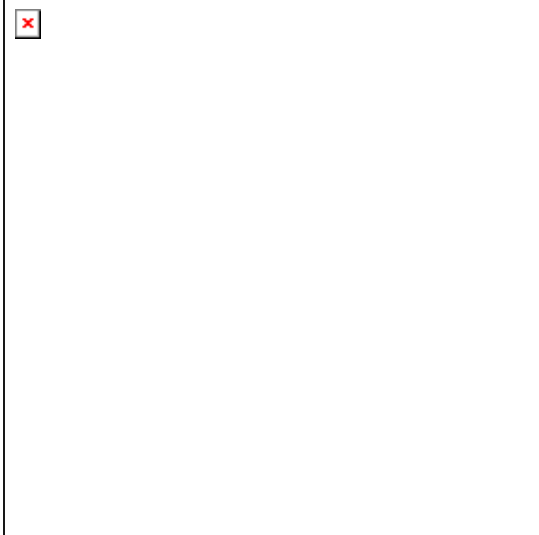




Comments on CESR's Advice on possible Level 2 implementing measures for the proposed prospectus directive

Introduction

The Société Générale Group is the sixth leading banking group in the euro zone and the ninth French company in terms of market capitalisation (EUR 24.3bn as of 11/29/02). The Group has over 80,000 employees. Its business portfolio is based on three core activities:



Retail banking,
Asset management,
Corporate banking and investment banking.

We welcome the proposed directive on prospectuses and the implementing measures as a step forward to achieve a European integrated financial market, as they will unify the regime and conditions under which funds will be raised in Europe.

According to its mandate, CESR proposes the disclosure requirements for both the registration document and the securities note for all forthcoming issues in Europe, taking account of the different current practices throughout Europe. The relevant information to be disclosed are to be those necessary for a useful information and then protection of the investor.

The proposed directive is to be a “full harmonisation” directive, which does not necessarily mean that the approach in terms of disclosure requirements has to be maximalist, in mixing together all the practices existing in Europe and elsewhere in this field and leading to something that would be hardly practicable. For Société Générale, it is very important to

recall that the main objective of the proposed directive is to permit an easy access to the European market to all issuers in Europe.

As general comments, we would like to stress that confidentiality and certainty are two step stones for the confidence of both issuers and investors in capital markets. Requiring issuers to disclose information and/or documents that are confidential will indeed be disastrous for a fair competition and should not lead to, at least for banks, a breach of their obligation to professional secrecy.

Further, requiring issuers to disclose information on facts that are uncertain, such as profit forecasts is not only unnecessary for an investor to decide to invest, but might also be dangerous. The publication of such type of information would be done under such a number of cumulative conditions that it would be :

- cumbersome for issuers and
- difficult to understand by an investor.

Consequently, these trends will become rapidly unusable and then useless.

Disclosure requirements

Question 44 . Do you agree with the disclosure obligations set out in Annex A ?

We think that IOSCO disclosure standards should be taken into account, but not implemented as such, in any case, and considered as a minimum to which further requirements may be added. Article 7.2) of the proposed directive is clear about this : the measures shall be “based on” standards in the field of financial and non financial information. Furthermore, the implementing measures have to be taken, considering both the investor protection and the market efficiency.

Then considering specific items of the proposed Annex A :

1. Some information is irrelevant where the issuer is a credit institution. Especially items IIA 3 and IVA4.
2. Some other information should not be disclosed as it is confidential and should remain as such.
Banks in particular have to comply with the banking secrecy. They should not be obliged to put documents on display (see answer to question 93). Information on material contracts (VIII C) should be disclosed only if those contracts are not commercial contracts and not entered into the ordinary course of business.
3. Some information should not be disclosed, as it does not constitute pure information but just analyses of trends. It is nowadays more difficult for banks than for industrial companies to give trends, considering especially the volatility of stock markets. It is not useful for the investor’s information, and dangerous for the issuer’s management. Plus, auditors would be very reluctant to examine and/or validate information relating to events that have not already occurred. (IV D should be deleted)
4. Some other information is not disclosed and does not have to be disclosed under French law.
5. Plus, it is very difficult to disclose information on the share ownership of the administrative and management bodies. Concerning the attribution of stock options, the information has to be disclosed. On the contrary, it is neither useful nor necessary to know the exact number of shares acquired by these bodies at market conditions. Further, it raises concerns from a privacy protection viewpoint. Currently, this information has not to be disclosed under French law, and its lack has never caused particular problems.

Question 47. Do you agree with this approach ?

Yes.

Question 51. Do you agree that pro forma should be mandatory in case of a significant gross change in the size of a company, due to a particular actual or planned transaction ?

Yes.

Question 52. do you agree that pro forma financial information should also be required in all cases where there is or will be a significant gross change in the size of the company ?

Yes

Question 53. Do you agree that 25% is the correct threshold figure ? would a different figure, say 10% be more appropriate ?

25% is the correct threshold figure.

Question 55. Do you agree that the competent authority should be able to insist on pro forma information being included where this would be material to investors?

No. As long as a threshold is determined, for reasons of legal certainty, this has to be automatic, and not dependant upon a decision of the competent authority.

Question 64. Do you agree with the disclosure requirements in respect of pro forma financial information as set out in Annex B, in particular with the obligation of an independent auditor's report?

Yes

Question 65. Would it be more appropriate to restrict the disclosure of pro forma financial information to the occasions where securities are being issued in connection with the transaction and hence require pro forma information in the securities note?

Yes, but a threshold has to be determined.

Questions 73. 85. 86. 87. Profit forecasts

Question 73. Do you have any comments at this stage about this preliminary definition of a profit forecast?

We do not believe that there should be inclusion of any profit forecast as this might be misleading to the investors as said in the introductory remarks. Issuers would be led to be either extremely prudent, to avoid profit warnings, or will link these forecasts to such a number of conditions to avoid liability, that they will be useless. Plus, market conditions may vary a lot.

Question 85. Should issuers be required to repeat or update outstanding ad-hoc profit forecasts in the prospectus ?

No, for the reasons set out in 73.

Question 86. Do you agree with the disclosure requirements in respect of profit forecasts set out in disclosure requirement CESR reference IV.D.3. (a) and (b) of Core Equity Building Block (Annex "A")

No.

Question 89. do you agree that such information may be material to an investor's decision to invest ? Would the provision of such details breach privacy laws in your jurisdiction ?

No. This information must not be disclosed. It is up to the national law to provide for such situations. It is not the goal of a prospectus to disclose information on facts or sentences that may have been amnestied or served.

Question 91. Do you think that the additional disclosures of any limiting measures should be required ?

Yes.

Question 93. Do you feel that issuers should be required to put on display all documents referred to in the prospectus (as set out in CESR reference VIII in Annex A)? Would this cause problem due to privacy laws or practical problems as a result of having to review lots of document for commercial information ?

It is unacceptable to require a company to put on display contracts or other private information sustaining information disclosed in the prospectus. On the one hand, this would be a serious breach of the confidentiality of affairs and thereby would lead to serious concerns for a fair competition.

On the other hand, it would represent an expensive amount of work and it is doubtful whether it would serve the interest of the investor protection.

Question 96. What other specialist building blocks should CESR consider producing in the future.

One is undoubtedly necessary for Banks and one of Insurance companies

Question 129. Do you consider that the disclosure requirements for debt securities should be identical to those for equity, as set out in Annex A ?

We consider that, as long as a listed issuer has to fill in an "equity" registration document, this registration document should be used for any type of issue, for manifest reasons of simplicity. This document could be the Annex A (as modified following our previous observations). In such a case, the securities note only would have to be filed and approved by the competent authority, even when this competent authority is different from the competent authority which has approved the registration document. A mere reference to the registration document should be done.

Otherwise, a special debt registration document should be done, rather than disclosing all the information of the Annex A, which is too cumbersome for a debt issuer and useless for the information of a debt investor, whose interest is mainly to know about the issuer's ability to repay the capital. In this case a mere extraction of the corresponding necessary information of the Annex A is sufficient.

There are anyway cases where a special debt registration document is necessary, in particular for non-listed companies, where there is no equity registration document.

Disclosure about the advisers of the issuer – CESR disclosure ref: I.B (Corporate Retail Debt Building Block)

Question 134. Do you consider disclosure about the issuer's bankers and legal advisers to the extent that the company has a continuing relationship with such entities to be relevant for corporate retail debt?

No. Such information is irrelevant to the correct information of the investors to acquire debt securities. It would not help assessing the risks of the issue.

Question 137. Do you consider disclosure about a company's past investments in other undertakings to be material for an investor to make an investment decision about investing in the company's debt?

Question 138. Do you consider that disclosure about a company's current investments in other undertakings to be material for an investor to make an investment decision about investing in the company's debt?

Question 139. Do you consider that disclosure about a company's future investments in other undertakings to be material for an investor to make an investment decision about investing in the company's debt?

The history of a company's investments might be of interest for a decision to acquire shares of a company, but not in the case of the acquisition of debt securities. Concerning future investments, they have in no case to be disclosed if this information is not public and could otherwise raise competition concerns.

Question 142. Do you agree that these different interests should be reflected by different disclosure standards and in particular that retail bondholders do not need the same disclosures as shareholders in respect of these sections of the IOSCO IDS?

Yes.

Question 145. Do you consider it necessary for a disclosure requirement that stipulates when interim financial statements should be disclosed in the registration document, to also stipulate what the form and content of these statements should be?

We do not consider it is necessary to stipulate the form and content of financial interim statement. It is already provided that the information shall be disclosed in an easily analysable and comprehensive form and shall include all material information.

Question 146. If you consider that the reduced level of detail is more appropriate, should the same approach be taken for equity?

The information on interim financial statements are already defined by the accounting rules, so the disclosure of such interim financial statements in the securities note should comply with these rules.

Question 148. Do you feel that issuers should be required to put on display all documents referred to in the prospectus (as set out in CESR reference VIII in Annex A)?

Would this cause problem due to privacy laws or practical problems as a result of having to review lots of documents for commercial information?

We do not believe that issuers should be required to put on display for inspection all documents referred to in the prospectus. The purpose of the prospectus is to disclose material information and to summarise in a complete and comprehensive form the most important documents. This disclosure should be sufficient for the information of the investors.

Moreover documents available are rarely inspected by investors and so the requirement would be of limited use of investors, instead such requirement would be costly and time consuming for the issuer and may include commercially sensitive information.

Question 149. On review of the list of documents set out CESR ref VIII.E of the corporate retail debt building block in Annex "I", please advise with reasons: (1) Whether or not there are any documents that are listed that you consider do not need to be put on display? (2) Whether or not there are any documents that are not listed that should be put on display?

As we answered to question 93, it is not acceptable to require that a company put on display its material contracts (Annex A - VIIF b), even if it concerns contracts not entered into in the ordinary course of business. Please see our answer to question 93 and 148.

Question 150. Please give views on which if any of the documents that are not in the language of the country in which the public offer or admission to trading is being sought should be translated.

The prospectus has the purpose to inform duly the investor, and give him all the information on which he may ground his decision to invest or not. A mere explanation of the content of material contracts is therefore sufficient. The contracts should not be published and consequently there should be no requirement to translate the contracts in the language of the prospectus (language that can differ from one issue to another).

Question 153. On a review of the equity disclosure requirements (CESR ref VIII.G of the Core Equity Building Block) set out in Annex "A", please advise which if any of these requirements you consider to be relevant for retail corporate debt. Please give your reasons.

Question 154. Do you agree with the CESR disclosure proposals for corporate retail debt as set out in Annex "I"?

Question 155. Please advise which if any items of disclosure should not be required for corporate retail debt. Please give your reasons.

Question 156. Please advise if there are any items of disclosure for corporate retail debt that are not set out in the schedule, but should be. Please give your reasons.

The disclosure requirement shall take into account that the key issue for debt investors is the ability of the Issuer to meet its obligations as to repayment of principal and payment of interest. The interest of investors in equity and the interest of investors in debt securities will have different focus and accordingly different type of disclosure.

I.B: Knowing which bankers and legal advisers were involved in the transaction does not help an investor to make its own appraisal of the creditworthiness of the issuer and the risk contemplated by the issue. This information is irrelevant.

IIA: Selected financial data is too detailed. A summary financial data should be included

II B: Risk factors disclosure is only relevant if these factors affect the company ability to pay interest and repay principal.

IIIB. Disclosure about a company past, current or future investments is generally not material for a debt investors. In the case this information is material it will be disclosed under the general disclosure requirement and should be considered only on a case by case basis.

IVA: To be disclosed in the general disclosure requirement if material in the context of a debt issue.

VC: Not necessary.

VIII E: see 148.

We do not think there are further items which need to be added.

Derivative securities

Question 160. Do you consider it necessary to have specific derivative registration document requirements, or do you consider this unnecessary, as the registration document requirements for debt securities should be used for derivative securities as well? Please give your reasons.

Taking account of our answer to question 129, we think that, as all derivative securities (as defined hereunder) without regard to the fact that they are issued or not by the issuer of the underlying, will have the same registration document regime. If the issuer publishes an Equity registration document, such document shall apply, otherwise a registration document for debt securities should be used for derivative securities.

169. Definition of derivative securities (not a question)

As stated in our answer to question 160, we consider, for the purpose of establishing a prospectus, that a distinction between the different types of derivative securities with regard to the issuer of the underlying is irrelevant. There is no reason to consider that a derivative instrument where the issuer is the same as the issuer of the underlying instrument, should be treated as the underlying instrument, and not as a derivative instrument, with its own characteristics.

In those cases, the settlement of the derivative instrument does not give rise to a new issue of either debt or equity (depending on the underlying) from the issuer. Thus, there is no objective reason to consider the issue of a derivative security as an issue of either debt or equity security, and the fact that the issuer of the derivative is the same as of the underlying is not relevant at all.

What gives rise to such a new issue of the underlying, is in France called either “Bons de souscription d’actions” or “Bons de souscriptions d’obligations”, but not warrants. For such products only is the appraisal of CESR relevant.

Question 170. Do you think it is useful to provide some form of definition for these securities?

Question 171. If so, which of the two approaches set out above do you prefer? Please give your reasons.

Question 172. If you prefer the approach based on a wide definition of derivatives, do you have any comments on the proposed definition?

Question 173. If you prefer the approach based on fundamental features, are there other features that should be but are not included in the above list?

" Yes but we should have a Securities Note for securities which are purely of derivative type (i.e. securities whose value depends totally and exclusively on the value of an underlying asset) and a Securities Note for securities which are of a hybrid type (i.e. which include both a redemption amount whether or not capital guaranteed, an interest rate where applicable and an indexation on an underlying asset). A definition is useful for pure derivative instruments. Both of the two approaches have their advantages and disadvantages, but the first one is definitely the most certain from a legal point of view. But it should be amended to :

- take account of other underlying assets than those already written, whereas innovation and diversity in this field have to be preserved. The definition could be then : "Derivative securities are securities whose value/price directly or indirectly depends on, including but not limited to: a), b), c), d), e), plus f) the value or level of indices and g) the occurrence of certain events ..."

Question 199. Do you consider the level of detail set out in IOSCO disclosure standard IV A to be inappropriate for these products ?

Yes because of the lack of flexibility necessary for these products that it would create.

Question 200. Which particular items of IOSCO disclosure in this section do you consider to be relevant for these products? Please give your reasons.

The risk factors linked to the product have to be disclosed but we think it is really inappropriate to disclose their possible remedies to those risks. (Annex M III Ce)) : this would be very costly and time consuming, for products for which rapidity is a key point. Indeed, such an obligation would :

- lead issuers to draw up the list of all the different products that could be used by the investor to cover the risks of the derivative security;
- have the reverse effect to encourage the investor to use these products, which are of a speculative nature, on a different basis.

Question 249. Do you consider it an appropriate approach to obtain flexibility by creating specific building blocks on particular characteristics of some issuers, offers, markets and securities?

Yes, we consider it an appropriate approach.

Question 250. Format of the Schedules - Is the format of the three main schedules suitable? These schedules are composed of (i) common items and (ii) specific items for each type of securities, amalgamated in one single document. Is this approach sensible or should the common items and the specific items form distinct blocks?

No, we do not think that common and specific items should be amalgamated. The Issuer should have the possibility to file separately those items. For a further issue, only the specific items should have to be filed, with a reference to the common items which by definition, do not change from one issue to another.

Some information required in the security note is already filed in the registration document. In that case, the issuer should only be required to refer in the securities note to the specific paragraph of the registration document.

Question 251. Complex financial instruments - In order to ensure adequate disclosure for securities that do not fall within just one of the three main types, do you agree that the Competent Authority should (as envisaged by Article 21(4)(a) of the amended proposal for a Directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, be able to add specific items of another schedule to the main schedule chosen, that it considers necessary having regard to the characteristics of the securities offered, as opposed to their legal form?

Yes. But the different competent authority should not be left without guidelines, otherwise it could prejudice, at Level 3, the necessary harmonisation of the prospectuses throughout Europe.

Question 252. Section I.2. - Should advisers be mentioned in all cases, or only if they could be held liable by an investor in relation with the information given in the prospectus?

Advisers must be mentioned only when they have could be held liable. Moreover, in some cases there are no advisers.

Question 253. Section I.5. - Under Section I.5. The securities note should mention any other information in the prospectus besides the annual accounts, which have been audited or reviewed by the auditors. Should the securities note contain the “auditors report relating to this information”?

No. The securities note should only refer to the paragraphs of the registration document.

Question 254. Sections I.6. And I.7. - Sections I.6. And I.7. Both concern the responsibility attached to drawing up a prospectus. Although under the proposed directive it is possible to choose a format consisting of three documents (Registered Document, Securities Note and Summary), these three documents are considered as making one prospectus. Is it therefore correct to assume that responsibility for each of these three parts must rest with the same persons?

No. For a whole prospectus, different persons may be responsible for different parties. The persons authorised to sign a prospectus may change.

Question 255. Section III.A. - Under Section III.A. All securities notes must contain a statement of capitalization and indebtedness. Is such a statement necessary for derivatives?

No. For derivatives such information is irrelevant.

Question 256. Section III.B. (III.B.1. For the derivatives schedule) - Section III.B. asks to list the reasons for the offer and the use of proceeds. While this is an important item for shares and bonds, is it also the case for derivatives?

No.

Section III.B (annex K)

The requested information is too wide. In particular, it is requested, in the point III.B.3, that the proceeds which may be used to finance acquisitions would be disclosed. This information must be limited to the officials or announced acquisitions. For other acquisitions, which are not certain, the confidentiality of business imposes to keep this information secret.

Question 257. Section III.C.2.(d) – Section III.C.2.(d) requires inclusion of a worked example of the “worst case scenario”.

1) Does this information provide material information for investors?

2) Are there circumstances in which an example of the worst-case scenario is not appropriate?

3) Would the disclosures as set out below be an appropriate alternative:

a) a risk warning to the effect that investors may lose the value of their entire investment, and/or

b) if the investor’s liability is not limited to the value of his investment, a statement of that fact, together with a description of the circumstances in which such additional liability arises and the likely financial effect.

We do not think that such information is appropriate. It does not provide material information to the investor. We think that a warning indicating that, for derivative securities, the investor may lose the entire invested capital, is enough. 3)a) is the appropriate alternative.

Question 258. Section IV.A. – Under Section IV.A. the interests of experts in the issue or the offer must be disclosed. These interests encompass those of any expert or counsellor who “has a material, direct or indirect economic interest in the company”. Is it necessary in the case of derivatives?

No. Such conflicts of interest should be dealt with under the rules of the relevant professional bodies. Plus, for the great majority of issues, there is no external expertise.

Section IV.B annex K

Such an information about the conflict of interests during an equity issue has no object. So should be deleted.

Question 259. Section V.A. - Section V.A. lists the items to be disclosed in -order to give a description of the securities that are offered or admitted to trading.

Should the following additional items be added to Section V.A.:

- a) Legislation under which securities have been created;*
- b) Court competent in the event of litigation;*
- c) Redress Service available for investors, if any”?*

Yes for a) and b).

Should information about the rating of the issuer or of the issues be mentioned under that item?

If yes, which one of the following wording would be more appropriate:

- “Rating assigned to the issue or to the securities by rating agencies and /or commercial bank lenders pointing out the name of the rating organization whose rating is disclosed and explaining the meaning of the rating. If a rating does not exist, to the knowledge of the issuer, it is required to disclose the fact that there is no rating”, or*
- “Rating assigned, at the issuers requests or with its co-operation, to the issue or to the securities by rating agencies and /or commercial bank lenders, pointing out the name of the rating organization whose rating is disclosed and explaining the meaning of the rating”.*

Yes. Information about the rating of the issuer is generally done, and debt issues are rated on a case by case basis upon request from the issuer. Therefore the second wording is the more appropriate.

Section V.A.15 annex K

Indication of public takeover bids by the issue in respect of other companies equity is not justified. Moreover, some OTC transactions may be more important, in terms of capital, than these operations, and they are not disclosed. So the second bullet point should be deleted.

Question 260. Section V.B.12, first indent of Annex M – Section V.B.12, first indent of Annex M requires a statement concerning the past performance of the underlying and its volatility. Is this disclosure necessary? Should the requirement for disclosure vary depending upon whether the underlying instrument is admitted to trading on a regulated market and the nature of the market? Should the requirement for disclosure vary depending upon the nature of the underlying instrument?

No. This statement should not be required. The past performance of the underlying does not give any reliable information on the future performance of the underlying. It has no additional value for the investor and would be very time consuming for the issuer of the derivative security. Further, it might be misleading to the investor.

Section V.I annex K

The information shall be limited to “gross proceeds” and “net proceeds” of the issue. A wider information is not relevant to the investor’s decision.

Incorporation by reference

“280. According to the above listed characteristics the following documents may be incorporated by reference in a prospectus:

- annual and interim financial statements;*
- merger and demerger documents;*
- auditor’s report ;*
- memorandum and articles of association*
- earlier approved and published prospectuses;*
- press releases.”*

Question 281. Do you think that the above illustrative list is acceptable?

Question 282. Should further technical advice be given on the documents that can be incorporated by reference in the prospectus? In the case of an affirmative answer please indicate which technical advice should be given.

Yes, we think that the above list is acceptable, with two exceptions : merger and demerger documents should be referred to only if this information is public, and press releases should not be referred to at all. No further technical advice is needed.

Question 289. Should other aspects concerning the accessibility of the documents incorporated by reference be considered?

Question 290. Should CESR give other technical advice on further aspects of incorporation by reference? In the case of an affirmative answer please indicate which technical advice should be given.

The advice is satisfactory and sufficient.

Publication of the prospectus

“305. The publication of the prospectus in electronic form, pursuant to Article 14 (2) c) of the proposed Directive or as an additional mean of availability, should be subject to the following requirements: a) The prospectus should be easily accessed when entering the web-site; b) The file format should be such that the prospectus cannot be modified (e.g. pdf-file); c) The prospectus cannot contain hyper-links, with exception of links to the electronic addresses where information incorporated in the prospectus by reference is available (in such a case only the documents incorporated by reference should be made available); d) The investors should have the possibility of downloading and printing the prospectus.

306. If a prospectus for public offer is made available on the web sites of issuers and financial intermediaries, these should take measures, such as the insertion of warnings related to the addressees of the offer, to avoid targeting residents in other jurisdictions where the public offer does not take place”.

Question 307. Should there be technical implementing measures at Level 2 further defining what is deemed to be “easy access” and which specific file formats are accepted for this purpose?

There is no need to further define which file formats are accepted.

Question 314. Are there any additional factors and/or requirements that should be taken into account at Level 2 concerning the availability via the press?

We think that the above advice is satisfactory and sufficient.

“322. When a prospectus is published or made available pursuant to Article 14(2) of the proposed Directive, a notice stating that such document has been published and where it is available should be disclosed by the issuer / offeror according to the following arrangements: a) When the prospectus is inserted in one or more newspapers or is published in the form of a brochure, the notice shall be made available on the issuer’s web-site; b) When the prospectus is published in electronic format, the notice shall be inserted on one or more newspapers that fulfil the requirements for publication of prospectuses.

323. The notice shall be made available or published no later than the next business day following the date of publication of the prospectus.

324. The notice shall contain, at least, the following items of information: a) The identification of the issuer; b) The type, class and amount – if already known- of the securities to be offered and/or in respect of which admission to trading is sought; c) The intended time schedule of the offer /admission to trading; d) A statement that a prospectus has been published and where it is available; e) If the prospectus has been published in the form of a brochure, the addresses where and the period of time during which such brochures are available to the public; f) If the prospectus has been made available in electronic form, the addresses to which investors should refer to ask for a paper copy; g) The date of the notice”.

Question 325. Do you consider appropriate the requirement to publish the said notice in the absence of a specific provision in the Directive proposal?

Such a notice is already provided for in the amended proposed directive.

Question 326. Should the minimum content of the notice be determined at Level 2 legislation?

No.

Question 327. When the prospectus is made available by its insertion in one or more newspapers or in the form of a brochure, besides the publication of a specific notice, should the list available at the web-site of the competent authority (see Introduction) mention where the prospectus is available?

Yes.

Question 328. In case of an affirmative answer to the previous question, should the indication in the website of the competent authority be considered enough and, consequently, should it be considered as an alternative to the publication of a formal notice by the issuer/offeror?

Yes.

Question 331. Which other issues regarding the availability of the prospectus in the form of a brochure should be covered by CESR's technical advice?

None

Question 334. Do you agree that the issuer should not ask the investor the payment of the deliver or mail costs?

Yes.

Question 335. Should additional issues regarding the delivery of a paper copy of the prospectus be dealt with by Level 2 legislation?

No