



Economic and financial affairs

11 July 2011

<p><b>Answer to ESMA consultation paper: ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU</b></p>
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MEDEF considers that a general reflexion is needed on the financial markets access costs, especially for SMEs, so that any useless requirement should be tracked. ESMA's proposals concern only a small part of the regulation and should be part of a larger analysis of a better regulation on the financial markets.

As ESMA consultation has been conducted on a very short period, MEDEF chose to focus its comments on two subjects: summary and proportionate disclosure regime for SMEs. ESMA's choice to consult only one month on this topic prevents us to organise a real discussion with companies on the proposed schedules. For that reason, we consider that the calendar was detrimental to the quality of the consultation process.

**4. Format of the summary of the prospectus and detailed content and specific form of the key information to be included in the summary (Article 5(5))**

*Q8: Do you agree with our modular approach?*

We agree on the principle of a modular approach, which could enable to combine the advantages of comparability and flexibility. Nevertheless, the proposed list enters in too many details which would lead to two inappropriate consequences: the summary would be too long and the approach would introduce an excessive rigidity. The proposed approach is rather the development of a mini prospectus than a summary. It pursues two antinomic goals: concision and completeness.

The lack of freedom in the proposed approach comes from ESMA's choice to be prescriptive in the detail. The objectives of standardisation should not overpass the necessity to adapt the information given to the specificities of each operation. The objective of comparability should be further analysed in order to better adapt the balance between standardisation and concision: the objective of standardisation is accurate in the perspective of an easier reading of summary and a training effect for investors as they will more easily find information in the summary. On the other hand, investors will not use them to compare two offers and therefore the level of detail prescribed by ESMA and the rigidity in the order are not proportionate to this objective.

On the specific point of risk factors, we are concerned with the comments made on §105: ESMA should not decide what is unacceptable on such a difficult subject, especially in the objective of having a readable summary for investors. Such a theoretical and rigid approach would certainly not lead to a progress toward more readable summaries. On the contrary, ESMA should let some freedom to the issuer regarding the risk factors part in the summary.

*Q9: Do you agree with our approach of identifying the mandatory key information to be contained within five sections?*

Even though the proposed sections are theoretically not criticisable, ESMA overweighs the objective of completeness. The proposed sections would become a sort of checklist for the competent authorities when they review summaries, which would certainly lead to enhance the length of summaries. ESMA should remain at a less detailed level of prescription.

*Q10: Do you agree that we have provided sufficient flexibility for issuers and their advisers in drafting summaries – whilst ensuring that summaries are brief and provide the reader with the necessary comparability between prospectuses?*

For the reasons described in Q9 and Q10, we do not consider that the proposed approach is flexible as it prescribes the contents and the order of the sections in a very detailed way. The objective of comparability would be reached but it would be detrimental to the accuracy of the selection of the points. Besides, it is not compatible with the objective to limit the length of summaries.

*Q11a: Do you agree that our approach adequately limits the length of summaries?*

*Q11b: What is “short” for a summary for: (i) an issuer; & (ii) an investor?*

*Q11c: Do you think that there should be a numeric limit on the length of summaries? If so how might that be done?*

No, we do not agree that ESMA’s approach would limit the length of summary. The proposed selection of items is too long and without a numeric prescription, it will enable the competent authority to ask for many details in the summary. We consider that there should be more freedom offered to the issuer in drafting the summary and that no numeric limit should strictly be prescribed. The competent authorities should let a tolerance margin to the issuer in order to take into account the complexity, both of the proposed instrument and of the issuer environment.

### **Part 5.III Proportionate disclosure regime regarding SMEs and issuers with reduced market capitalisation**

As a general remark, it is necessary to highlight the fact that the definitions of SMEs and Small Caps within the meaning of the Prospectus Directive are extremely restrictive (for SMEs, at least 2 of the following 3 criteria : less than 250 employees, total balance sheet < 43 MEUR, an annual net turnover < 50 MEUR and for Small Caps, an average market capitalisation <100 MEUR for the last three years). As a comparison, the provisions for small or mid-caps in France concern issuers whose market capitalisation is less than 1 billion euros. We consider that the regulator should adopt a view more consistent with the market perception which, in turns, reflects the investors’ one.

The fact that, in some small European countries, SMEs may represent an important part of the market capitalisation does not represent an obstacle as the proportionate regime will enable those SMEs to raise funds more easily, with a better balance between costs and benefits.

MEDEF considers that the proportionate regime’s objective should be to strike a balance between investors’ protection and administrative burden for companies. Reading through ESMA’s proposals, we fail to see a significant reduction of cost and burden.

There is a general agreement on the fact that the current complexity of prospectuses is detrimental to SMEs and does not really fit the investors' needs, as many of them acknowledged that they do not read Prospectuses. Moreover, most of the time Mid caps investors are not institutional investors but smaller ones who carry deep level analysis before committing themselves. It has to be remembered that the Study on the impact of the Prospectus Regime on EU Financial Markets published in June 2008 underlined that "unlike institutional investors, small retail investors do not, on average, make uses of prospectuses for their investment decisions". There couldn't be any clearer indication that the current prospectus regime is not only too costly and burdensome for small and medium issuers but also has become ineffective for their investors.

For those reasons, MEDEF asks ESMA to reconsider its proposals and opt for a more ambitious proportionate regime instead of a minimalist answer to the Commission mandate.

*Q37: Do you agree that a full prospectus should always be required for an IPO and for initial admission to a regulated market (as described in paragraph 141 above)?*

For the reasons stated above, we are not in favour of a full prospectus for an IPO. We consider that a proportionate regime for SMEs and Small Caps, which would concentrate on significant and relevant information, could be suitable, in any case.

The experience gained with the AMF specific French recommendation, in force since January 2008 for small and mid-caps, in accordance with European legislation, shows that the quality increase when issuers are guided toward providing only significant and relevant information.

Moreover, the Commission's mandate is about taking into account the size of the issuers. The advisory costs of producing a full prospectus are simply not worth an IPO for many SMEs and Small Caps.

*Q38: Do you agree with the proposal summarized in the table in paragraph 141?*

ESMA has chosen to restrain its proposal to a very limited scope (subsequent offer on MR or IPO / admission to a MTF) and proposes a limited number of simplifications. We do not consider that this proposal would significantly lower the cost of the regulation for SMEs.

The most important prescription, for SMEs, is that the whole Prospectus has to be drafted on a concise way, focused to the main point. It is the best way to enhance the quality and the accuracy of information and enable investors to read the Prospectus.

We understand that ESMA may be uncomfortable with a specific regulation in the regulated markets but the Commission's mandate is clear and both the problem of the excessive regulation's cost for SMEs and the fact that investors no longer read the prospectuses must be addressed.

The decrease in SME's admissions and the number of delisting clearly show that there is a problem. Either the Commission wants to fix it and ESMA proposal are insufficient, or the Commission considers that financial markets are not the right place for SMEs and in that case, the question of the way SMEs should raise funds remains unsolved. If the Commission wants to help SMEs raising funds in the financial markets, then ESMA proposals need to be reconsidered.

*Q39: Do you agree that there should be only one schedule for a proportionate prospectus for both unlisted and listed SMEs and Small Caps or do you believe that further consideration should be given to having a separate regime for unlisted companies, dealt with under the proposed revision to MiFID?*

As we consider that ESMA proposals are insufficient to really diminish the cost of a Prospectus for listed small companies, we do not support it for unlisted companies, as cost and burden will be all the more disproportionate.

*Q40: Can you provide data on the average costs for SMEs and Small Caps to draw up a prospectus? What are the most burdensome parts of a prospectus to produce?*

There is an incompressible cost for a Prospectus, which can be assessed to at least €500 000 to €600 000. The most burdensome parts of a Prospectus for SMEs are the phase of data collection, the IFRS implementation and probably the writing of the risk factors' part.

*Q41: Do you consider that the three items identified in paragraph 147 (the OFR and the requirements to include a statement of changes in equity and a cash flow statement when the audited financial statements are prepared according to national accounting standards and to produce interim financial statements when the registration document is dated more than nine months after the end of the last audited financial year) could be omitted without lowering investor protection?*

No, we do not consider that those items could be suppressed as they are accurate and important for an investor decision.

*Q42: Do you agree with the items ESMA proposes to delete and to redraft listed in Annex 4 and the proportionate schedule for the share registration document presented in Annex 5?*

Yes, we agree with the suggested deletion and redrafting but we judge them totally insufficient.

*Q43: Are there any other items which could be deleted or redrafted? Please justify any suggestions, including, if possible, the costs that would be saved and the impact on investor protection.*

*Q44: Taking into account the items which ESMA proposes to delete or redraft as per Annex 4, do you consider the proportionate disclosure regime for SMEs/Small Caps could strike the right balance between investor protection, the amount of information already disclosed to the markets and the size of the issuers?*

As stated below, we consider that the best way to simplify is to force every actor to adopt a more concise approach of the information given in the Prospectus. Such a spirit of mind is difficult to implement, as at each step of the process, there is a pressure for details: the issuer counsels, auditors and regulators may all be tempted to adopt the logic of "always more details". Competent authorities have an essential role to play on that dynamic and ESMA proposals should be clearly tailored in that end. That is why we ask ESMA to redraft as many items of the schema as possible to better show that only significant events and figures must be presented. Even if it may appear as useless, it will be as a signal to both issuers and competent authorities toward more concise prospectus, which will benefit also to the readers.

With the very limited alleviations it proposed, ESMA will give the opposed signal.

*Q45: Given the number and nature of the items ESMA proposes to delete and to redraft listed in Annex 4, do you consider the proposal would suppose a significant reduction of the costs to access financial markets for SMEs and Small Caps? Can you estimate the costs that the proposed proportionate prospectus will allow SMEs and Small Caps to save?*

As stated below, we consider that the reduction of the costs, enabled in the proposed proportionate regime, would be trifling.

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