THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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SUMMARY OF THE ANSWERS TO THE QUESTIONNAIRE ON THE WAY MEMBER STATES INTERPRET THE NOTION OF EQUIVALENCE IN THE CONTEXT DESCRIBED IN ARTICLE 4(3) OF THE PROSPECTUS DIRECTIVE

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1. INTRODUCTION

The mandate from the European Commission formalised on the 1 October 2003 requires CESR to provide by 31 December factual information on, and analysis of, the way Member States interpret the notion of equivalence in the context described in Article 4.

In order to provide the Commission with the information required, CESR prepared a questionnaire dealing with the issues.

Two chapters compose the aforementioned questionnaire: the first one concerns securities offered in connection with a takeover by means of an exchange offer, and the second one concerns securities offered, allotted or to be allotted in connection with a merger.

The questionnaire was answered by seventeen countries: Austria (AUS), Belgium (BE), Denmark (DK), Finland (FIN) France (FR), Germany (GER), Iceland (ICE), Ireland (IRE), Italy (IT), the Netherlands (NL), Norway (NO), Portugal (PO), Spain (SP), Sweden (SW), the United Kingdom (UK), Luxembourg (LUX) and Greece (GR).

This document aims to provide a synthesis of the answers received, in an attempt to emphasize where rules and practices agree or differ.

2. SUMMARY OF THE ANSWERS

A. SECURITIES OFFERED IN CONNECTION WITH A TAKEOVER BY MEANS OF AN EXCHANGE OFFER (ART. 4 (1) (b) AND (2) (c))

1. Does the bidder have the obligation to publish a prospectus or a similar information document in your jurisdiction for the offer and/or the listing of the securities offered in connection with a takeover by means of an exchange offer? If so, please specify which national regulation imposes the publication of that document.

In nine countries out of a total of seventeen (FR, BE, IRE, NL, ICE, IT, SP, PO, GR), a takeover document (i.e. a document specifically required on the basis of the takeover regulation of the relevant jurisdiction) must be published for each takeover bid by means of an exchange offer.

In four countries (NO, FIN, GER and DK), the obligation to publish a takeover document only applies if the target company's shares are admitted to trading on a market (NO: on a stock exchange in Norway; FIN: on a regulated market in Finland; GER: on an organised market in the EEA).

It should be stressed that in IT, SP and FIN, if the newly issued shares are going to be listed, that document must meet both the disclosure requirements for takeover documents and for listing prospectuses, and that in PO and FIN, if the offer is public, that document must meet both the disclosure requirements for takeover documents and for public offer prospectuses.

In four countries (UK, SW, LUX and AUS), no specific takeover document must be published, but there is an obligation to publish a listing prospectus (in UK and SW) or a public offer prospectus (in AUS and LUX).

2. **Please indicate the timing and modalities applicable to the publication of that document.**

The takeover document must generally be published before the start of the bid in a newspaper and/or on the Internet and/or be available (in the latter case, a notice must be published in the press to indicate where the document is available).

3. **Does a competent authority scrutinise and approve that document? If so, please identify the authority currently in charge of that scrutiny and approval, stating whether or not the same authority is in charge of approving the public offer and admission to trading prospectuses.**

Amongst the thirteen countries where a takeover document exists, there are eleven countries (FR, IT, SP, PO, NO, BE, DK, GER, FIN, NL, ICE, GR) where this document is approved by a competent authority[1].

In all these countries, the same authority is also in charge of approving the listing prospectuses, except in NL, in GR and in GER where the competent authority for listing prospectus is the Stock Exchange.

In all these countries, the same authority is also in charge of approving the public offer prospectuses, except in NL (no approval of the public offer prospectuses) and ICE (the Financial Supervisory Authority is competent for public offer prospectuses).

In IRE, there is no scrutiny or approval of the takeover document.

4. **Please state whether or not that document must provide information for each of the following items[2] and, if necessary, give some indication as to the content of the disclosure requirements for each item :**

The answers hereunder exclusively concern the thirteen countries where a specific takeover document must be published (see answer to question A.1.).

4.1. Concerning the offer and/or the admission to trading:

a. **Type and amount of the consideration being offered for the securities of the target company (exchange ratio)**

b. **Interest of persons involved in the offer**
Not required in BE,DK,NL and FIN

c. **Reasons for the offer and information on the intentions of the bidder with regard to the future business activity of the target company** Not required in ICE

d. **Information on the necessary steps ensuring that the bidder has at its disposal the means necessary to perform the offer**

e. **Terms and conditions**

[1] FR: COB; IT: Consob; SP: CNMV; PO: CMVM; NO: Oslo Stock Exchange; BE: BFC; DK: Danish Securities Council; GER: Bafin; FIN: Rahoitustarkastus; NL: AFM; SW: Stockholm Stock Exchange; ICE: Stock Exchange.

[2] The list of items refers to the main items of the Equity SN and RD schedules as set out in documents CESR/03-208 and CESR/03-300.
The items which at least four countries (i.e. at least one third of the countries where a takeover document exists) do not require appear in red.

f. Acceptance period
g. Admission to trading and dealing arrangements
h. Expenses of the offer Not required in BE , GR and ICE
i. Dilution Not required in IT, SP, NO, BE, DK, GER, NL, FIN, and ICE

4.2. Concerning the securities offered by the bidder:

j. Type and class of securities
k. Legislation Not in IRE, GR and ICE
l. Currency Not in IRE, GR and ICE
m. Rights attached Not in ICE
n. Resolutions, authorisations and approvals Not in ICE and GR
o. Expected issue date Not in GR
p. Restrictions on free transferability Not in ICE and GR
q. Taxes Not in ICE, GR and IRE

4.3. Concerning the bidder:

a. Auditors Not in IRE and ICE
b. Name, registered office and principal administrative establishment if different from the registered office.
c. Legal information (including provisions of the Articles of Association) Not in IRE and ICE
d. Activities and Markets Not in ICE and GR
e. Organizational structure of the group, if any Not in ICE and GR
f. Capitalization and indebtedness Not in IT, SP, BE, FIN, ICE and GR
g. Operating and financial review (including working capital and capital resources) Not in IRE, GER, FIN, ICE and GR
h. Research and development, patents and licences Not in BE, DK, IRE, ICE and GR
i. Trend information Not in DK and ICE
j. Administrative, management and supervisory bodies and senior management
k. Remuneration and benefits Not in BE, GR and ICE
l. Board practices Not in IT, BE, IRE, GER, FIN, GR and ICE
m. Employees Not in NO, BE, IRE, GR and ICE
n. Major shareholders Not in IRE and ICE
o. Related parties transactions Not in IT, BE, GR and IRE
p. Historical financial information (including interim financial information) Not in ICE
q. Auditing of historical financial information Not in IT, IRE and ICE
r. Pro forma financial information (financial position and results of the bidder in case of a successful offer) Not in PO, BE, DK, IRE, NL, FIN, ICE and GR
s. Dividend policy Not in IT, GER, FIN, GR and ICE
t. Legal and arbitration proceedings Not in IT, IRE, GR and ICE
u. Share capital Not in IRE and ICE
v. Material contracts Not in NO, BE, GER, FIN and ICE

4.4. Concerning the target company:

a. Name, registered office and principal administrative establishment if different from the registered office.
b. Legal information (including provisions of the Articles of Association) Not in PO, NO, IRE, FIN and GR
c. Information on payments of cash or any other valuable benefits which are granted to, or the prospect of which is held out to, members of the management or supervisory bodies Not in BE, IRE, FIN, ICE and GR

5. Please indicate whether there are any additional disclosure requirements in your jurisdiction which do not refer to items comprised in the lists under question 4.

The most frequent additional disclosure requirements are: (i) a justification of the exchange ratio and a description of the valuation methods (FR, NO, BE, NL,PO); (ii) a more extensive description of the target company (FR, IT, BE, DK, GER, NL and FIN) and (iii) any contact or agreement between the bidder and the management of the target company before the offer (NO, SP, IRE, NL and DK).

6. Please indicate whether Article 23 (1) (b) of Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities has been implemented in your jurisdiction.

Fourteen countries out of a total of seventeen have implemented Article 23 (1) (b) of Directive 2001/34/EC (UK, FR, BE, SP, PO, NO, DK, IRE, NL, FIN, SW, AUS, LUX, GR).

It should be emphasised that: (i) in IRE, the exemption from listing prospectus requirements is not granted when the bidder's shares are to be listed for the first time or, if shares of the bidder are already listed, where the new shares would represent an increase of over 10% in the number of listed shares; (ii) the UK has only implemented this provision for issuers who are not listed (new applicants).

IT, GER, and ICE have not implemented that provision.

In IT and GER, the takeover document also meets the disclosure requirements for listing prospectuses and is therefore accepted by the competent authority for the admission of newly created shares on a regulated market. However, in GER, the "official market" is subject to a more stringent prospectus regulation than the other regulated markets and the bidder may thus be required to draw a listing prospectus if the takeover document does not contain the additional information requested in that market segment.

In ICE, a listing prospectus is required, in addition to the takeover document, if the shares offered in exchange are newly issued shares.

7. If so, please indicate how the notion of "equivalence" is interpreted in that context (e.g. is the document referred to in question 1 considered sufficient or not? If not, please indicate which additional information requirements apply).

Out of the fourteen countries that have implemented Article 23 (1) (b), nine effectively grant an exemption from listing prospectus requirements (FR, BE, DK, IRE, SP, PO, AUS , GR and NO).

In FR, BE, DK, GR and IRE, the takeover document is regarded as containing equivalent information to that of the listing prospectus. No additional information is therefore required.

In SP and FIN, the document published for the takeover must meet both the disclosure requirements for takeover documents and for listing prospectuses (see answer to question 1). Therefore, it is regarded as containing equivalent information in order to grant the exemption in SP. Conversely and for the same reason, no exemption is deemed necessary in FIN.

In PO, the document published for the takeover must meet both the disclosure requirements for takeover documents and for public offer prospectuses. The exemption

of listing prospectus is then granted because a complete prospectus has been published during the last twelve months.

In NO, a public offer prospectus must generally be published in addition to the takeover document. This public offer prospectus is considered equivalent.

In NL, a listing prospectus must be published in addition to the takeover document. The exemption is therefore not granted in practice.

In LUX and in AUS only a public offer prospectus has to be published in case of takeover by means of an exchange offer (see answer to question A.1.). In AUS, an exemption of listing prospectus is granted without any requirement of "equivalence". In LUX, no exemption is needed in practice as this document generally also contains all the necessary information for the listing of the new shares offered in exchange.

In SW and UK, the exemption is never granted, as a listing prospectus must always be published (in those countries, no takeover document is published: see answer to question A.1.).

B. SECURITIES OFFERED, ALLOTTED OR TO BE ALLOTTED IN CONNECTION WITH A MERGER (ART. 4 (1) (c) AND (2) (d))

8. Please list all transactions which could be considered as "mergers" according to your national law (e.g. acquisition of another company or formation of a new company, division of a company, transfer of a branch, etc.) and give a brief description of the procedure applicable to each of these transactions (e.g. vote by the general shareholders' meeting or not, subsequent choice by each shareholder or not, etc.).

In fourteen countries out of a total of seventeen (FR, IT, SP, PO, NO, BE, DK, GER, SW, AUS, ICE, NL, FIN, LUX), the merger can be achieved either through the creation of a new company, or by absorption of a company by another one. The procedure applicable to the merger is defined by the third Council Directive (78/855). There is an approval by the shareholders' meeting either in all the companies involved (FR, BE, SP, PO, NO, GER, AUS, IT, NL, LUX) or only in the discontinuing (or absorbed) companies (SW, FIN, DK, ICE). It should be noted that in PO, the shareholders who have not approved the merger are entitled to require the company to acquire their shares if the merger is approved.

In NL, besides the legal merger (see previous paragraph), two other types of transaction are also considered as a merger: (i) a merger of businesses, i.e. an acquisition of either the assets and liabilities or a branch of another company; and (ii) a merger by means of shares, i.e. the takeover of all shares of another company (see above the answers to questions A.1 to A.7).

In GR, besides the merger by absorption, the following transactions are also considered as mergers: (i) the takeover of a company, (ii) a change of core business, (iii) the acquisition of the assets or of a branch of another company, and (iv) a spin-off.

In FIN,and LUX a division of a company into two or more companies is also considered as a merger.

In IRE, the concept of merger is not defined under the Irish Takeover Panel Act. The Irish Competition Act, which provides for mandatory and voluntary notifications of mergers to the Irish Competition Authority, specifies that a "merger" occurs where:

(a) two or more undertakings previously independent of one another merge; or

(b) one or more individuals or undertakings who or which control one or more undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or

(c) the result of the acquisition by one undertaking (the "first undertaking") of the assets including goodwill (or a substantial part of the assets) of another undertaking (the "second undertaking") is to place the first undertaking in a position to replace (or substantially replace) the second undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition; or

(d) the creation of a joint venture to perform on an indefinite basis all the functions of an autonomous economic entity.

In UK there is no distinction between a merger and a takeover.

For IRE and UK, the answers to questions A.1 to A.7 are applicable to both takeover and mergers. As a consequence, the following summary of the answers to questions B.9 to B.15 only refers to the thirteen countries mentioned in the first paragraph above.

9. Does the issuer of securities offered, allotted or to be allotted in connection with a merger have the obligation to publish an information document in your jurisdiction? Is this document imposed by your company law? If not, please explain.

As provided for in Directive 78/855/EEC, the following documents must be available for the shareholders of each company involved in the merger:

(i) the merger plan;

(ii) a report on the merger by the Board of Directors;

(iii) an expert report (FR, SP, IT, DK, LUX, GR) or auditors report (BE, GER, NL) on the exchange ratio;

(iv) the financial statements and management reports concerning the last three financial years;

(v) an interim financial statement, if necessary.

Those documents are prescribed by the company law of each country.

In DK a post-merger opening balance sheet is also required in the merger documents, and in NL, the written advice of the Council of employees must also be published.

In IT, for listed companies, in the case of a merger with an important impact on the size of the issuer, the publication before the general shareholders meeting of a document containing additional information (in particular pro-forma figures) is imposed by the Consob, in addition to the merger documents.

In FR, for listed companies, the COB regulation imposes publication before the general shareholders meeting of a document containing the information required in the merger documents and some additional information (this document is called "document E"). This document contains information that is more or less equivalent to that of a listing prospectus.

In PO, AUS and in FIN, if the merger meets the criteria of a public offer, a public offer prospectus must be published before the general shareholders meeting (in FIN and AUS) or before the public deed (in PO), in addition to the merger documents.

In SP, IT, NO, NL, ICE and DK, if the absorbing company is listed, a listing prospectus must be published, in addition to the merger documents (in DK, as an additional condition to require a listing prospectus, the merger must also imply major changes to the activities and/or level of activity of the absorbing company). It has to be noticed that in SP, the listing prospectus will include the merger documents plus additional information.

In GR, if the absorbing company is listed, a specific document or prospectus must be published, in addition to the merger documents.

10. Please indicate the timing and modalities applicable to the publication of that document.

As provided for in Directive 78/855/EEC, the merger documents must be available at least one month before the shareholders meeting. Every shareholder has the right to obtain a free copy of those documents or to inspect them at the registered office (for more details, see the table containing the complete answers).

11. Does a competent authority scrutinise and approve that document? If so, please identify the authority currently in charge of that scrutiny and approval, stating whether or not the same authority is in charge of approving public offer and admission to trading prospectuses.

In eight of the fourteen countries referred to in the first paragraph of the answer to question B.8. (NO, GER, NL, FIN, AUS, ICE, PO, LUX), there is no scrutiny or approval of the merger documents.

In BE and IT, if the companies involved are listed companies, the BFC and the Consob (which are the authorities in charge of the approval of public-offer and listing prospectuses in Belgium and Italy respectively) scrutinise the merger documents, without approving them.

In DK, SW and SP, the Commerce and Companies Agency or the Companies Registrar scrutinises the merger plan. In SW, the merger plan is even approved.

In FR, the COB scrutinises and approves document E (see answer to question B.9.).

In GR, the merger documents are approved by the Minister of Development.

12. Please state whether or not that document must provide information for each of the following items[3] and give some indication as to the content of the disclosure requirements for each item:

The answers hereunder exclusively concern the merger documents published in IT, SP, NO, BE, DK, GER, NL, SW, LUX and ICE, and the document E published in FR[4].

It should be noted that AUS has not answered that question and that PO, FIN and GR have answered it only in relation to the prospectus which must be published in addition to the merger documents.

[3] The list of items refers to the main items of the Equity SN and RD schedules as set out in documents CESR/03-208 and CESR/03-300.

[4] The items which at least three countries or more (i.e. almost one third of the ten countries having answered the question for the merger documents or more) do not require appear in red.

12.1. Concerning the merger and/ or the admission to trading:

a. Type and amount of the consideration being offered or allotted for the securities of the acquired company (exchange ratio)
b. Information on the necessary steps ensuring that the acquiring company has at its disposal the means necessary to perform the merger Not required in FR, NO, BE, DK, ICE, SW and LUX
c. Interest of persons involved in the merger Not in NO and NL
d. Reasons for the merger and information on the intentions of the acquiring company with regard to the future business activity of the acquired company Not in SP
e. Terms and conditions Not in SP and SW
f. Acceptance period, if any Generally not applicable, except in GER, SP and SW
g. Admission to trading and dealing arrangements Not in SP, NO, DK, SW, NL, ICE and LUX
h. Expenses of the merger Not in FR, IT, SP, NO, BE, DK, GER, NL, SW, LUX and ICE
i. Dilution Not in SP, NO, DK, NL, LUX and ICE

12.2. Concerning the securities offered, allotted or to be allotted in connection with the merger:

a. Type and class of securities Not in NO and DK
b. Legislation Not in SP, NO, DK,SW, ICE
c. Currency Not in IT, NO, DK and ICE
d. Rights attached Not in SP and NO
e. Resolutions, authorisations and approvals Not in NO, DK, SW, LUX and ICE
f. Expected issue date Not in NO and LUX
g. Restrictions on free transferability Not in SP, NO, DK, SW, ICE and LUX
h. Taxes Not in NO, BE, DK, NL, SW, SP , LUX and ICE

12.3. Concerning the issuer of the securities offered, allotted or to be allotted in connection with the merger (acquiring company):

a. Auditors Not in SP, NO, DK, ICE and LUX
b. Name, registered office and principal administrative establishment if different from the registered office.
c. Legal information (including provisions of the Articles of Association) Not in NL and ICE
d. Activities and Markets Not in SP, NO, BE, DK, GER, NL, SW, LUX and ICE
e. Organizational structure of the group, if any Not in SP, NO, BE, DK, NL, SW, LUX and ICE
f. Capitalization and indebtedness Not in SP, NO, DK, GER, LUX and ICE
g. Operating and financial review (including working capital and capital resources) Not in SP, NO, BE, DK, GER, LUX and NL
h. Research and development, patents and licences Not in SP, NO, BE, DK, GER, NL, LUX and ICE
i. Trend information Not in SP, NO, BE, DK, GER, NL, LUX and ICE
j. Administrative, management and supervisory bodies and senior management Not in IT, SP, BE, DK, GER, LUX and ICE
k. Remuneration and benefits Not in SP, NO, BE, GER, SW and LUX
l. Board practices Not in IT, SP, NO, BE, DK, GER, NL, LUX and ICE
m. Employees Not in SP, NO, BE, DK, GER, NL , LUX and ICE

n. Major shareholders Not in SP, NO, BE, LUX and DK
o. Related parties transactions Not in NO, BE, DK, LUX and SP
p. Historical financial information (including interim financial information)
q. Auditing of historical financial information
r. Pro forma financial information (financial position and results of the acquiring company after the merger) Not in SP, NO, GER, NL, LUX and SW
s. Dividend policy Not in SP, NO, BE, DK, GER, NL, SW, LUX and ICE
t. Legal and arbitration proceedings Not in SP, NO, BE, DK, GER, NL, LUX and ICE
u. Share capital Not in SP, NO, DK, GER, LUX and ICE
v. Material contracts Not in SP, NO, BE, DK, GER, NL, SW, LUX and ICE

12.4. Concerning the acquired company:

a. Name, registered office and principal administrative establishment if different from the registered office. Not in ICE
b. Legal information (including provisions of the Articles of Association) Not in DK
c. Information on payments of cash or any other valuable benefits which are granted to, or the prospect of which is held out to, members of the management or supervisory bodies. Not in ICE and LUX

13. Please indicate whether there are any additional disclosure requirements in your jurisdiction which do not refer to items comprised in the lists under question 12.

In several countries, the merger documents also contain a justification of the exchange ratio (valuation criteria and methods) and the historical financial information of the acquired company.

14. Please indicate whether Article 23 (1) (c) of Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities, has been implemented in your jurisdiction.

Eleven out of fifteen countries have implemented Article 23 (1) (c) of Directive 2001/34/EC (FR, SP, PO, BE, DK, NL, FIN, SW, AUS, LUX, GR)[5].

IT, NO, GER and ICE have not implemented that provision and in those countries a listing prospectus is required besides the merger documents. Nevertheless, in GER a listing prospectus is not mandatory if the merger documents already contain all the information required for a listing prospectus.

In DK, the exemption is only granted if the merger does not imply major changes to the activities and/or level of activity of the absorbing company. If this is not the case, a listing prospectus is required.

15. If so, please indicate how the notion of "equivalence" is interpreted in that context (e.g. is the document referred to in question 9 considered sufficient or not? If not, please indicate which additional information requirements apply).

Out of the nine countries that have implemented Art. 23 (1) (c), five countries effectively grant an exemption (BE, DK, FR, PO and FIN).

[5] For UK and IRE, see questions A.6 and A.7.

In BE and in DK (in the cases where an exemption can be granted: see answer to question B.14.), the merger documents are deemed to contain equivalent information. The BFC only requires to also provide a pro-forma balance sheet, and to update the information contained in those documents.

In FR, document E, which contains information more or less equivalent to that of a listing prospectus (see answer to question B.9.), is sufficient to grant the exemption from listing prospectus requirements.

In PO and FIN, the public offer prospectus, if any (see answer to question B.9.), is considered equivalent to a listing prospectus. In PO the exemption of listing prospectus is in fact granted because a complete prospectus has been published during the last twelve months.

In AUS, where a public offer prospectus must generally be published (see answer to question B.9), the exemption is granted without any requirement of "equivalence".

In GR the specific document or prospectus referred to in question B.9 contains information which is regarded as being equivalent in order to grant the exemption of listing prospectus. The merger documents are not regarded as sufficient.

In LUX, no exemption is needed in practice as the merger documents generally also contain all the necessary information for the listing of the new shares.

In SW, if the merger documents contain all the information required for a listing prospectus, an exemption can be granted, but only as regards the format of the document, not its content. However, in practice, such an exemption has never been granted.

In SP and NL, the exemption is not granted and a listing prospectus must be published. In SP, this prospectus will consist of the merger documents plus the information required in a listing prospectus that is not included in the merger documents.