



MEDEF

*Economic, Financial and
Fiscal Affairs*

Paris, Friday 31st January 2003

**CESR's Advice on possible Level 2 Implementing Measures for the Proposed
Prospectus Directive
Addendum to the consultation paper
Ref: CESR/02.286**

Medef Position

The main objective of the Lamfalussy process is to speed up the European legislative procedure. CESR has realised an important work on the first mandate regarding the Prospectus directive and is still working hard in order to respect the deadlines. Nevertheless it is crucial to adapt CESR calendar in order to make it match the directive adoption's one. A situation where CESR would achieve its first mandate whereas the Parliament would still be discussing points on the directive seems totally unacceptable. CESR must let the opportunity to the consultees to react on any impact on CESR's measures of a directive change.

On another level, we perfectly understand that this first mandate was so wide and technical that CESR has not been in a position to treat all the points raised within the first consultation paper and has had no other choice but to publish an addendum. As a consequence, consultees have been given a very short time to react and analyse this addendum with their own consultees. As that paper was very specific and technical, we needed to take the advice of different specialists. This very short time has prevented us from obtaining responses by those specialists. Given the importance of the subject, we fear that the result of this consultation process could not be as satisfactory as it was intended to be.

The complexity of the subject explains partly the complexity of the paper. As it has been raised during the open hearing, a significant part of this complexity is also coming from the fact that CESR often put very focused questions on each topic instead of consulting us on a principle-based way on each topic. We do not contest the fact that CESR had to treat very specific topics but those topics could have been analysed in a more synthetic approach. If we take the example of profit forecast, the consultation paper never asked us what we think about the opportunity to disclose such information. We were asked whether we agree with the definition and if those forecasts had to be audited. We think that those inquiries are too precise. What we would have appreciated to say is that we think that such forecasts disclosures should not be mandatory as it can be confusing for investors.

On a more general level, we fear that CESR implementing measures could be too complex. As it has been expressed during the open hearing, issuers may have many difficulties to understand and fulfil the different requirements set up by those measures. As evidence, the different specialists involved in this consultation have already stressed the complexity of the consultation paper, which is unquestionably abscon.

PART I – REGISTRATION DOCUMENT

Wholesale debt building blocks

Questions 15, 16, 18, 22, 23, 25, 27, 28, 30, 33

For that building block, CESR proposes some lightening in the prospectus content. This approach is justified as that kind of issue is mainly subscribed by qualified investors whose expectations in term of information are more focused. Some disclosures do not provide investors with sufficient benefit to justify the costs imposed to the issuer. It is our opinion that lightening could even go further, and that proposals made by CESR are a minimum.

Question 35, 59

Regarding documents on display requiring, we still consider that it is not acceptable for any type of issue. (Please refer to our answer to the first consultation).

Securities issued by banks

Questions 43, 44, 45, 47, 49, 51, 53, 55, 57

We perfectly agree with arguments in favour of the lightening raised by some members of CESR, stating that banks are under close regulatory control and prudential supervision. Therefore less information about issuer is necessary as compared to a corporate issuer. That is the reason why we consider that a specific building block is indispensable and we think that all lightening proposed must be adopted. Indeed some disclosures would not provide investors with sufficient benefit to justify the costs imposed to the issuer.

In order to obtain a level playing field, we think that this specific building block should be applied to non-EU bank, if they are subject to an equivalent level of prudential and regulatory supervision.

Derivative securities

Questions 66, 69, 71, 73, 74, 76, 78, 80, 87, 88, 89, 92, 93, 102, 103, 104

As stated in the consultation paper, derivative securities are mainly issued by banks or SPV. For the same reasons as evoked in the previous paragraph, we think that all lightening suggestions should be adopted.

Regarding guaranteed derivative securities and depository receipt, we did not have time enough to obtain any answer to CESR's questions from specialists.

Asset backed securities

Question 96

We believe that disclosure obligations set out in Annex 4 are appropriate and that the horizon of two years is sufficient. We are only opposed to the disclosure of material contracts (§ I B 6).

Shipping company building block

Questions 111 - 115

We have no particular remark on this block.

PART II – SECURITIES NOTE

Blanket clause

Questions 122, 123

We agree with CESR approach on blanket clause and the wording seems to be satisfactory. We want to stress the importance of obtaining a harmonised application in Europe. As it has been raised during the open hearing, the utilisation of this blanket clause will be further defined by the practice. That is the reason why we consider that a great communication between all competent authorities will be necessary, years after years, in order to ensure a harmonised interpretation of this clause. We believe that this search for harmonisation, even though difficult to achieve, is necessary and must be realised with the same methods as those taken into account by CESR in its work for a harmonised enforcement of IAS.

Additional information in the SN equity schedule

Question 132

We agree with CESR's approach on this topic.

Additional information in the SN debt and derivatives schedules

Questions 136, 139

We agree with CESR's approach on those topics. Issuers should not be lost within the disclosure requirements. That is why we recommend that CESR help them to identify provisions that are specific and could not concern them. This system would enable them to know that when there is no indication of a specific item, they must fulfil the requirement and when there is an indication, they must wonder whether this provision is applying to them or not.

Additional SN building blocks for asset backed securities, guarantees, and subscription rights

Questions 143, 144, 149 – 151, 155 - 159

Regarding those building blocks, we did not have time enough to obtain any comment to CESR's questions from specialists.

PART III – SUMMARY

Question 168

Annex 1 of the new directive proposal established a framework of necessary information to be included into the resume. In order to harmonise the interpretation of the directive, we think that it would be useful that CESR precise, for each topic chosen in the annex 1, the level of detail that the issuer has to give. If there is no such a precision given by CESR, we fear that some important differences in the way of interpretation the Annex 1 may remain between European competent authorities.

PART IV – BASE PROSPECTUS

Questions 175 - 176

During the open hearing some participants proposed to give to CESR some models of base prospectus used by professionals. We believe that it is essential that CESR take them as a model in order to implement a base prospectus fitting the professional practices.

Besides we want to stress the fact that it would be unacceptable that, on a topic as important as the base prospectus, CESR take its final measures without a new consultation on this subject.