

Committee of European Securities Regulators
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CC.
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Response to the addendum of CESR's consultation paper to the Prospectus Directive

Dear Mr. Demarigny,

thank you very much for the opportunity to comment on the Addendum to the Consultation Paper on CESR's Advice on possible Level 2 Implementing Measures for the future Directive for the prospectus to be published when securities are offered to the public or admitted to trading.

The Association of German Public Sector Banks, VÖB, founded in Berlin in 1916, is one of the main associations in the German banking sector. The VÖB has 59 members, including the central savings banks/giro institutions (Landesbanken/Girozentralen), federally and state-owned special credit institutions and Deutsche Postbank AG. The VÖB cooperates with the other banking associations in the Central Credit Committee of the German banking sector (Zentraler Kreditausschuss). In this context the VÖB refers to the common response of the Central Credit Committee and entirely shares the answers given by the Central Credit Committee to the consultation paper. We would like to complete these answers by the following general remarks.

- **Necessity for a supplementary consultation**

Please let us stress that our main concern relates to the finalisation of the consultation and the fulfilling of your mandate. CESR announced at the last hearing in Paris that a second consultation on the revised possible implementing measures which will be sent to the Commission was unlikely to be held in the light of the tight timeframe. Both hearings showed there is a widespread fear that the regulations proposed in both consultation papers will result in a high degree of inflexibility. Market participants made a lot of suggestions in their written comments as well as during the open hearings. According to most market participants, care should especially be taken to ensure admission to trading is as flexible as possible, particularly with new, as yet unknown, products in minds. Furthermore a clear-cut ranking between the different registration documents is necessary to give issuers the necessary legal certainty. Although of high priority, the shape of a guideline to be given by CESR in this respect has not yet emerged.

Bearing in mind the above-mentioned complexity of the issue and its implications for the European capital market and despite the fact that CESR is under pressure to work to a very tight schedule, we would like to underline the high importance of comprehensive consultations. In our view, therefore, it is essential to consult the market for a second time about the whole consultation complex even if this would extend the end of the consultation process from March to May or June of this year.

- **Base prospectus**

As we have already mentioned in our last response to the initial position paper, the base prospectus is of high importance for the banking industry. It will be the probably mainly used prospectus in the future in Germany. CESR has not yet been instructed by the Commission to consider this format. Since it will be highly important, however, the building block approach now proposed for derivative products should therefore also be revised against the background of the requirements which must be drawn up for a base prospectus. We therefore consider it essential to develop valid disclosure requirements for base prospectuses so as to give market participants as well enough time to contribute to the search for a practicable solution for all market participants during the consultation process. One important point is the flexibility which the base prospectus must grant to the issuer, especially in respect to the finalisation of the incomplete prospectus. Here it is absolutely necessary to pay attention to the necessities arising out of the current practices in the market.

- **The building block for credit institutions**

We welcome that the addendum encloses a specialist building block for banks. Preferable might be the expression credit institutions which is used and defined by the proposal for the Prospectus Directive to consider the whole range of this industry. Credit institutions are indeed subject to close regulatory control and supervision, and therefore carry a lower insolvency risk. This has to be reflected by lower disclosure obligations. One has to bear in mind that the purpose of a prospectus is not to provide a due diligence report to the investor but only to

inform him about the nature and the major risks of his investment (see also Art. 5 para. 1 of the Prospectus Directive).

The obligation to disclose the actual solvency ratio should be waived for the following reasons: Actually, there are two solvency ratios, at least for the international banks. This fact does not facilitate the orientation for the investor. The actual solvency ratios are changing permanently. The disclosed figures would be incorrect after a short time. As it is mentioned in the addendum, a normal investor could only grasp the meaning of the ratios if "the significance were fully explained and put in context" (Nr. 48). This explanation in plain terms is obviously not an easy task and will burden the issuers beyond the necessary. The obligations for the disclosure of the solvency ratios are laid down in the Banking Directive 2000/12/EC and in the Capital Adequacy Directive (93/6/EEC). They are definitely settled there and should not be widened on level 2.

Clear ranking between the registration documents necessary

We would like to stress once again our concern regarding the large number of building blocks and the high grade of detail. Regarding the workability of the shelf registration document, issuers will have to cope with the problem to determine which building block is the right one for the respective issue. In order to create a high grade of legal certainty, clear-cut rules and lines of demarcation should therefore be drawn up.

It will probably also lead to a problem for the issuer to determine whether a registration document which has been already prepared and approved for issues of other types of securities is allowed to be used for a new issue of securities. For this case and in this context, CESR has not provided any ideas for a rule until now.

With kind regards,
Association of German Public Sector Banks (VÖB)

(Karl-Heinz Boos)

(Oliver Blaß)