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# CESR – THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

## *CONSULTATIVE WORKING GROUP MEETING with PROSPECTUS EXPERTS GROUP (CESR/03 –210b)*

***Paris September 15th, 2003***

**Draft**
September 29th , 2003

**CESR's advise on Level 2 Implementing Measures for the Proposed Prospectus Directive –**
**Consultation Paper – ref. CESR / 03 – 210b and annexes – July 2003**

## III. MINIMUM INFORMATION

***Extract from the European Commission's mandate***

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

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

I do not believe that the expression "*the public nature of the issuer*" provided for in Article 7.2, f) of the Directive coincides with the circumstance highlighted in the preamble to the Directive, paragraph 15 and Article 1. 2, b).
I agree with the concept that we have to distinguish between Member State and regional or local authorities from the other 3 categories shown in Article 1. 2, b).
It is important that we distinguish between the securities issued or guaranteed by a Member State, by one of a Member State's regional or local authorities(1); by public international bodies (2); by ECB, central bank of a Member State (3); or by non-profit organizations (4). We do not have to consider the above mentioned issuers as having no risk. Moreover these 4 categories cannot be considered as having the same level of risk. In fact securities issued by one of the above mentioned 4 categories of issuers show different frameworks of risk which have to be disclosed to investors (see n.32 and n.33). Therefore appropriate information should be provided.
Apparently CESR seems to have included other issuers of public nature, which have not been explicitly included by the Directive in the above mentioned categories, like "Non EU States and their regional or local authorities".
In the case of securities issued by "Non EU States, regional or local authorities" we cannot undervalue a significant risk of insolvency, or legal framework of risk, which has been shown through experience (see: e.g. Argentina, Russia). The social, political and financial context where "Non EU States, regional or local authorities" operate is totally different from the one of EU Members, therefore it would be necessary to include also disclosures on investments and future investments, pay out or dividend policy and reasons for the offer and the use of proceeds. It would be also useful to include a precise disclosure on the legal framework related to the issuer, to the securities and to legal claims between issuers and shareholders and/or bondholders of other Member States (where, how and when can the investors exercise their social and patrimonial right). A relevant attention on the disclosure of the potential conflict of interest between issuer, his holder and share/bondholders could become necessary.
I do not believe it to be useful to create an *ad hoc* disclosure regime for Non EU States (and their regional or local authorities) but it seems convenient to apply them to the above mentioned regime, which is the same set forth for EU corporate issuer and to provide to investors with the rating assigned to the issuer and to the relevant issue. It is understood that the above opinion is subject to the existence of a reciprocity agreement between EU and the Non EU State.

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

I deem that the list referred to in item 31 has to be integrated with the Annex D and with other information provided in points 30 and 33.

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

The disclosure on pay out or dividend policy, reasons for the offer and the use of proceeds, should be considered as relevant. In the case of non profit organizations we have to pay attention also to investments and future investments, and general financial information.
It is also important to consider the disclosure on legal framework related to the issuer, to securities and to legal claims between issuers and share/bondholders of other Member States (e.g. where, how and when can the investors exercise their social and patrimonial right).
Moreover, also for the type of issue herein, as well as for corporate issues, it could result to be important to provide investors with the rating assigned to the issuer and to the relevant issue.

***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.*

I believe that, in the case of the public issuers ex art. 7.2, f), the disclosure on legal risks (e.g. where, how and when can the investors exercise their social and patrimonial right), related party transactions, memorandum and articles of association (or equivalent document) and the rating assigned could be significant.

***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.*

It would be important to include investments and development plans in connection with the reason for the offer, especially considering that when these issuers are intending to operate in the financial market, they have to accept the rules and responsibility towards investors, markets, authorities.

***41.*** *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?*

I believe that the potential conflicts of interest for any expert used by the issuer have to be disclosed, and wording used in the Annex D will be sufficient to capture such conflicts.

## III.2 FINANCIAL INFORMATION REQUIREMENTS IN A PROSPECTUS

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

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

***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?*

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

In order to better face the point herein, it should be reminded that the IAS adoption will be made compulsory, by listed entities, with the consolidated financial statements related to 2005.

It will be obligatory for these statements to be compared with those related to 2004, which have to be fully restated (and not reconciled) on the basis of IAS principles. Therefore, financial statements related to 2005 (jointly with the relevant comparison with the balance related to 2004) shall be the first balance "IAS complied" audited by accountants (cfr. IFRS 1 First time application)

Given that CESR, in its proposal, seems to want to adopt the IAS principles (see before), it is worthwhile to define how to manage financial statements related to years 2003/2005 when three accounting periods have to be compared in prospectus published from 2004 to 2006.

We should consider that to prepare IAS compliant financial statement it is not only a matter of accountant's figures, but a matter of the disclosure (i.e. segment information IAS 14; Financial Instrument IAS 32, Related party IAS 24….)

The costs, time and resources necessary to prepare a fully restated IAS compliant financial statement are substantially higher than those necessary to prepare a simple reconciliation.

The following proposal, referred to the prospectus to be drafted for listing, could be suggested:

| **EU MEMBER STATES** | | |
|---|---|---|
| **FINANCIAL STATEMENT RELATED TO 2003 OR PRIOR YEARS** | **FINANCIAL STATEMENT RELATED TO 2004** | **FINANCIAL STATEMENT RELATED TO 2005** |
| **Prospectus published: within 2005** | | |
| Local GAAP audited | Local GAAP audited | |
| **Prospectus published: after 2005** | | |
| ***Either*** Local GAAP audited<br>***Or*** reconciliation between Local GAAP and IAS without audit | ***Either*** IAS audited<br>***Or*** full restatement IAS audited | IAS Audited |

| NON EU MEMBER STATES | | |
|---|---|---|
| **FINANCIAL STATEMENT RELATED TO 2003 OR PRIOR YEARS** | **FINANCIAL STATEMENT RELATED TO 2004** | **FINANCIAL STATEMENT RELATED TO 2005** |
| **Prospectus published: within 2005** | | |
| Local GAAP audited, under the reciprocity clause between the Non EU State and the Member State where the offer will take place | Local GAAP audited, under the reciprocity clause between the Non EU State and the Member State where the offer will take place | |
| **Prospectus published: after 2005** | | |
| ***Either*** Local GAAP audited - under the reciprocity clause between the Non EU State and the Member State where the offer will take place-<br>***Or*** reconciliation between Local GAAP (as above) and IAS without audit | ***Either*** IAS audited<br>***Or*** full restatement IAS audited | ***Either*** IAS audited<br>***Or*** full restatement IAS audited |

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

I agree with the proposal therein.

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

No, in my opinion there are not.

## IV. DISSEMINATION OF ADVERTISING

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

Given that the scope of the present consultation paper on advertising is to reach a common understanding of what the Directive means for advertising and common approaches and the rules of conduct in different Member States, I agree with this scope, given that the last 10 years experience has demonstrated that advertising has a real capacity to promote subscriptions or acquisition of the securities and it is also able to influence the results of the offer.

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

Blackout periods should not be imposed for the dissemination of advertisements when a prospectus has not been made available, accordingly to the article 15.2 to 5 of the Directive.

***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 harmonized? If so, do you think that competent authorities should exercise the above mentioned control? Please give reasons for your answer.*

I deem that competent authorities should exercise the control over compliance of advertising activity on the basis of the principles referred to in paragraphs 2 to 5 of Article 15 of the Directive, in order to assure a harmonised rule of conduct for the different Member States.

The interested parties disseminating the advertisement have the responsibility of corresponding the advertisement with the appropriate information contained in the prospectus.

The competent authorities will exercise the above mentioned control after the publication of the prospectus and every significant mistake or inaccuracy shall be mentioned in a supplement to the prospectus or in a notice.