

Mr. Fabrice Demarigny,
Secretary General,
The Committee of European Security Regulators
11 – 13 Avenue de Friedland
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Date
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Your letter

Our reference
AGT 2003-2086-M

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Subject
Consultation paper

Dear Mr. Demarigny,

Re: CESR's Advice on Level 2 implementing Measures for the Prospectus Directive – Consultation Paper (Ref: CESR/03-210b)

The Dutch State Treasury Agency, the issuer of government bonds and bills in the Netherlands, recognizes the efforts of CESR to comply with the key objectives of the Prospectus Directive: the need to encourage and build an efficient, cost-effective and competitive pan-European capital market on the one hand, and to provide the necessary level of investor protection on the other.

Further to the CESR consultation paper, we would like to share our views on the proposed treatment of Member States as issuers. In addition, the attached annex contains answers to the questions raised in the consultation paper.

Our main concern is that CESR's starting point with regard to sovereign issuers is incorrect. CESR asserts (item 23, page 8 of the CESR/03-210b) that

'while EU members states and their regional or local authorities can be outside the scope of the prospectus directive, they are nevertheless obliged to produce a prospectus in order to benefit from a single passport for raising capital in the EU'.

CESR refers to paragraph 15 of the preamble as the basis for this assertion. Recital 15 does not, however, apply to sovereigns. Recital 11, which applies to sovereigns, does not support CESR's assertion.

Recital 11 poses Member States outside the scope of the directive, while recital 15 applies to parties with an exemption to the obligation to publish a prospectus. Article 1.2 and 1.3 of the prospectus directive (provisions on parties to which the directive does not apply) are clearly linked with recital 11, while article 4.1 (provision on who is exempt) is linked with recital 15.

Recital 11 and 15 therefore apply to two entirely different groups. Article 1.3 does not provide CESR with the necessary authorization to state conditions Member States need to fulfill in order to receive a 'single passport'.

A second issue that we would like to bring to your attention concerns the minimum information requirements outlined in the consultation paper. These do not take into account the (benchmark) status of the sovereign debt of Member States in Europe. Due to the special status that markets confer to sovereign debt of Member States, the capital markets already have access to all necessary information. The information requirements in annex D are very extensive and will impose a costly administrative burden on the Member States, but will not further increase transparency.

We remain at your disposal for further clarification or consultation.

Yours sincerely,

Rits de Boer
Head of Strategic Policies and Research
Dutch State Treasury Agency

Annex:

- Answer to the questions in consultation paper

**ANSWER TO QUESTIONS IN CONSULTATION PAPER
ANSWERS PROVIDED BY DUTCH STATE TREASURY AGENCY**

QUESTIONS REGARDING MEMBER STATES, NON-EU STATES AND THEIR REGIONAL OR LOCAL AUTHORITIES

QUESTION 30

Do you agree with this approach? If not, please give your reasons.

ANSWER

We see serious drawbacks to this approach. All the information requested from Member States is already publicly available due to the (benchmark) status their government bonds enjoy. This status also ensures that even if Member States were to provide the requested information market parties and other independent parties (such as IMF, OECD etc...) would require additional information from other sources as they do now. Requiring Member States to provide the described information in their prospectus would create an additional administrative burden and as such would increase the costs involved with debt issuance. As a result we see no added value of including the requested information in a prospectus, only an increase of costs.

QUESTION 32

Do you agree with this list as more fully described in Annex D?

ANSWER

The requested minimum information consists largely of publicly available information and is not 'brief and not extensive' as suggested under point 26. Therefore this format does not have our preference.

QUESTION 33

Is there any other information which you consider relevant for Member States and their regional or local authorities and should be included in the Annex?

ANSWER

Not at this moment.

QUESTION 35

Do you consider that it is appropriate to have such a disclosure requirement? If so, do you believe that the selected indicators are those relevant to make an investment decision? Please give your reasons.

ANSWER

Not at this moment. Please see the answer to question 30.

QUESTION 40

Do you deem that Investments and development plans should be included in the Annex for Member States and regional and local authorities? If so, please give your reasons.

ANSWER

Not at this moment. Please see the answer to question 30.

QUESTION 42

Do you consider that potential conflicts of interest should be disclosed? If so, do you consider that the wording used will be sufficient to capture such conflicts?

ANSWER

Not at this moment. There are potentially conflicts of interest present but it seems highly unlikely that these would materialize with these types of issuers.