



Ref: CESR/03-496

**SUMMARY OF THE ANSWERS TO THE QUESTIONNAIRE ON FACTUAL INFORMATION ON THE  
LEGISLATION AND PRACTICES OF MEMBER STATES REGARDING THE TREATMENT OF THIRD  
COUNTRY ISSUERS WITH RESPECT TO THE DRAWING UP AND APPROVAL OF PROSPECTUSES  
(ARTICLE 20 OF THE PROSPECTUS DIRECTIVE)**

**DECEMBER 2003**



## 1. INTRODUCTION

1. The mandate from the European Commission formalised on 1 October 2003 requires CESR to provide by 31 December 2003 factual information on the legislation and practices of Member States regarding the treatment of third country issuers with respect to the drawing up and approval of prospectuses (article 20 of the prospectus directive).
2. The mandate relates to the provisions of Article 20 of the Prospectus Directive, which allows competent authorities to approve prospectuses, drawn up in accordance with the legislation of a third country. However, there are restrictions to this general power. The most important of which is that “the information requirements [in that third country], including information of a financial nature, are equivalent to the requirements under [the] directive.” This deals with the ad hoc, one-off cases. Article 20(3) allows the European Commission to go further and state that a third country ensures equivalence of prospectuses by reason of its requirements.
3. CESR conducted a short fact finding exercise amongst its members. A questionnaire was prepared to that effect (attached).

## SUMMARY OF THE ANSWERS RECEIVED

4. The results of the fact finding exercise were remarkably consistent and can be divided into two areas.
5. First, no jurisdiction currently accepts prospectuses approved outside the EU. All CESR members check prospectuses approved by non-EU authorities against their own disclosure requirements. Some gave details of how such third country approved prospectuses could then be treated. It is possible that the prospectus meets the relevant disclosure requirements and is therefore approved unchanged. But, such approval is based on the fact that it meets the relevant disclosure requirements and not because it has been approved elsewhere.
6. Second, there was almost as much consistency in relation to the acceptance of financial information produced to a different GAAP. For accounting information prepared to IAS, a small majority of CESR members accept this without amendment. The other CESR members accept IAS on the basis that there is also an explanation of the differences or a reconciliation to the local GAAP. For accounting information prepared to US GAAP, the approach is almost identical. The only significant difference is one CESR member requiring a reconciliation to national GAAP rather than just an explanation of the differences. The picture is less consistent for other GAAPs. Those jurisdictions with a broader international experience tend to accept different GAAPs subject to various conditions; some of which are specific to the method of treating certain accounting items; some based on whether the standard was sufficient to protect investors. The majority require an explanation of the differences between the GAAP used and the local GAAP. Others require a reconciliation to their local GAAP.



**Questionnaire on the notion of equivalence (Article 20 (b))**

*Article 20 allows the competent authority of a home Member State of issuers having their registered office in a third country to approve a prospectus for an offer to the public or for admission to trading on a regulated market, drawn up in accordance with the legislation of a third country, provided that:*

- (a) the prospectus has been drawn up in accordance with international standards set by international securities commission organisations, including the IOSCO Disclosure Standards, and*
- (b) the information requirements, including information of a financial nature, are equivalent to the requirements under this Directive.*

*The European Commission has mandated CESR to provide factual information on how competent authorities of member states currently deal with prospectuses submitted for approval by third country issuers with respect to the notion of equivalence.*

*The answers to be provided by CESR members to this questionnaire must be factual and relate only to current practices and detailed as much as possible. Statements of opinion or recommendation as to future practices are not invited at this stage.*

1. Does your competent authority approve prospectuses submitted by issuers incorporated in third countries based on the rules and regulations of that country without any review or modifications?
2. If not, are there any circumstances whereby your competent authority will treat certain requirements included in a prospectus submitted by a third country issuer as equivalent to the requirements in your country?
3. What criteria does your competent authority apply in reaching a conclusion that a certain requirement is equivalent to its own requirements?
4. Does your competent authority allow a prospectus approved in another jurisdiction to be included, without modification, in a prospectus being approved in your jurisdiction and if so, in what circumstances?
5. As part of a prospectus subject to approval by your competent authority:
  - (a) does your competent authority accept the historical financial information drawn up according to the accounting principles or standards of a third country where those standards are different from its own?
  - (b) do you require any particular modifications to the historical financial information of a third country issuer?
  - (c) If you do accept other country's accounting principles or standards, what criteria does your competent authority apply in reaching such a decision?