



MEDEF

*Economic, Financial and
Fiscal Affairs*

Paris, Friday 28th March 2003

Prospectus Mandate
Second call for evidence - Ref: CESR/03.038

Medef contribution

With its call for evidence of 7 February 2003, CESR invited all interested parties to submit views as to what CESR should consider in its advice to the European commission on possible implementing measures concerning the future directive on the prospectus to be published when securities are offered to the public or admitted to trading". We are pleased to send you Medef's contribution.

CESR IS INVITED TO PROVIDE ADVICE ON SOME PRIORITY ISSUES:

Minimum information

Medef would like to insist on the SME's specific schedule. Indeed, to enable an access for SME's to financial markets, it is crucial to tailor obligations required in the prospectus to take into account their size, as proposed in the prospectus directive proposal. In its first advice, CESR's proposition mainly consists in a reduction of the past years figures presentation to two years instead of three. It is relevant but insufficient. Indeed, a number of the disclosure requirements contained in the Core Equity building block are burdensome for SME's and we have no doubt that if there is no specific disclosure regime for SME's, they will be excluded of the financial European market. Furthermore, listed SME's would ask to discontinue the listing of their company.

We agree with the idea that information provided by SME's must be reliable and precise but we think that it could be possible in a more concise way.

Besides, we disagree with the idea that, as SME's activity is simpler, its obligations of information are lightened, because its means are also more limited. It is consequently more difficult and expensive to produce information.

We propose a specific disclosure for SME's, (see draft proposal in annex below), that could be completed for two years at the beginning and then updated on a three years basis. We established this model of prospectus keeping in mind investor's protection.

Especially for the SME, it would be useful to accept, as it is possible in France, the registration of the annual report as a prospectus.

Annual information

CESR has to provide technical advice on possible implementing measures relating to the method of publication of the document that contains or makes reference to all disclosure requirements published over the past 12 months. Regarding the way to make it available, Medef considers that issuers should be granted the possibility to choose between the different diffusion modalities authorised by the directive (Art. 14).

Incorporation by reference

Regarding information that can be incorporated by reference in a prospectus, Medef considers that CESR's first advice remains satisfactory.

Publication of the prospectus

The latest text provides in Article 14 for an option to require the drafting and the publication of a notice stating how the prospectus has been made available and where it can be obtained. CESR has to provide technical advice on possible draft implementing rules relating to the content of the notice and its methods of publication.

- Content of the notice
Issuers consider that the notice must be strictly limited to the following elements:
 - the issuer name,
 - the exact title of the published document,
 - the publication modalities, and
 - the diffusion place.
- Notice's publication method
Medef asks for issuers to be granted the possibility to choose between the following diffusion modalities:
 - financial newspapers,
 - legal information newspapers,
 - regulator website
 - market operator website, or
 - a specific European website that could be created by European regulators or by the Commission.



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CESR's Advice on possible Level 2 Implementing Measures for the Proposed Prospectus Directive

Annex : PROPOSAL FOR THE REGISTRATION DOCUMENT : PROPOSED SCHEME FOR SMES

♦ Responsibility for the prospectus

I.A.1 Name and position of the natural persons or the registered name and registered office of legal entities who are responsible for the prospectus or, where applicable, some parts thereof, with in such cases, reference to those parts.

I.A2 Declarations of the persons responsible referred to in point I.A.1, stating that to their knowledge in respect of the part of the prospectus for which they are responsible, the information therein is in accordance with the facts and does not contain any omissions that would affect the import of the registration document.

I.C Name, address and qualifications of the auditors

♦ General information on the issuer and the issuer's share capital

III.A General information on the issuer

III.A.1 Registered name, registered office and headquarters if different to registered office

III.A.2 Trade registry and registration number

III.A.3 Formation date and expiry date of the issuer; length of life of the issuing except where indefinite

III.A.4 Legal form of the issuer - only specific provisions need to be stated

VIII B The company's objects and reference to the specific Article in the Articles of Association under which the objects are stated

VIII F(except (b)) Locations where the issuer's legal documents (e.g. Articles of Association, minutes of General Meetings of Shareholders, auditors' reports, etc.) may be examined

Financial year - start date, end date and duration

VIII B 5 Describe the conditions governing the manner in which annual general meeting and extraordinary general meeting of shareholders are convoked, including the conditions of admission and functioning.

(VIII A 7) General information on the company's capital

Capital history covering the last two years or since its formation date if formed less than two years ago

VIII A 1 & VIII B 3 Current distribution of shares and voting rights

♦ Information on the issuer's activities

III C 1 Description of the issuer's main activities

The issuer shall cover the following details if they are material:

- Turnover part realised with the most important customer
- Turnover part realised on the most important product
- Part of the most important supplier in purchases

V D Average number of employees and movements over the past two financial years in the case of significant changes

III B Investment policy

The issuer shall cover the following details if they are material :

- Numeric details of the main investments carried out over the past two financial years and during the months since the last year-end
- Main investments in progress and details of funding
- Details of the issuer's principal future investments that have been firmly committed to by the company management or directors, excluding any interests to be acquired in other companies in cases where the information is confidential

II B Issuer risks

By way of example, the issuer shall give details of the following risks if they are relevant and of a significant amount:

II B 1 General or industrial risk

Disclose the following risks, if they are relevant and material :

- Political risk (turnover part realised with risky countries)
- Risks relating to natural phenomena (level of direct dependency toward natural phenomena)
- Any possible dependency that the issuer may have with respect to patents, licences, supply, industrial, sales or financial agreements, or to new manufacturing procedures if these factors are of major significance to the activities or to the profitability of the issuer
- Seasonal nature of activities
- Competitive position

II B 2 Financial risk

Disclose the following risks, if they are relevant and material:

- Exchange rate risk
Reflects the fact that a drop in exchange rates may cause a fall in the value of assets denominated in foreign currencies
- Interest rate risk
Risk of capital losses due to interest rate fluctuations

II B 3 Other risks specific to the issuer, where relevant:

Disclose the following risks, if they are relevant and material :

- Counterparty risk
Risk of the definite loss of an outstanding account if the debtor is unable to meet all its commitments
- Is the issuer subject to a specific legislation? If so, give a brief description of this legislation and its impact on the company.
- Links and/or dependency, where applicable, between the issuer and other companies (dealing agreements, marketing, distribution or manufacturing licences)
- Details of assets required for operations but not owned by the company
- Specific fiscal arrangements
- Details of any dispute or arbitration that may in the future have, or has in the recent past had, a considerable effect on the issuer's financial position, activities, profit and, where applicable, on its group.

II B 4 Insurance – Coverage of potential risks to which the issuer may be subject

Disclose the following risks, if they are relevant and material :

- List of the insurance policies taken out by the issuer
- Amount of coverage in respect of all general or specific risks

♦ Assets - Financial position and results

VII A Issuer's financial statements

VII A 1 Audited financial statements for the last two financial years drawn up by the issuer's company management or directors presented in the form of a comparative table with Notes to the annual accounts for the most recent financial year.

VII A 2 Total earnings and earnings per share for the year, before and after taxation, including profit on ordinary operations and net profit, specifying the non-consolidated and consolidated figures, for the two latest financial years

VII J Cost of dividend and dividend per share for the two latest financial years

VII A 3 Existing bank borrowings classified by maturity dates

IV B 1c & IV B 3 Details up to the latest available date :

- of total outstanding loans broken down between unsecured loans and loans secured by the lender itself
- or by third parties through sureties or otherwise;
- of the total amount of conditional commitments

must be given if they are of significant amounts

VII A 3 Source and application of funds statement for the past two financial years - cash flow statement

♦ Directors and senior management

V A 1 Directors and senior management

The issuer shall state, notably, in addition to a detailed curriculum vitae, any convictions for offences (not amnestied), personal bankruptcy, receiverships, liquidations and details of any public criticisms made by a regulatory body or professional body against a director, whilst in office or during the twelve months preceding the event.

♦ Management and directors' interests in the share capital of the issuer and in a company which has a controlling interest in it, a subsidiary of the issuer or a major customer or supplier of the issuer

V B Total amount of compensation paid and benefits in kind granted during the financial year directly or indirectly paid in name to each company management or director by the issuer or by a group company

VIII A 6 & V D 1 Share subscription or purchase options granted to and exercised by each company management or director

- Number, maturity date and price of share subscription options granted to each company management or directors and the options that have been exercised by said management or directors
- Number and price of shares subscribed or purchased during the financial year by each company management or directors as a result of the exercise of one or more of the options held in the companies referred to above

VI B Information on the nature and importance of transactions concluded between the company and its managing director, joint managing directors, directors and members of the management board or supervisory board, shareholders holding a fraction of the voting rights over 10%, or in the case of a shareholder company, the company that controls it. If such transactions were concluded during previous financial years without the approval of the competent body, information on these transactions shall also be provided, particularly the auditors' special reports on these transactions. Transactions realised according to normal market terms and conditions are excluded of the disclosure scope.

VI B Overall description of loans and guarantees granted in respect of the administrative and supervisory bodies and directors

V D 2 Details of employee profit sharing agreements and incentive schemes

- Date, description and principal terms of these agreements
- Sums allocated under these schemes to employees over the past two years

♦ Recent developments and future outlook

IV D 1 Recent developments

General information on the development of the issuer's business since the date of the latest published annual accounts, notably, the most significant recent trends in:

- a) production
- b) sales
- c) inventory
- d) order book volumes
- e) costs and selling prices

As far as possible, the issuer shall show a comparison with the equivalent details for the previous year.

The issuer shall give the market trends for the various factors.

IV D 1 & III E & III B 3 Strategic policy

- General policy: diversification, specialisation, retraining;
- Former or new activities to be expanded;
- Where applicable, general details about the projected investment programme.

IV D 2 Forecast information

The issuer shall specify if this heading includes any targets or estimates which are unlikely to be achieved, and particularly:

- forecast turnover and profits
- details of negotiations in progress or on the state of advancement of transactions of any type and of which the outcome or nature shall have a significant influence on the assessment of the financial position, activities or profits of the issuer.

IV D 2 The market

- Probable factors relating to foreseeable market developments