rules in respect of administrative, management and supervisory bodies:
We agree with CESR’s recommendations.

Description of the rights attaching to shares of the issuer:
We agree with CESR’s recommendations.

Material contracts:
We are concerned that the mention in the prospectus of the “key terms and conditions” of the material contracts will attempt to the confidentiality of certain provisions of such contracts, especially as concerns price. Issuers should not have to include such details in their prospectus, as such provisions should legitimately remain confidential information.

Statements by experts:
The proposed recommendations only clarify the meaning of “interest”. A clarification of what is considered as “material interest” could be further specified by CESR.

Information on holdings:
CESR’s recommendation foresees a very high level of details. The information relevant for investors is already sufficiently disclosed in the annual report.

Interests of natural and legal persons involved in the issue/offer:
We agree with the CESR’s recommendation.

Clarification of terminology used in the collective investment undertakings of the closed-end type schedule:

With respect to paragraph 300 we would propose to precise that the index should be calculated by an independent calculator.
The information referred to in paragraph 304 should rather be included in the annual report than in the prospectus.

3 Recommendations on issues not related to the schedules

Euronext considers that no recommendations are needed on “documents including information on the number and nature of the securities”, since it has been adequately set out in provision 4 of the Directive.
The applicable language regime should be in accordance with the language regime applicable to prospectuses as set out in the Directive.