

CESR guidelines for the consistent implementation of the proposed Commission Regulation on the prospectus

Reply of Euronext

Euronext welcomes this consultation aimed at identifying the areas in which market participants feel that guidelines are necessary at level 3 in order to ensure a harmonised implementation of the execution measures contained in the proposed Commission regulation complementing the prospectus directive.

Euronext believes that such guidelines will indeed be essential in order to clarify what information is exactly required when filling in a number of items to be contained in prospectuses drafted in compliance with the Commission regulation. The items for which Euronext believes that guidelines would be necessary are mainly the following: Risk Factors; Selected Financial Information; Profit forecasts or Estimates; Financial Information concerning the issuer's assets and liabilities, financial position and profits and losses; Related Party Transactions; Material Contracts; Third Party Information and statements by experts and declarations of any interest.

Guidelines may be necessary in some instances to avoid redundancy between several items and/or between items and the content of the accounts prepared under IFRS (IFRS will provide a very wide range of quantified data that may also be required in various items of the registration document and/or securities note).

We also believe that some guidelines at level 3 could be useful to determine a harmonised approach to information required from SMEs. Since there is no specific schedule for SMEs, it would be helpful to know if and how some of the items could be approached in a way more specific to SMEs in order to take account of their specificities and allow for a suitable flexibility in the implementation of the Commission regulation.

Risk Factors:

It would be very useful to design guidelines for issuers (specifically for those who will use the passport) that would specify the expected content of such item. In particular, it would be useful to specify how to deal with such items with a view to avoiding redundancy, for example, with the item regarding trends (Trend Information) since information may sometimes be adequate with respect to both items.

Selected Financial Information:

It would be helpful to have clarification on what is expected from companies, especially since all such information are provided in the accounts. For instance, what level of details does this item require having in mind the possible use of incorporation by reference. A description of the expected minimum content could be useful as well as clear indication of whether the issuer has to give either summarised financial statements (which may be quite substantial and burdensome) or a selection of indicators.

Profit forecasts or Estimates:

Since the definition of profit forecasts is very broad, it would be useful to have guidelines ensuring a harmonised approach to this item throughout Europe. The fact that such item is voluntary should be the basis for preventing that regulators may require that information dealt with under other items (such as trends) should in fact be dealt with under Profit Forecasts or Estimates.

Financial Information concerning the issuer's assets and liabilities, financial position and profits and losses:

It would be necessary to clarify the exact scope of the verification foreseen with respect to historical financial information since such information is already audited when auditors verify the accounts. What would be the liability of auditors with respect to the prospectus?

Related Party Transactions and Material Contracts:

For both items, guidelines would be useful for ensuring that only the transactions and contracts in effect and producing material consequences at the time of the drafting of the prospectus need to be identified.

Third Party Information and statements by experts and declarations of any interest:

Guidelines should specify for which type of information a confirmation from third party is necessary. There are many public data, which should not require such confirmation. Moreover, the general undertaking of the issuer's managers on the accuracy of the content of the prospectus should not require a specific statement in relation to this item.
