

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

**Consultation Paper**

**July 2003**

AFEP response

**III.1 MEMBER STATES, NON-EU STATES AND THEIR REGIONAL OR LOCAL  
AUTHORITIES**

As questions 30 to 36 relate to sovereign States, AFEP does not have any comment to make.

**III.2 FINANCIAL INFORMATION REQUIREMENTS IN A PROSPECTUS**

**QUESTIONS**

**56. What are your views on the costs of providing reconciliation as compared with a full restatement?**

No comment.

**57. What are your views on the most appropriate way to present the financial information?**

CESR envisages different presentations of financial statements established in accordance with IAS/IFRS with a concern to create a relevant comparability between the old and new standards. For this purpose, it outlines four presentation options, while expressing a preference for the second, i.e. a four-column approach which imposes the restatement and presentation of the two most recent financial years according to IAS/IFRS and presentation according to local GAAP of the financial year preceding these two years, accompanied by a hinge year presenting the financial statements according to both local GAAP and IAS.

The first option, practised in some Member States, would entail presenting three years of comparisons drawn up in accordance with IAS/IFRS. CESR envisages, without adopting, a third possibility whereby the reconciliations would be undertaken for one, two or even three financial years. Lastly, a final option raises the possibility of not imposing any restatement or reconciliation and not going beyond what the IAS require.

AFEP believes that companies should not be bound to present more than two comparative years in the registration document, in contrast to the preferential solution envisaged by CESR.

Moreover, on the occasion of the first application of IAS/IFRS, AFEP considers that comparative annual information established in accordance with IAS/IFRS should be presented solely for the year preceding the year of the first application (year n-1). For this year (n-1), as moreover for the previous year (n-2), the comparative annual information would be presented in accordance with the GAAP applied prior to the IASB standards, thus making it possible to have two years of comparative information and to have information drawn up according to the old and new standards for the year preceding the year of first application (n-1) alone.

As regards the envisaged presentation of three years of comparative information and two years in accordance with two different standards, apart from complicating the reading of the document, it would force companies to maintain two information systems in use for two years, which would lead to high costs that are disproportionate to the usefulness of the measure envisaged.

Moreover, it would assume that companies can anticipate the development of IAS/IFRS three years in advance, which in view of their constant development would prove to be very difficult.

The exercise would be all the more complicated due to the fact that the IAS/IFRS provide for a restatement of comparisons on the basis of the abandonment of a line of activity or a geographical region (discontinued operations).

**58. What are your views on the importance of comparability both within the audited historical track record and with the reporting standards that are to be adopted?**

**59. What are your views on how this should be achieved?**

See the response to question 57.

**60. Do you agree with the approach taken in relation to issuers of debt securities? If not, please state your reasons.**

CESR envisages a differentiated presentation of financial statements for debt issuers.

AFEP believes that the financial market should be informed in an equivalent manner by all issuers, whether these be issuers of shares or of debt instruments. In this respect, issuers of such debt instruments should provide the same information as that recommended by AFEP in question 57.

**Non EU issuers:**

## **QUESTIONS**

### **69. What are your views on extending this treatment to EU issuers for the types of securities identified?**

As a matter of principle, CESR considers that the information requirements set for non-EU issuers should generally follow those relating to EU issuers. As an exception, issuers of deposit certificates and wholesale debt securities could be subject to lower information standards.

AFEP is in favour of this position adopted by CESR insofar as it applies to sophisticated markets where only professional or well-informed clients operate.

It is also in favour of CESR's proposal to extend this provision to EU issuers so that it covers all issuers in accordance with the principle of the equivalence of information.

### **70. Are there any other types of issuer where you believe that different requirements should apply?**

No comment.

## **IV. DISSEMINATION OF ADVERTISING**

## **QUESTIONS**

### **84. Do you agree with the scope of the present consultation paper on advertising? Please give reasons for your answer.**

CESR does not wish to give a definition of advertising that differs from existing definitions. In contrast, it defines its area of application – an offer or admission to trading, the scope (it is not considered as a part of the prospectus) and the objective (to promote the operation proposed to the public).

While remaining favourable to these orientations, AFEP considers it necessary for CESR to define the scope of application of the advertising concerned more effectively.

As such, CESR's opinion on the dissemination of advertising should stipulate explicitly that it solely covers advertising relating to the essential financial/technical elements of operations (price, volume, schedule) and not elements of a commercial nature or which could relate to the registration document (presentation of the company, etc.).

**85. Do you believe that blackout periods should be imposed for the dissemination of any advertisements when a prospectus has not been made available? Please give reasons for your answer.**

CESR is reflecting on the modalities which could lead to the creation of periods during which dissemination of advertising is prohibited while the prospectus has not yet been registered or filed.

AFEP is not opposed to a black-out period; however, it holds the view that this prohibition should be focused on the essential financial and technical elements of operations (price, volume, schedule).

Thus, the prohibition on dissemination should apply to these elements alone for the few days preceding formal approval of the conditions by the competent authority.

For example, a communication black-out should not affect institutional promotion of the enterprise, which should be able to occur at all times.

**86. In addition to what is covered by the mandate, CESR considers useful to seek views on the following issues:**

**87. Do you consider that control over compliance of advertising activity with the principles referred to in paragraphs 2 to 5 of Article 15 of the Directive should be harmonised? If so, do you think that competent authorities should exercise the above mentioned control? Please give reasons for your answer.**

CESR wonders about the appropriateness of assigning control of advertising to the competent authorities.

In view on the one hand of the multiplicity of media for disseminating advertising (press, radio, TV, mail, CD-ROMs, etc.), and on the other the widespread use of these media in an international environment, AFEP believes that in practice it would be very difficult to retranscribe all of the contacts made for the competent regulatory authority.

AFEP is therefore unfavourable to the establishment of specific control of advertising by the competent authorities.