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**REPORT ON CESR MEMBERS' POWERS UNDER
THE PROSPECTUS DIRECTIVE
AND ITS IMPLEMENTING MEASURES**

IMPORTANT NOTICE

In the interest of transparency and in order to inform interested parties, CESR is publishing this document relating to CESR Member's responses to a questionnaire regarding the nature and extent of powers in relation to the Prospectus Directive and its implementing measures, together with a correspondence table for ease of reference.

This document and the correspondence table have no legal effect, they do not present or represent any interpretation of or definitive position regarding existing laws, regulations or other forms of legislation in any jurisdiction. This document and the correspondence table should and cannot be relied upon for any purpose other than for the purposes for which they were prepared. In particular, they should not be relied upon as a substitute for, or as guidance on, any aspect of the supervisory practices or regulatory systems of any Member State.

In addition, when reading this report, there may be occasions where reference has been made to "all authorities" or "all jurisdictions" but not all CESR members are referred to in the text following these statements. This is because in some cases, not all members responded to the question being discussed.

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Executive summary



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EXECUTIVE SUMMARY
OF THE REPORT (Ref: 07-383) ON CESR AUTHORITIES' POWERS UNDER THE PROSPECTUS
DIRECTIVE AND ITS IMPLEMENTING MEASURES

1. Register of qualified investors (Article 2 of the Prospectus Directive)

1. This part of the report describes if authorities have the power to create and supervise the register.

Creation of the register

2. The vast majority (AT, BE, CY, CZ, DK, FI, FR, DE, EE, EL, HU, IS, IE, IT, LV, LT, LU, NL, PL, PT, SK, SI, UK) of the authorities have the power to create and supervise the register of the qualified investors directly and replied that SMEs and/or natural persons can be registered as a qualified investor in their jurisdiction. In one case (NO) this power has been delegated to the relevant stock exchange. One jurisdiction (SE) decided not to create a register. In BE the category of qualified investors is currently not extended to natural persons. Another jurisdiction (MT) has the power through the Register of Companies. In one jurisdiction (ES) third persons (an investment firm in Spain) have taken on this function; however the authority has the power to supervise the functioning of the register.

Data protection

3. Some jurisdictions (DE, SI) indicated that issues of compliance with the data protection provisions could arise. Other jurisdictions (AT, CY, CZ, ES, HU, LU, NL, NO UK and PL,) do not have concerns related to data protection or have not yet addressed them. In AT providing the information on a secured website solved this issue. In LU data protection issues have been taken into account at the time of preparation of the relevant legislation. In ES the securities legislation expressly states that the establishment and functioning of the register of qualified investors should respect the data protection legislation. In PL the database of qualified investors is according to the legislation open for perusal. The person who would like to be registered in it is aware that his/her data are available to everyone. In HU the authority is authorised to manage personal data related to qualified investors. The authority must provide sufficient technical facilities for the protection of the data it manages in order to ensure against unauthorized access, disclosure by transmission, alteration or erasure by operating a logically closed system. In some jurisdictions (CY, CZ, NL) no such concerns have been addressed yet. In the NL the register of qualified investors is not public but the regulator will confirm on request whether a person is a qualified investor. In NO this issue has been discussed with the NO Data Inspectorate and is not considered to raise issues with regard to data protection legislation, as only the name of the investor (and the company registration number) is published.

Availability of the register

4. In the majority of the member states (AT, BE, CZ, DK, FI, DE, EE, EL, ES, HU, IS, IE, IT, LU, LV, MT, NL, NO, PL, PT, SK, SI and UK) the register is accessible to issuers. In some jurisdictions (FI, DE, HU, IE, NL, PL, SI, UK and LU) the register is only available upon request (not publicly available). In some jurisdictions (CY, LT, FR and SE) the register is not made available to issuers. One of these (FR) indicates that the guideline is that the register should

not be directly accessible to the public because they did not wish to make this register a tool for solicitation. ES specifies that only issuers can access the register. In another case (AT) the information is provided to issuers on a secure web page which issuers can access with log in codes.

2. Obligation to publish a prospectus (Articles 3, 4 and 5.2 of the Prospectus directive)

5. All authorities, except AT, DK, NO, have directly the power to ensure that public offers of securities are not made without prior publication. In NO the power is delegated to the Oslo Stock Exchange. Two authorities (AT and DK) have the power with application to judicial authority to ensure that public offers of securities are not made without prior publication.
6. There seem to be different approaches and techniques on how to ensure that such offers are not made without the prior publication of a prospectus. The supervision seems to be more difficult in the case of non-listed companies. In one jurisdiction (UK) there is no proactive monitoring for ensuring compliance with the relevant obligations to publish a prospectus due to the size of its securities; markets and the risk-based approach it undertakes. In other jurisdictions there seems to be a more proactive attitude (AT, CY, IT, PL, PT and SE). These authorities monitor on a regular basis the regulated market as well as any other market to see whether there is any offer without prospectus. Reference is made to monitoring financial newspapers or market news.
7. Tools used to ensure that public offers are not made without prior publication of a prospectus:
 - In some jurisdictions this obligation is ‘easy’ to verify thanks to collaboration with the stock exchange (if the securities are listed, as it is the case in the majority of issues).
 - Some authorities monitor the newspapers.
 - Three authorities take information and complaints from market participants or investors into account.
 - In some authorities they learn about the violations by different sources such as own research (e.g. media control) notices, whistle blowing and complaints and cross information between the different departments of the authority and web spidering.
 - Some jurisdictions use external information – a note appears that a case has been submitted for public prosecution for public offers. In one jurisdiction external information such as announcements made or complaints are followed up by the regulator.
 - One authority replied that it draws the attention of the issuers that intend to offer securities that in some cases they are obliged to obtain the authority’s approval for prospectuses and that it is not allowed to offer securities without a prospectus.
 - Ex post checking based on reports provided by the Stock Exchange.
8. In case of a failure to comply with the provisions most authorities are entitled to impose sanctions.

AT, FI, PT, SK and SI	Use the powers provided to them by the directive and usually impose fines. In SI the fine ranges from EUR 83.300 to EUR 375.000.
FI	The authority will ask the issuer for detailed clarifications and may also order the offering and/ or admission to trading to be suspended until corrective action is taken by the issuer.
AT, PL and DK	The authority will file a formal complaint to the State Attorney for criminal proceedings.
SK	The authority has the power to oppose a public offer for lack of prospectus.
UK	A failure to produce an approved prospectus prior to making an offer of securities when there are no exemptions would result in a criminal offence punishable by a fine (up to £5,000 if tried summarily and unlimited if tried on indictment) an/or

	imprisonment of up to 2 years. The prospect of imprisonment has proven to be a deterrent in the UK. Civil liability would also attach for any misrepresentations in the prospectus.
CY	Making a public offer before the publication of an approved prospectus is a criminal offence punishable by imprisonment of up to 2 years and or a fine of up to CYP 200.000. This could also constitute an administrative offence punishable with a fine of up to CYP100.000 (in the case of a repeat offence the fine could be up to CYP 200.000) with a provision that these fines could be up to 1/3 of the amount of the public offer which in the case of a repeat offence is increased to 1/2.

Exemptions (Art. 3.2 / 4, and 5.2)

9. In relation to the exemptions of article 3.2 provided for in the Prospectus Directive, all member states have incorporated the relevant provisions, some of them by law and others by decrees or stock exchange rules. In the case of IS this power is exercised in collaboration and in NO it has been delegated to the stock exchange.
10. The power of supervision and that of sanctioning with regard to the exemptions from the obligation to publish a prospectus in the case of a public offer lie in all jurisdictions, NO excepted, with the administrative authorities.
11. In all jurisdictions, except for MT and NO, the authorities have directly the power to ensure that the exemptions set out in Article 4.1 of the Prospectus Directive are correctly applied.
12. In all jurisdictions, except for AT, LT, IS and NO, the authorities have the direct power to ensure that the exemptions set out in Article 4.2 of the Prospectus Directive are correctly applied.
13. As for the exemptions set out in Article 5.2, in some jurisdictions (MT, FR, and ES) the relevant power is used in collaboration with the stock exchange. In NO this power has been delegated.
14. On average the authorities apply ex post supervision. The authorities learn about violations from different sources such as own research (e.g. media control) notices, whistle blowing and complaints and cross information between the different departments of the authority. Complaints from the public or checking the newspapers are the usual techniques mentioned for supervising the correct application of the exemptions.
15. Two jurisdictions (FI and IT) seem to have a proactive approach and decide if an exemption is applied correctly. They receive requests for public offers and admission to trading and decide if an exemption should be granted. IT can veto market operator's decisions within 5 days and pecuniary sanctions are also available.
16. Some jurisdictions (SE and UK) do not apply proactive monitoring as to whether the exemptions are applied correctly. However, the UK monitors the activities of listed companies through the press. Sanctions are provided in cases of breaches of relevant provisions and enforcement action can be undertaken following complaints or other notices of breaches.
17. In relation to the issue of equivalent documents, all authorities except AT, DE, HU and NO, have the power to assess the equivalence. In most of the cases (CY, DK, EE, ES, FI, IT, NO, IE, LU, PL, PT, UK and SE) the equivalence of the documents is to be assessed on a case by case basis.
18. Most authorities (AT, BE, CY, CZ, DK, FR, EL, IS, IE, IT, LV, LU, MT, NL, PT, SK, SI, ES and UK) have the power to issue rules or regulations determining the information that would be considered as equivalent. Under certain circumstances one jurisdiction (DE) may adopt rules

to determine equivalence of the documents referred to in Articles 4.1(b), 4.1(c), 4.2(c) and 4.2(d) of the Prospectus Directive. The power to adopt rules may be delegated from Ministries of Finance and Justice. Some other jurisdictions (DE, FI, HU, IS, LT, NO, PL and SE) stated that they do not have this power. The equivalent documents have to be published in all countries.

19. Two jurisdictions (NL and PT) point out the difficulty of checking this availability as this type of document is disseminated only to the investors to whom the offer is made. So a complaint is necessary in order to detect irregularities. In the UK the equivalent document, not being a prospectus, does not have a statutory requirement for persons responsible similar to that provided in Article 6 for prospectuses. FR has developed instructions (guidance) to describe precisely what information would be considered as equivalent and the expected content of such information. The instruction also provides for the definition of the means of publication that are used (press releases, information posted on the issuer's web site).

<p>3. Information not included in the Prospectus (Articles 5.4, Art 8.1(a), Art 8.1 (b) of the Prospectus Directive</p>
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20. This section of the report explains how members have dealt with the provisions of the Prospectus Directive where the final terms are not included in the prospectus either because the issuer is using a base prospectus, or for the reasons set out in Articles 8.1(a) and 8.1(b) of the Prospectus Directive, or for the reasons set out in the final paragraph of Article 8.1.

21. From the report it can be seen that overall, all the members have the necessary powers in relation to this aspect of the Directive, and other than NO who has delegated this function to the stock exchange, all members exercise their powers directly.

Meaning of “as soon as practicable” and of “if possible in advance of the offer” for the purposes of Article 5.4

22. There appear to be some differences in terms of what members consider the meaning of “as soon as practicable” and of “if possible in advance of the offer”, for the purposes of establishing how members ensure that the final terms of the offer are provided to investors and filed with the competent authority when each public offer is made “as soon as practicable and if possible in advance of the offer” as set out below

23. Overall it is clear that members consider the meaning of both these terms to be at some point before the offer commences, and for others it is something that can only be determined on a case by case basis. Note that most consider “before the offer” to mean the day before and others any point in time before the offer.

How members ensure that the final offer price and amount of securities not included in a prospectus are filed with the competent authority and published (Art 8.1 Final paragraph)

24. From the answers given, members ensure that the final offer price and amount of securities not included in a prospectus are filed with the competent authority and published in a variety of different ways as follows:

- Requests to the issuer to submit and publish: AT, BE, DE, EL, IE, NL, PT, SK, ES, LT;
- Use of internal checklist to monitor this: CY;
- Requests the issuer to submit and publish/ ex post supervision: DK, FI; EE
- Constant monitoring: , LV, IT, PT;
- Confirmation of having done this to the Authority: HU;
- Clarification of when this will be published at time of vetting: LU;
- Registrar of companies ensures that this is done: MT;
- Delegation to the stock exchange: NO

- No experience to date: SI; and
- Systems and controls in place to ensure compliance: UK

How members deal with the information requirements of Article 8.1(a) are met and the withdrawal rights of Article 8.1(b).

25. All members use ex-ante approval of the prospectus to check that the information requirements of Article 8.1(a) and (b) are included in the prospectus and the failure to include this information will result in non approval of the prospectus.

26. The following points of interest were identified in respect of Member States' approaches:

- NL- only included Article 8.1(a) because the Ministry of Finance considers that there is a choice between Article 8.1(a) and (b) to implement.
- ES – In practice it is Article 8.1(b) that is used as the prospectus includes a non binding range, following the fixing of the price the rights of withdrawal can be used
- SI – has no practice of this to date – all the information has been known in advance

4. Responsibility for the prospectus and the summary (Article 6)

27. This section of the report deals with the nature of those who are responsible for the information provided in the prospectus, and the civil liability that attaches to them.

Responsibility for the prospectus and the summary

28. All members (other than NL) ensure that those set out in the directive are made responsible. In addition all members allow for additional persons to be responsible except: CZ, DK, LV, NL and SE.

29. In contrast, in the case of NL, it is the Dutch Act on Civil Law that regulates the responsibility of persons in relation to the prospectus. Article 6 of the Prospectus Directive is therefore not specified in the Act and Decree which implements the rest of the Prospectus Directive.

Civil liability

30. The questionnaire aimed at ascertaining whether or not members had the necessary powers to enforce civil liability, in contrast to the general administrative powers that they have been granted.

31. Due to the way in which the questions were drafted, a lack of clarity resulted and therefore, from the answers given the following can be summarised:

32. *Those with direct power to ensure that civil liability applies:* AT, CZ, FI, IE, FR, EL, HU, IS, IT, LV, LT, MT, NL, PL, PT, SI, SK, ES, SE, UK; and

33. *Those who exercise this power through application to the judicial authority:* CY (the persons making claims for damages have to apply themselves to the judicial authority), BE, DK, EE, LU, DE (prospectus liability is a civil law matter).

5. Omission of certain information (Articles 8.2 & 8.3)

34. This part of the report sets out how members deal with the provisions of Articles 8.2 & 8.3 of the Prospectus Directive which allows for the omission of information from a prospectus in certain circumstances, or the use of equivalent information.
35. Overall, all members (other than NO) have the power to authorise the omission of information for the reasons set out in Article 8.2, and all members have the power to ensure that equivalent information as provided for in the situations set out in Article 8.3.
36. In contrast, the following members have the power to issue regulations determining what information will be considered as equivalent: DK, EE, FR, IE, IT, CY, LU, NL, MT, PT, SK, SI, UK, and the following do not have such powers AT, BE, CZ, DE, FI, EL, HU, IS, LV, NO, PL, LT and ES.

A) Regarding the Omission of information

37. Overall there is reluctance to authorise the omission of information, which is something that is determined on a case by case basis on a few occasions following detailed examination of the stated justification for the omission. In addition, the following is considered to be interesting to note:

- IT, DE, – The underlying principle is that all information should be included, as such it is only in exceptional cases that information can be omitted.
- SE – It is considered that the reason for omission in art 8.2(a) i.e. “disclosure of such information would be contrary to the public interest” can not in practice exist and can not authorise omission for this reason.
- ES, DE, AT – Historically the omission of information has only been authorised in very exceptional cases.
- EL – A formal request to the board of directors who can authorise the omission has to be made.
- IE – The initial request is made to the stock exchange which subsequently makes a recommendation to the authority. Following an assessment of all the relevant facts, the authority will make a decision regarding the request for the omission of information.

B) Regarding the power to issue regulations determining what information will be considered as equivalent

38. FR and IE– Have to date not found the need to issue regulations about what would be considered as equivalent.
39. PT - does not consider it necessary to issue additional regulations as their administrative practice is enough.
40. FI – do not need the power because the inclusion of equivalent information requires the exemption granted by the authority. If needed the authority can issue an interpretation or examples of the cases where an exemption would be granted.
41. The authority in one jurisdiction (SE) acts to ensure that the prospectus is published. In accordance with its risk-based approach, the UK does not proactively monitor adherence to whether issuers apply the exemption correctly but will take enforcement action if this comes to its notice.

6. Validity of the prospectus, base prospectus and registration document (Article 9)

42. All authorities have the power to monitor that the documents referred to in Art. 9 of the Prospectus Directive (Prospectus, base prospectus and registration document) are only valid for a period of 12 months. Only in one jurisdiction (NO) the power has been fully delegated to the stock exchange.
43. In most of the jurisdictions, the supervision takes place ex ante i.e. when there is a public offer or an admission to trading on a regulated market the competent authorities check the validity of the relevant documents.
44. In practice, in order to supervise many authorities calculate the 12 month period by using a record.

7. Annual document (Article 10 of the Prospectus Directive)

45. All the authorities have the power to ensure that the relevant issuers publish an annual document in accordance with Article 10 of the Prospectus directive. However, in two jurisdictions (DK and NO) said power has been fully delegated to the relevant stock exchanges. In one jurisdiction (NO) even the sanctioning power has been delegated to the stock exchange.
46. In relation to the timing of publication of the annual document, some differences in practice have been identified across Europe. This timing is ranging between 20 and 30 days after the publication of the annual financial statements with many countries applying the 20 day period (BE, CY, PT, FI, IE and NO). In relation to the means of publication, different solutions have been indicated by some authorities such as the publication on the authority's website (PT and IE), on the issuer's website (BE, FR, PT and SE) and a stock exchange solution (NO).
47. Some authorities indicated that they have encountered problems with issuers that argued that the annual document is unnecessary because a) the same information can be accessed through the websites of the issuer or the stock exchange (CY and NO) and b) the same information will be provided by the issuers in accordance with the provisions of the Market Abuse and Transparency Directives (UK, LU, NL and LT).
48. All the authorities have the power to ensure that the annual document is filed with them after the publication of the financial statements. However, in two jurisdictions (DK and NO) this power has been delegated to the stock exchange. Many authorities (AT, BE, CY, FI, IE, IT, DE, LU, MT, NL, PL, PT, SE, SI, UK and ES) declared that if an issuer fails to publish the documents within the prescribed terms after the publication of the annual financial statements, the authority can require the publication of the document.
49. All the authorities have the power to ensure the compliance of disclosure requirements with regard to the annual document in accordance with art. 10.2 of the Prospectus Directive. However, in two jurisdictions (DK and NO) this power has been delegated to the stock exchange. In two other jurisdictions (IS and HU) the authorities are exercising this power in cooperation with the relevant stock exchange.
50. All the authorities have the power to ensure that the exemption provided for in Art. 10.3 of the Prospectus Directive (of issuers of non equity securities whose denomination per unit amounts to at least 50,000) is used correctly. In two jurisdictions (DK and NO) this power has been delegated to the regulated stock exchange.

8. Incorporation by reference (Article 11)

51. All the authorities have the power to ensure that the documents incorporated by reference in a prospectus are those permitted in the provisions of Art. 11.1 of the Prospectus Directive. In one jurisdiction (NO) this power is delegated as part of the delegation of the power to scrutinize and approve prospectuses.
52. Many authorities (AT, EE, DE, LU, EL, IE, FI, IT, BE, MT, PL, ES, DK, PT, SI, CY, UK and the NL) stated that they control ex ante this provision i.e. they don't approve the prospectus if the issuer does not comply with art. 11.
53. All the authorities apart from one (CZ) have the power to ensure the inclusion of a cross reference list where applicable in accordance with Art. 11.2. In one jurisdiction (NO) this power has been delegated to the stock exchange.

9. Approval of the prospectus and the supplement (Articles 13, 16 and 17.2)

Approval of the prospectus and transfer of approval (Art. 13)

54. All the authorities have the power to approve prospectuses. In one jurisdiction (NO) said power has been delegated to the stock exchange. In another jurisdiction (IE) the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange but the approval of the prospectus lies with the authority.
55. Some authorities (ES, NL and CZ) reported problems regarding the supervision of this issue.
56. In relation to the power of the authorities to prohibit the publication of a prospectus until it has been approved, there is diversity across the EU. One authority (CY) does not have the power. On that issue, CY specified that it does not, explicitly, have the power to prohibit the publication of a prospectus until it has been approved, however, the publication of a prospectus without approval is subject to administrative measures. AT stated that it exercises this power with application to judicial authorities and another authority (NO) declared that it has delegated this power to the stock exchange as well as the sanctioning power for violation of this provision.
57. Most of the authorities declared that no prospectus can be published until it has been approved by the authority/ or the stock exchange (NO). In one jurisdiction this power has been delegated to the stock exchange which approves the prospectus. In another jurisdiction the authority collaborates with the relevant exchanges (MT). Two authorities (AT and DK) stated that they also undertake ex post supervision.
58. Some authorities (AT, MT, PT, DE and ES) specifically stated that they get information from consumer/ investor complaints and their own research of the media, whistle-blowing (PT) and cross checking with other departments of the authority (PT).
59. In most of the jurisdictions (BE, CY, EE, FI, IC, IT, LU, IE, ES, SI, SE and UK) non compliance with this obligation can lead to administrative measures such as suspension/ prohibition of the offer by the authority, the publication of the fact that the issuer is failing to comply (LU) or administrative sanctions such as fines can be imposed (BE, DE, EL, FI, IT, LV, NL, NO sanctions imposed by the stock exchange). In six jurisdictions (BE, CY, AT, FI, PL and the UK) it can lead to penal sanctions.
60. All the authorities have the power to notify the approval of a prospectus to the issuer, the offeror or the person asking for admission to trading. In one jurisdiction (NO), this power has been delegated to the stock exchange. Most of the authorities notify the issuer by a letter but other (usually complementary) means of notification are also used such as fax, phone, e-mail and publication on the authority's website.

61. All the authorities declared that they approve prospectuses within the timeframes provided for in Articles 13.2, 13.3 or 13.4 as appropriate. In one jurisdiction (NO) this power has been delegated to the stock exchange.
62. All the authorities declared that they have the power to notify the issuer that the documents submitted to it for approval are incomplete or require supplemental information within the timeframe provided for in Art. 13.4 (i.e. within 10 working days of the submission of the application). In one jurisdiction (NO) this power has been delegated to the stock exchange.
63. With the exemption of two (DE and LV), authorities have the power to transfer the approval of a prospectus to the competent authority of another member state and notify this transfer within three working days from the date the decision was taken by the authority. However, most of the authorities (AT, BE, CY, CZ, FI, IE, LT, LU, MT, PL, PT, SI, IT, DK and NL) reported that in practice the transfer of approval has not taken place yet. In ES there has been one case of transfer of the approval of a prospectus from the Spanish competent authority to another competent authority of the EU.

B. Approval of the supplements to the prospectus (Art. 16 and 17.2)

64. All the authorities declared having the power to ensure that the supplement to the prospectus is produced and published in accordance with Articles 16 and 17.2. However, two authorities (AT and DK) stated that they exercise said power in cooperation with the judicial authorities and in one other jurisdiction (NO) this power has been delegated.
65. The authorities learn about the relevant changes which require a supplement via ad hoc information but also via requests (AT, FI, PL, UK and DK), complaints (AT, CY, FR, EE, PL, PT and DK), whistle blowing (PT and SE), cross information with the relevant departments of the authority (EE, PT and UK) and own research (EE, FR, PL, AT, SE, DK, CY and PT which controls on a daily basis the media).
66. In the case they learn about the relevant changes which require a supplement, they will require the issuer to publish a supplement (FR, IT, PL, AT, BE, CY, NL, NO/ stock exchange and PT, UK), request an explanation from the issuer (PL, MT) suspend or interdict the offer (PL, IT, BE), make a public statement (PL, BE) or impose a pecuniary sanction (BE, DE, MT, IT and NL).
67. All the authorities stated that the method followed for the approval of the supplement is that of the original prospectus with the exemption of the 7 working days period for the approval of the supplement provided for in Art. 16 of the Prospectus Directive.

<p>10. Filing, publication and availability of the prospectus (Article 14)</p>

68. This section deals with the way following which a prospectus should be filed, published and made available to the public
69. All the authorities have the power to ensure that the approved prospectus is filed, even if in NL, LT and DK, there is no specific legal obligation to file a prospectus because the filing is considered a result of the approval of the prospectus.
70. Some of the countries (AT, LT) check the availability of the prospectuses on a reactive basis (investigations are made on the basis of complaints from investors or ex post checking) while some of the others (CY, EL, LU, NO, SE) take a proactive profile (checking the website of the issuer, putting in place a procedure where the stock exchange cannot list a security without having checked the availability of the prospectus).

11. Advertisements (Article 15)

71. This section deals with the supervision of the advertisements.
72. All competent authorities have the power to supervise the advertisements, although NO has delegated this power to the stock exchange and SE exercises it in collaboration with the stock exchange
73. In FR, advertisements shall contain a notice alerting the public of the section “risk factors” of the prospectus and where applicable and at the request of the French regulator a warning about exceptional characteristics of the issuer, the guarantors or the relevant financial instruments.
74. The competent authority of the home Member State shall have the power to exercise control over the compliance of advertising activity. Since in practice this task is difficult to be executed, countries were asked whether they had encountered any problems as a host competent authority from the fact that they are not the competent authority responsible for the supervision of the advertisements (related to a public offers of which the prospectus was approved by another authority).
75. In the IE and UK, issuers are required to insert a bold and prominent statement on advertisements that the advertisement is not a prospectus but an advertisement and investors should not subscribe for any transferable securities except on the basis of the information in the prospectus. This is so as to ensure that investors are offered the protection of the prospectus including obtaining the full information on the issuer.

12. European passport of prospectuses (Articles 17 and 18)

76. This section deals with the procedure followed when passporting a prospectus to a host competent authority and the issuing of the certificate of approval attesting that the passported prospectus has been drawn up in accordance with the directive.
77. When acting as host member states, it seems that all the competent authorities have the relevant powers and, along with the provisions of the directive, do not undertake any approval or administrative procedures relating to prospectuses notified by the relevant home Member State when acting as the host Member State and accept validity of the prospectus and supplements approved by the competent supervisory authority of another Member State of the European Union, and if they provide proof to the authorities that the prospectus or base prospectus is in compliance with the regulations of the European Union.
78. In BE, HU, SI and LT, it is observed that a part of the requests for passporting are not coming with either the final terms or an advertisement or both. It means that a part of the requests for passporting is made automatically to a certain number of countries without the real intention to launch a public offer in some of these countries.
79. IE and NL think that if all countries would require the same, the functioning of the passport would be easier. The NL competent authority indicates that there are countries that require for example a fax of the certificate or countries that require all the documents incorporated by reference.
80. Regarding the passporting of supplements, many competent authorities (AT, BE, CY, CZ, LT, LU, NL) judge that it is up to the home/host regulator to draw the attention of the issuer to the obligation to passport the supplement in the host country. In other words, it is up to the issuer to demand the passporting of the supplement to the home/host regulator.

13. Language regime for the prospectus (Article 19)

81. With regard to the language regime of the prospectuses, it should be noted that, in most countries, when an offer to the public is made or admission to trading on a regulated market is sought only in the home member state the prospectus is written in the national language of the competent authority or else can be written as well in English. (Exception: LV which can only accept the national language).
82. With regard to the language regime of the prospectuses, it should be noted that, when an offer to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding the home Member State, the prospectus is drawn up either in a language accepted by the competent authority of those Member States or in language customary in the sphere of international finance at the choice of the issuer, offeror, or person asking for admission, as the case may be.
83. Most competent authorities do require the summary to be translated into their official language(s).

14. Issuers incorporated in third countries (Article 20)

84. With regard to issuers incorporated in third countries, it should be noted that all the authorities except MT and NO have the power to approve prospectuses from third country issuers under the conditions provided for in the directive. In addition, some authorities require a cross reference list if all the elements of Reg. 809 are not included in the prospectus.

15. Competent authorities and the delegation of powers (Articles 21.1 and 21.2)

85. All authorities are the designated central competent administrative authorities in their respective country.
86. Almost half of the authorities do not have the power to delegate responsibilities related to the PD (CZ, FI, DE, EE, HU, LV, LT, MT, NL, PL, SK, SI, SE, UK) while the other half does have this power (AT, BE, CY, DK, FR, EL, HU, IE, IT, LU, NO, PT, ES) but little instances of delegation were evidenced yet. The AT framework provides for different filing authority. In IE the authority has delegated certain tasks to the stock exchange subject to such conditions as the authority specifies. Notwithstanding any delegation, the final responsibility for supervising compliance with the Prospectus Directive rests with the authority.

16. Powers (Articles 21.3 and 21.4)

Powers to require issuers, offerors or persons asking for admission to trading on a regulated market to include in the prospectus supplementary information, if necessary for investor protection

87. All authorities have the power to ask for additional information to be included in the prospectus directly. In IE the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The approval of the prospectus rests with the authority. In NO this power has been delegated to the stock exchange.

88. As a general comment, practical experience of the exercise of these powers since the implementation of the Prospectus Directive varies from one Member to another. DK, HU, IC, LV, MT, PL reported no cases so far since the implementation of the Prospectus Directive. CY, EL, FI, IT, LU, SI reported that it is usual practice to require the issuer to insert additional information as a result of the scrutiny of the prospectus.

Powers to require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents

89. All the authorities have also the power to ask for information and documents. In IE the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The approval of the prospectus rests with the authority. In NO this power has been delegated to the stock exchange. FI, HU, IC, LT, MT reported no cases so far.

Powers to require auditors and managers of the issuer, offeror or person asking for admission to trading on a regulated market, as well as financial intermediaries commissioned to carry out the offer to the public or ask for admission to trading, to provide information

90. All the authorities have the power to require auditors, managers and financial intermediaries to provide information except NL which does not have the power to require auditors to provide information. In IE the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The approval of the prospectus rests with the authority. In NO this power has been delegated to the stock exchange.

Powers to suspend a public offer or admission to trading for a maximum of 10 consecutive working days on any single occasion if it has reasonable grounds for suspecting that the provisions of this Directive have been infringed

91. All the authorities have the power to suspend the public offer or the admission to trading. In NO this power has been delegated to the stock exchange. No cases in practice reported so far by most jurisdictions. IT reported two cases of suspension of public offer in 2005.

Powers to prohibit or suspend advertisements for a maximum of 10 consecutive working days on any single occasion if it has reasonable grounds for believing that the provisions of this Directive have been infringed

92. All the authorities except EE have the power to prohibit or suspend advertisements for a maximum of 10 days. In NO the power has been delegated to the stock exchange. In FI the power to prohibit advertisements is exercised with application to judicial authorities (Market Court).

93. In BE and HU the draft of all advertisements shall be submitted to the regulator at least five business days before the conclusion of the marketing procedure or before the commencement of trading on a regulated market. In BE and HU the regulators may ban the publication of the advertisement if it contains any information that is in contrast with the draft version submitted and approved for publication as well as any information that is misleading.

Powers to prohibit a public offer if it finds that the provisions of this Directive have been infringed or if it has reasonable grounds for suspecting that they would be infringed

94. In relation to the powers of prohibition or suspension of trading and prohibition of public offers all the authorities except EE have the relevant power. In FI the power to prohibit

public offer or admission to trading is exercised with application to judicial authorities (Market Court). In NO the power has been delegated to the stock exchange. No cases in practice have been reported so far in most of the jurisdictions.

95. In 2005 IT prohibited the offer in 6 cases. In EL, NL, AT, CZ, IE, NO, SI, ES no offer has been prohibited so far. In DE in 2006 a few cases were reported, that exclusively dealt with the prohibition of public offers of non-listed companies and companies listed on non-regulated markets. In 2005 DK did not prohibit any offers by issuers who filed for approval of their prospectus. In CY since the implementation of the Prospectus Directive they did not approve one prospectus for a public offer, on the grounds that the issuer did not submit to the authority the final prospectus, corrected and signed by the persons responsible. The issuer later resubmitted a new application for approval of a prospectus. In LU they did not prohibit any offer under the new prospectus regulation. Nevertheless, they may point out that some prospectuses have not been approved when information provided in relation to the offer has not been compliant with the Prospectus Directive. They have no statistics about details. In PL in the period July 2005-October 2006 the competent authority prohibited the offer in 1 case.

Powers to suspend or ask the relevant regulated markets to suspend trading on a regulated market for a maximum of 10 consecutive working days on any single occasion if it has reasonable grounds for believing that the provisions of this Directive have been infringed

96. All the authorities except EE and DE have the power to ask the relevant regulated market to suspend the trading on a regulated market and to prohibit trading for 10 days. NO has delegated this power to the stock exchange. In DE this power lies with the stock exchange/ stock exchange supervisory authority. In IT the regulator may request the market management company to suspend financial instruments from trading. In case the market operator does not comply the regulator can intervene directly on the market platform to suspend the trading. This has happened in the past. However normally the regulator informally requests this of the market operator and the market operator implements the request. In SI the regulator has the relevant powers but technically the Agency cannot suspend trading but has to request this action from the stock exchange. The stock exchange can suspend trading on a regulated market also by itself and in accordance with its Rules that become valid after Agency's approval and also for reasons not relevant for this issue. No cases of suspension of public offer or admission to trading or prohibition or suspension of advertisement are reported.

Powers to prohibit trading on a regulated market if it finds that the provisions of this Directive have been infringed

97. All the authorities apart from CZ have the power to prohibit trading on a regulated market. In FI the power is exercised with application to the judicial authority. In DE the powers under Article 21.3(h) are within the competence of the German Stock Exchange Supervisory Authority. In NO the power has been delegated to the stock exchange. In CZ the authority cannot prohibit trading; it can only suspend it for a maximum of six months.

Powers to make public the fact that an issuer is failing to comply with its obligations

98. In relation to the power of the authority to make public the fact that an issuer is failing to comply with its obligations, all the authorities have this power with the exemption of NO. In this latter case (NO) the power is not considered necessary as such information will normally *not* be subject to professional secrecy. Breaches of prospectus requirements will normally be published by the stock exchange, sometimes on a no-name basis.
99. In DE under certain circumstances, the regulator may publish non-appealable measures against the issuer's infringement of the Prospectus Directive law. In DK an injunction regarding Article. 10 of Prospectus Directive can be made public. In IT the regulator can publish non-compliance by issuers- either in Consob's or Bank of Italy's bulletin and establish other methods of making this public – the expenses for which are passed to the

issuer. All the decisions adopted by the regulator in IT on suspension of offers or prohibition of offers have been published on the web-site of the regulator and on the weekly newsletter. In SE the regulator has the power to make public that the issuer does not comply. The decision must be taken on a case by case basis. Generally, these powers exist in BE too.

Powers to require the issuer to disclose all material information which may have an effect on the assessment of the securities admitted to trading on regulated markets in order to ensure investor protection or the smooth operation of the market, once the securities have been admitted to trading on a regulated market

100. All the authorities except DE and NO have the power to require the issuer to disclose all material information. In NO the necessary powers are considered to be provided (to the stock exchange) in the Exchange Act and Stock Exchange Regulation's provisions regarding the issuer's disclosure obligations. In DE this power with respect to Article 21.4 (a) lies with the stock exchange. In LT the regulator can exercise this power either directly or in collaboration with the stock exchange. In SE disclosure of material information is ensured by the market operator.

Powers to suspend or ask the relevant regulated market to suspend the securities from trading if, in its opinion, the issuer's situation is such that trading would be detrimental to investors' interests, once the securities have been admitted to trading on a regulated market

101. All the authorities except DE and NO have the power to suspend or ask the regulated market to suspend the securities from trading. In NO such power belongs to the stock exchange. In DE this power lies also with the stock exchange. In LT the regulator can exercise this power either directly or in collaboration with the stock exchange.

Powers to ensure that issuers whose securities are traded on regulated markets comply with the obligations provided for in Articles 102 and 103 of Directive 2001/34/EC and that equivalent information is provided to investors and equivalent treatment is granted by the issuer to all securities holders who are in the same position, in all Member States where the offer to the public is made or the securities are admitted to trading

102. All the authorities except DE and NO have the powers to ensure that issuers whose securities are traded on regulated markets comply with the obligations of Articles 102 and 103 of Directive 2001/34/EC. In DE the powers under Article 21.4 are within the competence of the German State Stock Exchange Supervisory Authority. In DK this power is exercised with application to the judicial authorities. In NO this power is considered to be covered by the national law that implemented Directive 2001/34/EC. In SE the regulated market has the primary power to stop the trading, but if they don't, the regulator has that power.

Powers to carry out on-site inspections in its territory in accordance with national law, in order to verify compliance with the provisions of this Directive and its implementing measures. Where necessary under national law, the competent authority or authorities may use this power by applying to the relevant judicial authority and/or in cooperation with other authorities

103. In relation to the power to carry out on site inspections, all the authorities but DE, DK, NO and PL have the relevant power. In DE the powers under Article 21.4 are within the competence of the German State Stock Exchange Supervisory Authority. NO considers that instead of on site inspections it can impose penalties. The reason for not empowering the authority to carry out on site inspections was partly that the offeror/issuer will be subject to disclosure obligations where non-compliance may be sanctioned with day penalty, and partly that breaches of the prospectus rules may be a criminal offence. The prosecutor authority has adequate powers to secure evidence. PT can exercise this power directly but it can also ask for the cooperation of judicial authorities and the police. In SE the regulator has the power only to carry out on-site inspections of those issuers who are directly under the Authority's supervision.

17. Professional secrecy (Article 22.1)

104. All the authorities have provisions regarding professional secrecy directly applicable by them. In some jurisdictions professional secrecy rules may be also imposed apart from laws by codes of conduct of the authorities (AT, DE, and PT). In some jurisdictions (AT, EL, FI, NO, PT) professional secrecy rules also apply to other persons performing directly or indirectly, permanently or occasionally any service for the authorities even after the services rendered have ceased.

18. Cooperation between authorities or with market participants (Article 22.2)

105. All the authorities except LV have the power to consult operators of regulated markets as necessary (see Article 22.2 of the Prospectus Directive) and, in particular, when deciding to suspend or prohibit (or to ask to suspend) trading. It also appears that all the respondents except NO have the power to provide directly assistance to foreign regulators in cases where there is shared competence or when the approval has been transferred. However, it seems that there is a lack of practical experience with respect to the implementation of Article 22.2 of the Prospectus Directive.

19. Precautionary measures (Article 23)

106. As regards precautionary measures (Article 23 of the Prospectus Directive) all the respondents but two (NO and CZ) when acting as the host Member State authority have the power to communicate to the home authority the irregularities or other violations committed by the issuer or the financial institution in charge of the public offer. It appears, however, that there is a lack of practical experience in the implementation of such provisions.

20. Sanctions and right of appeal (Articles 25 and 26)

107. This section deals with the types of sanctions the different competent authorities can impose, the range of administrative fines, the publication of the sanctions and the right of appeal against the decisions imposing sanctions.

108. Almost all the authorities have the power to impose sanctions in case of infringement of the directive provisions. In the case of NO this power is delegated to the stock exchange. In DK and FI certain sanctions are imposed with application to the judicial authorities and in ES sanctions for very serious infringements rest with the Ministry of Finances.

109. Regarding the publication of sanctions, it seems that significant divergences exist among the CESR Members.

21. Procedure for the election of a home member state by a third country issuer

110. With regard to the procedure for the election of home member state for third countries issuers it should be noted that that no specific procedure has been set up in most of the Member States.

22. Questions in relation to the Regulation 809/ 2004 9 Art. 3.3, 22.1, 23.1, 23.3, 25.4, 26.3, 30.2 of the Regulation

111. All jurisdictions have the power to require information on the prospectus or base prospectus to be completed on a case by case basis. In some jurisdictions (IC, and NO) the regulator has delegated this power to the Stock Exchange.
112. All jurisdictions but DK, HU and SI have the power to ask for adapted info in the prospectus or the base prospectus.
113. All regulators have the power to require the issuer to provide more detailed information about every item of the prospectus. They can also ask the issuer to provide a cross reference list when the order of the items of the prospectus does not coincide with the order of the building block and schedules. In one jurisdiction (NO) the regulator has delegated this power to the Stock Exchange.
114. Concerning the power to determine a newspaper whose circulation is deemed appropriate, all jurisdictions do have this power (apart from HU). NO has delegated this power to the Stock Exchange.



Final report



INTRODUCTION ON CESR MEMBERS' POWERS UNDER THE PROSPECTUS DIRECTIVE AND ITS IMPLEMENTING MEASURES

1. The mapping exercise of CESR Member's powers in relation to the provisions of the Prospectus Directive and the highlighting of issues of interest are presented in twenty two different sections which are following as closely as possible the order of the articles of the Prospectus Directive and include also a selection of questions regarding the Regulation on Prospectuses n°809/2004.
2. In spite of the fact that the vast majority of the authorities have the power to create and supervise the register of the qualified investors, some jurisdictions indicated that issues of compliance with the Data Protection Directive provisions could arise. It is noted a certain diversity among the authorities in relation with the accessibility of the register.
3. Almost all the authorities have the power to directly monitor that public offers of securities are not made without prior publication of a prospectus and the vast majority of the authorities monitor proactively this issue.
4. Regarding the exemptions¹, the general picture is that the authorities apply ex post supervision. In relation to the issue of equivalent documents, almost all the authorities have the power to assess the equivalence and in most cases the assessment is made on a case by case basis. Some jurisdictions have not the power to issue rules or regulations determining the information that would be considered as equivalent. It is pointed out the difficulty of checking the availability of the equivalent documents.
5. The majority of the authorities ensure that the final offer price and amount of securities not included in a prospectus are filed with the competent authority and effectively made public via a request to the issuer to submit and publish it. If the information required in article 8.1 of the PD² is not included in the draft prospectus, the document is not approved by the competent authorities.
6. All Members but one ensure that the persons or bodies set out in the Prospectus Directive are effectively made responsible.
7. All the authorities but one have the direct power to authorize the omission in the prospectus of information for the reasons set out in article 8.2. of the PD but only a number of these authorities have the power to issue regulations determining what information will be considered as equivalent. There is a general reluctance to authorize the omission of information.
8. All the authorities but one have the power to directly monitor that the prospectus, base prospectus and registration document are only valid for a 12 month period. This monitoring is generally done when the issuer intends to make a public offer or an admission to trading on a regulated market.
9. All the authorities have the power to ensure that the annual document of article 10 of the PD is published annually by the relevant issuers, that this document is filed with them after the publication of the financial statements, that this document comply with the disclosure requirements and that the exemption provided for in article 10.3³ of the PD is used correctly. Some authorities indicated that some issuers argued that the annual document is unnecessary because the same information is accessible on the issuers' website or will be

¹ Articles 3.2, 4. and 5.2 of the PD.

² Information about the formation of the offer price and the withdrawal right following the publication of the publication of the final offer price and the amount of securities offered.

³ Exemption of annual document for issuers of non equity securities whose denomination per unit amounts is at least of EUR 50,000.

provided by the issuers in accordance with the provisions of the MAD and Transparency Directives.

10. All the authorities have the power to ensure that the documents incorporated by reference in a prospectus are those permitted in article 11.1 of the PD. If this provision is not respected, the draft prospectus is not approved by the authorities.
11. All the authorities but one have the power to approve prospectuses, to notify the approval, to approve in the timeframes provided for in the PD, to notify the issuer that the documents are incomplete or require supplemental information within the timeframe provided by the PD, to transfer the approval of a prospectus to the competent authority of another Member State and to ensure that the supplement to the prospectus is produced and published in accordance with the PD. Most of the regulators declare that no prospectus can be published until it has been approved by them.
12. All the authorities have the power to ensure that the approved prospectus is filed, even if in three jurisdictions there is no specific legal obligation to file this document, because the filing is considered as a result of the approval of a prospectus. The availability of the prospectus is checked either reactively or proactively.
13. Not all the regulators have the competence to supervise the advertisements. Certain countries have either a checklist or advertising principles.
14. All the competent authorities declare they do not undertake any approval or administrative procedures relating to prospectuses notified by the relevant home Member State when acting as the host Member State. However, it is observed that a part of the passporting requests is made automatically to a certain number of countries without real intention to launch a public offer in some of these countries. It is also reported that it is up to the issuer to demand the passporting of supplements to the home/host regulator.
15. In all the countries but one a public offering or an admission to trading done by an issuer in his home country can be launched with a prospectus set up in the language of the home country or in English. If these operations are launched in one or more countries, other than the home country, the languages are those accepted by the competent authority (ies) of those Member States or English. Most regulators require the summary to be translated into their official language(s).
16. All the countries accept prospectuses from third countries issuers provided that their prospectuses are set up under the conditions of article 20 of the PD.
17. With regard to the designation of central competent authorities and the delegation of responsibilities of central authorities, it should be noted that authorities are the designated central competent administrative authorities in their respective country and that most of them do not explicitly have the power to delegate responsibilities related to the PD. However in one country NO all the powers have been delegated directly by the law and not by the competent authority to the Stock Exchange.
18. All authorities have directly the power to ask for additional information to be included in the prospectus, to ask for information and documents to the issuer, to require auditors and managers of the issuer to provide information (except one country regarding the auditor), to suspend or prohibit a public offer or an admission to trading (few cases of suspension or prohibition indicated in some countries), to prohibit or suspend advertisements, to suspend or prohibit (except one country for the prohibition) directly or by asking it to the relevant regulated market, the trading on a regulated market (few cases of suspension reported so far), to make public the fact that an issuer is failing to comply with its obligation (except one country), to require directly or via the market operator, the issuer to disclose all material information which may have an effect on the assessment of the securities admitted on a regulated market, to ensure that issuers whose securities are traded on a regulated market comply with article 21, 4, c of the PD (except on country; in

some countries this power is delegated or exercised with the judicial authority) and to carry out on-site inspection in order to verify compliance with the provisions of the PD and its implementing measures (except one country; in other one, this power is exercised by the stock exchange).

19. All the authorities have provisions regarding professional secrecy, even in some jurisdictions these rules may be imposed by codes of conduct of the authorities.
20. All the authorities but one have the power to consult operators of regulated markets in particular when deciding to suspend or prohibit trading. All the jurisdictions except LV can provide direct assistance to foreign regulators in cases where there is shared competence or when approval has been transferred. The direct provision of assistance to foreign regulators is mandatory in all jurisdictions but two, when requiring the suspension or prohibition of trading for securities traded in various Member States. Assistance given to a host authority is also mandatory in all the countries but three from the stage at which the case is scrutinized in particular for new type or rare forms of securities. It should be noted that there are some differences in the perception of the scope of the cooperation to be provided.
21. All the regulators but two when acting as the host Member State have the power to communicate to the home authority the irregularities or other violations committed by the issuer or the financial institution in charge of the public offer. Till now, only a few Member States have experiences in this field. All the jurisdictions but two when acting as host authorities have the power to take all appropriate measures in order to protect investors in particular in cases in which despite the measures taken by the home regulator or because such measures appear inadequate, the violations continue to be perpetrated. However, it seems that there have not been cases since the implementation of the PD that would enable to test the use of such powers in cases of cross border offerings.
22. All the authorities but one have the power to impose sanctions in case of infringement of the PD provisions.
23. No specific procedure has been set up in most countries regarding the election of home Member State for third countries issuers.
24. All jurisdictions have the power to require information on the prospectus to be completed on a case by case basis, to ask for adapted info in the prospectus or to require more information on every item of the prospectus.

Comparison with the mapping exercise conducted by CESR in 2004

25. As a general comment it should be noted that the mapping exercise of CESR Members' supervisory powers which was conducted in 2006 refers to a different number of jurisdictions (namely 27 jurisdictions) comparing to the mapping exercise which was undertaken by CESR in the course of 2004 (namely 17 jurisdictions). It should be also noted that the exercise was done before Romania and Bulgaria became members of CESR.

Impact of the transposition of FSAP Directives (PD and MAD) on powers

26. In the mapping exercise the Member States did not explicitly indicate any further constitutional interpretative constraints regarding sanctions, investigation and rulemaking. Conflicts of constitutional nature in the exercise of respective powers were not highlighted by the Member States. Generally, Member States are enabled to exercise the powers to be given to them according to the relevant provisions of the directives. However, the mapping has shown a very diverse picture regarding the degree of experience Member States have in the application of respective powers so far and it can be



assumed that the variety of cases and respective administrative practices could shed light on problems of constitutional nature as well.

Primary Markets

27. The outcome of the original exercise showed that the regulated markets still retained considerable powers. The current exercise demonstrates that the situation has changed and only one country maintains a total delegation to the regulated market in this area. In all other countries, even where certain tasks are delegated, the overall and primary responsibility for the process of approval of listing prospectuses has been entrusted to the regulator.

Transfer of powers to another EU securities supervisor.

28. In the former Mapping Exercise an overwhelming majority of CESR members did not have the power to transfer supervisory powers to another securities regulator in another Member State. In this area the securities regulators made significant progress as almost all authorities, two jurisdictions excepted, have the power to transfer the approval of a prospectus to the competent authority of another Member State and notify this transfer within three working days. Nevertheless, most of the authorities reported that in practice the transfer of approval has not taken place yet. In only one jurisdiction there has been one case of transfer of approval of a prospectus to another CESR member.

Outcome of the mapping exercise

29. The outcome of the original exercise (in 2004) showed a lack of powers in the field of rulemaking and with respect to international cooperation. In particular, reference was made to areas considered to be particularly critical such as accounting, auditing and corporate governance. The implementation of the Prospectus Directive seems to have addressed certain of these issues since it provides the competent authority with the power to request information from issuers, auditors and more broadly to those involved in the offering process.

30. As far as rulemaking powers are concerned, the situation improved due to the implementation of the Market Abuse and the Prospectus Directive. Almost all the authorities declare that they have the power to adopt regulations in the field covered by the Prospectus Directives.

1. Register of qualified investors (Article 2)

31. This part of the report describes whether authorities have the power to create and to supervise the register of qualified investors. Further it gives insight in the followed procedures for registration and accessibility of the register to issuers.

A. Creation of the register

Powers

32. The vast majority (AT, BE, CY, CZ, DK, FI, FR, DE, EE, EL, HU, IS, IE, IT, LV, LT, LU, NL, PL, PT, SK, SI, UK) of the authorities have the direct power to create and supervise the register of the qualified investors directly and replied that SMEs and/or natural persons can be registered as a qualified investor in their jurisdiction.

33. In one case (NO) this power has been attributed directly by the law to the relevant stock exchange. One jurisdiction (SE) decided not to create a register. In BE the category of qualified investors is currently not extended to natural persons. Another jurisdiction (MT) has the power through the Register of Companies.

34. In one jurisdiction (ES) third persons (which are investment firms in ES) have taken on this function; however the authority has the power to supervise the functioning of the register (including on-site inspections). There is no delegation of tasks, as article 2.3 of the Prospectus Directive does not require the competent authority to be in charge of the register, but only to ensure that the appropriate mechanisms are in place for the register.

Issues of Interest

35. Some countries (AT, CY, CZ, DK, EE, IE, LU, LV, LT, MT and PT) explicitly mentioned that they have not received any applications for inclusion on the register of qualified investors to date. EE specifically stated that they will issue guidance on the requirements and process of registration as a qualified investor, when the need arises.

36. Some jurisdictions (AT, BE, CY, DK and NO) gave more clarity concerning the level of control regarding the data provided. NO relies on the declaration of the investors, unless specific circumstances should indicate that the declaration is not correct. In BE, it is considered that the quality of the data transmitted is the responsibility of the person seeking to be admitted to the register, even if the BE regulator checks the documents submitted in order to eliminate false demands. In AT the authority/ stock exchange reviews the data provided and if necessary requests additional information from the applicant. If an application for inclusion in the register is received in CY, the authority will check that the applicant has supplied all the information needed and that this meets the requirements of the law for inclusion in the register. DK has not yet received any applications for inclusion in the register but the authority will review the data provided and if necessary ask the applicant for additional information.

37. One jurisdiction (NL) specifically referred to the deletion of entries on the register which may take place either on request of the qualified investor itself or by the authority when this would be necessary to maintain the proper working of the capital markets. In another jurisdiction (IE), a small or medium sized enterprise or a natural person wishing to be removed from the register is required to submit a written request to the authority which will process that request within 10 working days of its receipt.

Data protection

38. Some jurisdictions (DE and SI) indicated that issues of compliance with the data protection provisions could arise. In DE it is a general concern that gathering and making available personal (confidential) data has to comply with the applicable data protection rules. In SI there are also important concerns in relation to compliance with data protection provisions in relation to the authorities' daily work as well as for the preparation of secondary legislation. The authority has to submit all the drafts of secondary legislation to the Information Commissioner so that the content can be checked for compliance with individual data protection legislation. In BE, natural persons can not be registered in so far as the data protection issue is not totally solved.
39. Several other jurisdictions (AT, CY, CZ, ES, HU, LU, NL, NO, PL and UK) do not have concerns related to data protection or have not addressed them yet. In AT providing the information on a secured website solved this issue. In LU data protection issues have been taken into account at the time of preparation of the relevant legislation. In ES the securities legislation expressly states that the establishment and functioning of the register of qualified investors should respect the data protection legislation. In PL the database of qualified investors (included in the register maintained by the competent authority in PL) is according to the legislation open for perusal. Any person who would like to be included in the register is aware that his/her data are available to everyone.
40. In HU the authority is authorized to manage personal data related to qualified investors. The authority must provide sufficient technical facilities for the protection of the data it manages in order to ensure against unauthorized access, disclosure by transmission, alteration or erasure by operating a logically closed system. In some jurisdictions (CY, CZ, NL) no such concerns have been addressed yet. In the NL the register of qualified investors is not public but the regulator can confirm, on request, whether a person is a qualified investor. In NO this issue has been discussed with the Norwegian Data Inspectorate and is not considered to raise issues with regard to data protection legislation, as only the name of the investor (and the company registration number) is published.

B. Procedure for Registration

41. Some Member States (AT, CZ, FI, FR, DE, HU, IE, IT, LT, NL, PL, SI, ES and UK) follow determined procedures to register the qualified investors.
42. Several countries have (FR, IS, IE, LT, NL, PL and LU) or will have (ES and DE) a written procedure, which describes how the qualified investors should proceed in order to be registered and indicating to what extent the public can access the information. Some jurisdictions (EL, LU and DE) will issue guidance in the near future which will determine the process of creation and supervision of the register.
43. In one case (NO) the power is delegated to the stock exchange and such a registration form is to be submitted to the stock exchange.
44. CY, DK and CZ have not created a register of qualified investors, because they have not yet received an application. DK has no specific procedure for the creation of the register. The creation of the register will follow the law and the investors who want to be registered.
45. SE has decided not to create a register for qualified investors. In another case (PT) the procedure for the register does not exist yet and is to be defined by an authority regulation.

Issues of interest

46. In SI an authority Decision is issued describing the procedure of registration and deletion from the register and the procedure to access data in the register. When the investment firm receives a request from a person (legal entity or individual) it collects and checks the documents defined in the above Decision. Afterwards if it considers that a person should be classified as professional investor, it sends the application to the authority, which decides on the registration. According to SI law, investment firms should prepare and adopt an internal document in which procedures for classification of professional investors are defined. However, there have been no applications so far.
47. In some cases (AT, BE, SI and FI) the application can be found in electronic form on the website of the authorities. The UK provides a form of limited anonymity by allowing individuals to provide the address of their broker or financial adviser if they did not wish to disclose their own address.

C. Accessibility of the register to issuers

Powers

48. In the majority of the Member States (AT, BE, CZ, DK, FI, DE, EE, EL, ES, HU, IS, IE, IT, LU, LV, MT, NL, NO, PL, PT, SK, SI and UK) the register is accessible to issuers.
49. In some jurisdictions (CY, FR, LT and SE) the register is not made available to issuers. One of these (FR) indicates that the guideline is that the register should not be directly accessible to the public because they did not wish to make this register a tool for solicitation.
50. In some jurisdictions (FI, DE, HU, IE, NL, PL, SI, LU and the UK) the register is only available upon request (not publicly available). ES specifies that only issuers can access the register. In another case (AT) the information is provided to issuers on a secure web page which issuers can access with log in codes.

Issue of interest

51. In some countries (AT, CZ, LV, and PT) the list of persons recognized as qualified investors would be available on the website of the competent authority. In FI the registration is valid for three years. In NO a list of the persons recognized as qualified investors is available on Oslo Børs' website.
52. One jurisdiction (LV) said that the list of qualified investors managed by them included those enterprises which requested to be considered as qualified investors as well as small and medium-sized enterprises which have their registered offices in other Member States of the European Union, which they assumed are included in identical or similar lists of qualified investors.

2. Obligation to publish a prospectus (Article 3, 4 and 5.2)

53. This section of the report sets out whether the authorities have the power to ensure that public offers are not made without prior publication and which tools are used to ensure that offers are not made without prior publication. Further this part describes if the CESR members have incorporated the provisions related to the exemptions of article 3.2, 4 and 5.2. Finally, this part sets out how members assess equivalence and if they have the power to issue rules and regulations determining the information that would be considered as equivalent.

A. Tools used to ensure that public offers are not made without prior publication of a prospectus (Art 2a)

Powers

54. All authorities, except AT, DK, and NO have directly the power to ensure that public offers of securities are not made without prior publication of a prospectus.
55. Two authorities (AT and DK) exercise this power with application to a judicial authority to ensure that public offers of securities are not made without prior publication of a prospectus. DK also ensures this by ex post supervision, i.e. by monitoring on a regular basis the regulated market as well as any other market to see whether there is any offer without a prospectus.
56. In another case (NO) this power has been delegated directly by the law entirely to the stock exchange.
57. For some jurisdictions (BE, IS, LT and PL) for admission to trading, this power is exercised in collaboration with the stock exchange. In one case (PT) the application for admission is firstly subject to approval of the stock exchange. The PT authority is empowered to approve the prospectus, to supervise, sanctioning of exemptions and impose sanctions and fines.

Issues of interest

58. There seem to be different approaches and techniques to ensure that such offers are not made without the prior publication of a prospectus. Supervision seems to be more difficult in the case of non-listed companies. In one jurisdiction (UK) there is no proactive monitoring for ensuring compliance with the relevant obligations to publish a prospectus due to the size of its securities' market and the risk-based approach it undertakes. However, if it emerges that someone has not complied with the appropriate obligations, enforcement action would be taken. Additionally, the UK and LU monitor the press regularly for activities undertaken by listed companies and might learn of such non-compliance this way.
59. In other jurisdictions there seems to be a more proactive attitude (AT, CY, FR, IT, PL, PT and SE). These authorities monitor on a regular basis the regulated market as well as any other market to see whether there is any offer without a prospectus. Reference is made to monitoring financial newspapers or market news.
60. Three jurisdictions (IT, FR and LU) require advance notice of public offers and two of them (IT and FR) use a range of monitoring tools (e.g. web spidering, looking at newspapers- also BE) to check for offers taking place without publication of prospectus.
61. In EL there is no formal supervisory process for non-listed companies but if by reviewing their announcements in the media the authority finds out that an issuer is attempting to make a public offer without an approved prospectus, the authority will implement proper procedures. EL has detected a small number of non-listed companies attempting to make a public offer without an approved prospectus. CZ also detected some non-listed companies making a public offer without an approved prospectus (mostly in relation to raising registered capital). In CZ they have not taken any action yet, it is currently under process but before the Prospectus Directive was implemented they had imposed fines on the responsible persons.
62. DK has also detected a small number of non-listed companies making public offers without an approved prospectus mostly involving small companies and small amounts. The State Attorney has imposed the relevant sanctions. NO has also detected a few such offers. However, none of these have related to offers exceeding EUR 2,500,000 (and have thus only been subject to national prospectus requirements). In PL there were some cases where an issuer or offeror announced in a public way its offer, but such cases took place also before the Prospectus Directive entered into force. NL also detected non-listed companies

attempting to make a public offer without an approved prospectus. ES reported that problems have been encountered with companies offering securities to the public without having a prospectus approved by the authority and published. There have also been exceptional cases relating to small companies and small amounts and the authority imposed administrative sanctions upon the responsible persons.

63. Other authorities (AT, CY, LU and SK) reported no problems on this issue. One other authority (LT) declared that no such sanctions have been imposed yet since the transposition of the Prospectus Directive. However, if they notice public advertising in mass media of an issue of a value of up to EUR 2.5 m they will consider imposing sanctions.

Tools used:

64. A number of tools are used to ensure that public offers are not made without prior publication of a prospectus:

- In some jurisdictions this obligation is ‘easy’ to verify thanks to collaboration with the stock exchange (if the securities are listed, as it is the case in the majority of issues).
- Some authorities monitor the newspapers.
- Three authorities take information and complaints from market participants or investors into account.
- In some authorities they learn about the violations by different sources such as own research (e.g. media control) notices, whistle blowing and complaints and cross information between the different departments of the authority and web spidering.
- Some jurisdictions use external information – a note appears that a case has been submitted for public prosecution for public offers. In one authority external information such as announcements made or complaints are followed up by the regulator.
- One authority noted that it draws to the attention of the issuers who intend to offer securities that in some cases they are obliged to obtain the authority’s approval for prospectuses and that it is not allowed to offer securities without a prospectus.
- Ex post checking based on reports provided by the Stock Exchange.

Sanctions

65. In case of a failure to comply with the provisions most authorities are entitled to impose sanctions.

AT, FI, PT and SK	Use the powers provided to them by the directive and usually impose fines.
SI	Uses the powers provided by the directive and usually imposes fines. The fines range from EUR 83.300 to EUR 375.000.
FI	The authority will ask the issuer for detailed clarifications and may also order the offering and/ or admission to trading to be suspended until corrective action is taken by the issuer.
AT, PL and DK	The authority will file a formal complaint to the State Attorney for criminal proceedings.
SK	The authority has the power to oppose a public offer for lack of prospectus.
UK	A failure to produce an approved prospectus prior to making an offer of securities when there are no exemptions would result in a criminal offence punishable by a fine (up to £5,000 if tried summarily and unlimited if tried on indictment) an/or imprisonment of up to 2 years. The prospect of imprisonment has proven to be a deterrent in the UK. Civil liability would also attach for any

	misrepresentations in the prospectus.
CY	Making a public offer before the publication of an approved prospectus is a criminal offence punishable by imprisonment of up to 2 years and or a fine of up to CYP 200.000. This could also constitute an administrative offence punishable with a fine of up to CYP100.000 (in the case of a repeat offence the fine could be up to CYP 200.000) with a provision that these fines could be up to 1/3 of the amount of the public offer which in the case of a repeat offence is increased to ½.
IT	In case the Italian authority discovers that an offer took place without prior publication of a prospectus, the necessary measures to forbid the offer will be taken and the sanctioning proceedings will be started (see Section 20 below)

B. Exemptions (Article 3.2 / 4, and 5.2)

B1. Exemptions Articles 3.2/4

Powers

66. In relation to the exemptions of Article 3.2 provided for in the Prospectus Directive, all Member States have incorporated the relevant provisions, some of them by law and others by decrees or stock exchange rules. In the case of IS this power is exercised in collaboration and in NO it has been delegated to the stock exchange.
67. The power of supervision and that of sanctioning with regard to the exemptions from the obligation to publish a prospectus in the case of a public offer lie with the administrative authorities, except NO where the law delegated to the stock exchange.
68. In all jurisdictions, except for MT and NO, the authorities have directly the power to ensure that the exemptions set out in Article 4.1 of the PD are correctly applied.
69. In all jurisdictions, except for AT, LT, IS and NO, the authorities have the direct power to ensure that the exemptions set out in Article 4.2 of the PD are correctly applied.
70. In one jurisdiction (AT) the supervision lies with the stock exchange regarding the exemptions of Article 4.2 of the Prospectus Directive though for all other cases the supervision lies with the administrative authorities and the State Attorney. If the stock exchange finds out or has reasonable grounds to believe that there is an infringement, the authority will use its powers (namely suspension and prohibition of trading) and will impose sanctions.
71. In NO the power to impose sanctions has been delegated to the stock exchange. In some jurisdictions (EL and SI) the authorities are informed by the issuer or by direct collaboration with the Stock Exchange.

Issues of interest

72. On average the authorities apply ex post supervision. The authorities learn about violations from different sources such as own research (e.g. media control) notices, whistle blowing and complaints and cross information between the different departments of the authority. Complaints from the public or checking the newspapers were cited as the usual techniques for supervising the correct application of the exemptions.
73. One jurisdiction (DK) applies ex post supervision regarding Article 4.1. a, d and e whilst in respect to Article 4.1. b and c they apply ex ante supervision. They decide on a case by case basis whether the information in the document is equivalent to that of the prospectus.

74. In DE the verification of the applicability of the exemptions set out in Article 3.2 of the Prospectus Directive is the responsibility of the issuer. The issuer may ask for an interpretation. Administrative sanctions and civil liability may apply, on a case-by-case basis, for breaches of Article 3.2.
75. In two jurisdictions (HU and BE) the exemptions of Article 3.2 will be construed as a private placement. In HU the issuer shall inform the authority within 15 days. Where any securities have been offered by methods other than public offering, the authority may request the issuer to supply extra information to determine whether the offering should be considered a private placement in accordance with what is contained in the law. In PL the exemption of Article 3.2.b is construed as a private placement.
76. Two jurisdictions (FI and IT) seem to have a proactive approach and decide if an exemption is applied correctly. FI receives requests for public offers and admission to trading and decide if an exemption should be granted. The same applies to IT in the cases when the PD requires the exemption to be granted provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus. In such a case it is up to the authority to decide whether the information is equivalent and the exemption can be granted. In general it should be recalled that in IT the authority has the power to block offers or veto listing in case the relevant legislation is not complied with.
77. In some jurisdictions (SE and UK) they do not apply proactive monitoring as to whether the exemptions are applied correctly. In the UK this is because of the authority's risk-based approach to regulation. However, the UK does monitor the activities of listed companies through the press. Sanctions can be imposed for breaches of the relevant provisions and enforcement actions can be undertaken following complaints or other notices of breaches.
78. In one jurisdiction (SI) the authority does not decide if an exemption is applied correctly. However, if the authority finds out that an issuer is attempting to issue new securities (it can find this out through regular reports made by public companies, for example among decisions taken by companies' general assemblies) it may inform (warn) the issuer.
79. In some jurisdictions (BE, DE, DK, LU and SI) issuers are able to ask the authority for an interpretation but they are responsible for whether or not they are obliged to publish or not a prospectus.
80. A question was raised regarding how to calculate the figure of 10%. In some jurisdictions (AT, CZ, DK, LU, NO, NL and PL) they assume that the 10% should be calculated over 12 months and in relation to the total number of shares already admitted to trading on the same regulated market. In DK it is calculated at the time of admission of the shares to trading on the regulated market, i.e. if it is less than 10% at the time of admission, no prospectus is needed. This also means that shares admitted to trading without prospectus according to the other exceptions in the Prospectus Directive will be taken into account when calculating the number of shares.

Problems

81. Regarding Article 3.2a one jurisdiction (DK) has encountered problems relating to who is responsible for the prospectus in the case of resale.
82. Some countries have explained (AT, CU, CZ and HU) how this issue can be treated. In AT this will be decided on an individual basis – these cases usually encompasses an arrangement between the issuer and the offeror. If in CY such an issue arises it will also be dealt with based on the facts of the case (e.g. the authority might examine the intentions of the initial issuer/ offeror etc). If qualified investors in CZ resell securities in a way that could be considered as a public offering they are responsible for preparing a prospectus.

In HU in the case of resale, the offeror must be responsible for the information given in the prospectus.

83. Some other countries (LU, NO, NL, PL) did not encounter this problem. PL is of the opinion that if such a resale looks like an offer separate from the “initial” offer, the offeror should be required to draw up a prospectus.

B2. Exemptions Article 5.2

Powers

84. As for the exemptions set out in Article 5.2, in some jurisdictions (MT, FR, and ES) the relevant power is used in collaboration with the stock exchange. In NO this power has been delegated.
85. Most jurisdictions (BE, CY, CZ, DE, DK, FI, FR, MT, IE, ES, EL, LU, NL, PL, PT, SI and UK) clarified they do not request a summary for non-equity securities with a denomination of at least EUR 50.000. In DK this power is exercised by ex ante regulation. In some countries (DE, UK and SE) it is clear from the scrutiny of the prospectus whether or not a summary is necessary. A prospectus for non- equity securities with a denomination of at least EUR 50.000 does not need to include a summary.
86. NO stated that this power has been delegated by the law to the stock exchange. Article 5(2) of the Prospectus Directive has not been transposed into Norwegian law. However, the Commission Regulation (EC) No 809/2004 (“CR”) has been implemented directly.
87. In another jurisdiction (IE), the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The stock exchange will ensure that the exemption provided for in Article 5.2 is correctly applied. The approval of the prospectus rests with the authority.

Issues of interest

88. Members were asked to explain their understanding of “as soon as possible” and responded as follows:
- as the preceding day (HU);
 - immediately when available but at least one day before the beginning of the public offer or the trading (PT);
 - before the public offer is made (LU);
 - FI, EE and IE are of the view that there should be no undue delay in providing the final terms to investors and filing them with the competent authority;
 - in IS it is of the view of as soon as possible and also evaluated on a case by case basis;
 - LV answered that they shall evaluate each case individually;
 - LT answered that the final terms of the offer shall be disclosed to the investors and submitted to the authority in a separate document in respect of each public offer and at the earliest possibility (where possible, prior to the beginning of the public offer);
 - PL answered that the final terms of the offer shall be disclosed to the investors and submitted to the authority as soon as possible and where possible prior to the beginning of the subscription for securities;
 - for SK and SI as soon as possible is considered or before the public offer is made. The SK law uses the terms “immediately when available and if possible before the beginning of an offer” (no experience on this issue);
 - EL considers the wording above means “at the latest the day before the commencement of the public offering”;
 - CY considers ‘as soon as practicable’ to mean as soon as the final terms have been established and ideally before the beginning of the offer;

- DK considers “as soon as practicable” to mean at the least the day before the offer or the admission to trading of the securities involved;
- DE considers the wording above means at the day of the public offer at the latest.
- in SE it is understood as before the beginning of the offer at the latest;
- BE responded that it is a "factual issue" and means as soon as the competent bodies of the offeror have determined the final conditions.

C. Equivalent documents (Article 4)

C1 Assessment of equivalence

Powers

89. In relation to the issue of equivalent documents, all authorities except AT, DE, HU and NO, have the power to assess the equivalence.
90. In the case of NO and DE this power has been delegated to the stock exchange.
91. AT and HU indicated that they do not have this power. AT stated they do not review and approve the respective documents. HU has no right to request the documents from the issuer prior to the offer, to check the equivalence. There are no procedural regulations in order to request the documents from the issuer prior to the offer or to check equivalence. Neither is there any regulation determining the information that would be equivalent.

Issues of interest

92. In most of the cases (CY, DK, EE, ES, FI, IT, NO, IE, LU, PL, PT, UK and SE) the equivalence of the documents is to be assessed on a case by case basis.
93. In CY and EE the offeror submits the offer document to the authority and the relevant department examines the information to assess equivalence. In practice the offeror and its advisor contact the authority’s staff and the authority informs them that the relevant information should be prepared on the basis of Regulation 809/ 2004 in order to be considered equivalent. In PT the authority considers that the equivalent information must be the same as a prospectus i.e. in practice it does not grant this particular exemption, especially with regard to the exemption for the exchange offer.
94. In one jurisdiction (PL) issuers have to submit the document to the authority which can forbid the offer/refuse admission to trading if the document is not in compliance. Another jurisdiction (SI) has the power to ensure that the exemptions from the obligation to publish a prospectus contemplated under Articles 4.1 and 4.2 do apply for all the cases listed under this Article. In IT the regulator receives the requests for evaluating the equivalence of information and grants the exception if appropriate. If it is not satisfied with the existence of the equivalence, the regulator can veto the operation.
95. In one case (IE), an issuer who requests the authority to assess the equivalence of information is required to submit that request in writing to the stock exchange. The stock exchange will communicate its assessment and any relevant documentation, together with a recommendation based thereon to the authority. The authority will consider each request on a case-by-case basis prior to making its decision. To date the authority has not received any requests to assess the equivalence of information in a document.

C2 Issue rules / regulations determining equivalence

Powers

96. Most authorities (AT, BE, CY, CZ, DK, FR, EL, IE, IS, IT, LV, LU, MT, NL, PT, SK, SI, ES and UK) have the power to issue rules or regulations determining the information that would be considered as equivalent.
97. Some jurisdictions (DE, FI, HU, IS, LT, NO, PL and SE) do not have this power. In the case of NO this power has been delegated by law to the stock exchange.
98. Under certain circumstances one jurisdiction (DE) may adopt rules to determine equivalence of the documents referred to in Articles 4.1(b), 4.1(c), 4.2(c) and 4.2(d) of the Prospectus Directive. The power to adopt rules may be delegated from Ministries of Finance and Justice.

Issues of interest

99. In AT a regulation specifies what is considered to be equivalent. The AT regulation prescribes that the equivalent document should be short and understandable. It has to include at least the name and seat of the company, information about where to obtain further data, declaration about the grounds of the public offer, legal provision on which the document is drawn up, details concerning the offer and signature of the issuer.
100. The UK has provided informal guidance on what is considered to be equivalent information by publishing newsletters etc. Two jurisdictions (BE and IE) can also issue regulations but have not yet done so.
101. One jurisdiction (EL) is to issue a rule in the near future setting out the information that is to be included in a document which is considered equivalent to that included in a prospectus. It is the intention of some authorities (ES and MT) to issue guidance when they will have experience in this field. Another jurisdiction (NL) refers to the annexes of the Regulation to assess the equivalence and does not intend to use its power to issue rules on this matter.
102. SK has the power to issue rules and regulations to determine which information would be considered equivalent and precise and in some cases rules for equivalence. Nevertheless one concern might be that SK is not directly competent at all in the case of company mergers or other changes of status regulated by the company law and accepts the documents provided by company law as being adequate⁴. In SI- the regulator is the competent authority for takeovers of public companies, but it is not directly competent in cases of other status changes of companies since those issues are covered by the Company Law.
103. SI has the power to issue rules and regulations to determine which information would be considered equivalent and precise in some cases rules for equivalence. In practice, it applies only for exchange offers of securities in case of takeovers.

C3 Availability of the equivalent documents

Powers

104. The equivalent documents have to be published in all the countries.

⁴ However, it is a competent authority for public offers to buy (mergers and acquisitions of public companies) and assesses equivalence. The most direct competence of the authority is however in the case of a takeover in which a take-over prospectus does contain information on securities issued in the exchange offer. The authority does not have experience in those cases and they are considering issuing a form of guidance or recommendation describing which documents are considered equivalent in cases of statutory changes whenever the company that remains is a public company.

Issues of Interest

105. In two cases (FI and PT) the decision of the authority to grant the exemption includes the requirement of publication of the equivalent documents. In another case (AT) the equivalent documents have to be published via a media defined in a national regulation and in one other case (NO) the issuer and its advisors must file with the stock exchange a confirmation that these documents have been published.
106. In HU, FR and LU they will ensure that the documents provided for by the relevant Articles are made available. In IT the regulator will veto the operation, in case information is not made available as requested. Administrative pecuniary sanctions are also available.
107. LT answered that the issuers or persons asking for the admission to trading on a regulated market should apply together to the authority by submitting the prospectus. Each request for a listing without prospectus according exemptions in Article. 4.2 of the Directive is considered on a "case by case" basis. The Board of the stock exchange takes decisions concerning the listing.
108. In SI the authority does not have the power to ensure those documents are made available. Issuers applying those exemptions have to ensure that those documents are available to addressees.
109. DK and DE have the power to ensure that the document containing information as referred to in Article 4.1(d), 4.2(e), 4.2(f) and following other requirements described in this Article is made available by the issuer. In DE the issuer is responsible to ensure availability of documents requested. According to PL legislation the equivalent document should be made available to investors and it is up to the issuer to decide how to fulfil that requirement.
110. Two jurisdictions (NL and PT) point out the difficulty of checking this availability as this type of document is disseminated only to the investors to whom the offer is made. So a complaint is necessary in order to detect irregularities. In the UK the equivalent document, not being a prospectus, does not have a statutory requirement for persons responsible similar to that provided in Article 6 for prospectuses. Investors would only be able to rely on common law or case law therefore regardless of the magnitude of transaction. Additionally, there are no withdrawal rights pursuant to Articles 8 and 16 for offers based on equivalent documents. SI has not yet defined equivalence so far (in a formal way, as a by-law) but the authority decides on it case by case.
111. FR has developed an instruction (guidance) to describe what information would be considered as equivalent and to clarify the expected content of such information. The instruction also provides for the definition of the means of publication that are used (press releases, information posted on the issuer's web site).
112. Some other jurisdictions (CY, CZ, DK, LU, NO and PL) have not experienced any problems with availability.

Problems

113. In CZ the relevant legislation requires that documents be made available in the 'registered seat' of an issuer. This has posed difficulties where the registered seat is outside CZ since it has proved impossible to ensure that all legal provisions are complied with. The same applies to AT. In LU and NO this is not required by legislation.

3. Information not included in the Prospectus (Articles 5.4, 8.1(a) and 8.1 (b))

114. This section of the report deals with those situations where the final terms of the offer are not included in the prospectus, either because the issuer is using a base prospectus or because information cannot be included in the prospectus because of the reasons set out in Articles 8.1(a) and 8.1(b) of the PD. It is divided as follows:

- A. Final terms in case of an offering program (Article 5.4)
- B. Cases where the final offer price and amount of securities are not included in the prospectus and there is an obligation for this information to be filed with the competent authority and to be published (Article 8.1 -final paragraph).
- C. Cases where the final offer price and amount of securities are not included in the prospectus and the information requirements of Article 8.1(a) & 8.1(b) applies.

A) Final terms in case of an offering program (Article 5.4)

i.

115. The aim of the question was to ascertain how members ensure that the final terms of the offer are provided to investors and filed with the competent authority when each public offer is made “as soon as practicable and if possible in advance of the offer”. There were two aspects to this question, the first was to ascertain what the meaning of “as soon as practicable” was and the other was the meaning of “if possible in advance of the offer”.

Powers

116. All members (other than NO) have the power to ensure that the final terms of the offer are provided to investors and filed with the competent authority when each public offer is made “as soon as practicable and if possible in advance of the offer”.

117. All members exercise these powers directly with the exception of NO which has delegated this to the stock exchange.

Issues of interest

118. Although not all members answered in relation to the meaning of both “as soon as practicable” and of “if possible in advance of the offer”, the following arose as points of interest following a review of the responses:

Meaning of “as soon as practicable”

119. For the following members, “as soon as practicable” means as soon as the person making the offer can establish the final terms – CY, IT , MT, NL, PT, PL and DK

120. NL considers the meaning of “as soon as practicable” and “if possible in advance of the beginning of the offer” to be exactly as set out in the Directive. Therefore, it is up to the issuer what is the meaning of “as soon as practicable” and “if possible in advance of the beginning of the offer”

121. For others, the answer was as per the Prospectus Directive wording (FR, SI), or without undue delay (EE, FI and IE), at the day of the public offer at the latest (DE) that or that it is determined on a case by case evaluation (LU and LV).

122. *Meaning of “if possible in advance of the offer”.*

- Prior to beginning of the offer: SE, EE, ES, LU, LT, IT, AT, DK, CZ.
- Day before commencement of the offer: HU, PT
- As per the Prospectus Directive wording: SI, FR

- Moment of commencement: SK
- Time when subscription is to begin: PL
- Before the investor files actual application: MT
- Case by case determination: LV IS.
- Up to the issuer: NL
- No undue delay: FI, IE
- At day of public offer the latest: DE
- As soon as competent bodies of offeror have determined them: BE, FI

123. Overall, it is clear that some members consider the meaning of both these terms to be at some point before the offer commences, and for others it is something that can only be determined on a case by case basis. Note that most consider “before the offer” to mean the day before and for others it is at any point in time before the offer while MT is the only member that makes explicit reference to investors. In addition, CY explained that it had no experience of this as the information has to date been known in advance.

Issues of interest

124. In IE, the final terms are submitted to the stock exchange which subsequently transfers the document to the authority for filing. To facilitate investors’ access to this information, the authority will publish this information on its website unless a non-publication request has been received from the issuer. Where this is the case, the authority must be notified of the method of publication adopted by the issuer. The authority will then publish a notification on its website regarding the method of publication adopted by the issuer.

B) Cases where the final offer price and amount of securities are not included in the prospectus and there is an obligation for this information to be filed with the Competent Authority and to be published (Article 8.1 final paragraph).

125. The aim here is to determine whether and how members ensure that the final offer price and amount of securities not included in a prospectus are filed with the competent authority and published. It is important to point out that the question posed to Members dealt with how this is done in all cases (so including issuing a base prospectus).

Powers

126. All members (other than NO and MT) have the power to ensure that the final offer price and amount of securities not included in a prospectus are filed with the competent authority and published. In the case of MT the registrar of companies ensures that this done,

127. All members exercise these powers directly with the exception of NO which has delegated this to the stock exchange.

Issues of Interest

128. A variety of different answers were given by the authorities, and the outcome envisaged by the directive is achieved in the number of different ways:

- Requests to the issuer to submit and publish: AT, BE, DE, EL, IE, NL, PT, SK, ES, and LT.
- Use of internal checklist to monitor this: CY
- Requests the issuer to submit and publish/ ex post supervision: DK, FI, EE
- Constant monitoring: LV, IT, PT
- Confirmation of having done this to the Authority: HU
- Clarification of when this will be published at time of vetting: LU.
- Delegation to the stock exchange: NO

- Registrar of companies ensures that this is done: MT
 - Systems and controls in place to ensure compliance: UK
129. SI has to date no practical experience of this as the information has to date been known in advance.
130. In IE, the same procedure is followed as for the filing of the final terms discussed in paragraph 127 above, namely the final offer price and amount of securities is submitted to the stock exchange which subsequently transfers the document to the authority for filing. To facilitate investors' access to this information, the authority will publish this information on its website unless a non-publication request has been received from the issuer. Where this is the case, the authority must be notified on the method of publication adopted by the issuer. The authority will then publish a notification on its website regarding the method of publication adopted by the issuer.

Specific information that was provided about the use of the supervisory tools and sanctions

- The use of administrative sanctions: BE, IE, IT and PL
- Formal complaint to the state attorney for criminal proceedings: AT, DK.
- Imposition of fines: DE, PT (EUR 12,500-250,000), NO (no specific limits regarding amount)
- Suspension or vetoing of the offer: IT
- Would consider taking enforcement action: UK, FI, CY

C) Cases where the final offer price and amount of securities are not included in the prospectus and the information requirements of Article 8.1(a) & 8.1(b) apply.

131. The aim here was to ascertain how members deal with the information requirements of Article 8.1(a) & 8.1(b) in cases where the final offer price and amount of securities can not be included in a prospectus. (Note that this includes the case of base prospectuses as well).

Powers

132. All authorities (other than NO) have the power to ensure that in the case of omission of information regarding the final offer price and the amount of securities, the disclosure requirements of Article 8.1(a) are met or the withdrawal rights of Article 8.1(b) are included in the prospectus.
133. All members exercise these powers directly other than NO, who has delegated this to the stock exchange. In one case (IE), the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The stock exchange will scrutinise the disclosures made but the approval of the prospectus rests with the IE authority.

Issues of interest

134. All members use ex-ante approval of the prospectus to check that the information requirements of Article 8.1(a) and (b) are included in the prospectus and the failure to include this information will result in non approval of the prospectus. In addition, the following points of interest were identified between members
- NL – only included Article 8.1(a) because the Ministry of Finance considers that there is a choice between Article 8.1(a) and (b) to implement.
 - ES – In practice it is Article 8.1(b) that is used as the prospectus includes a non-binding range, following the fixing of the price the rights of withdrawal can be used.
 - SI – has no experience of this to date – all the information has been known in advance.

4. Responsibility for the prospectus and the summary (Article 6)

135. This section of the report deals with the nature of those who are responsible for the information provided in the prospectus, and the civil liability that attaches to them and is divided as follows:

- Section 4.1 Persons responsible
- Section 4.2 Civil liability

4.1 Persons responsible

136. In addition to those set out in the Prospectus Directive, Members indicated that within their jurisdictions the following additional persons are responsible:

- AT – the prospectus controller, the intermediary between the investor and the issuer, the auditor.
- CY – in the case of a 1st application for admission to listing and to all public offers, the Financial Services Firm who is responsible for the drafting of the prospectus.
- FI – the party handling the offer or the application for admission to public trading on the basis of an order shall also be liable for the preparation and publication of the prospectus.
- FR – statutory auditors and investment services providers
- EL – the underwriters or advisors
- IE – (a) each person who accepts, and is stated in the prospectus as accepting responsibility for the prospectus; and (b) each person not falling within any other provisions of Schedule 1 of the Prospectus (Directive 2003/71/EC) Regulations 2005 who has authorised the contents of the prospectus. There are different regimes depending on whether the prospectus relates to equity or debt securities.
- DE – In case admission to trading on a regulated market is sought, the credit/financial institution that together with the issuer has to file the application for admission.
- IT – The persons responsible for the placement of the financial instruments to the public.
- LT – other persons may be designated as responsible for the information presented in the prospectus (not specified who)
- PL – a person empowered to represent entities under Article 6.
- PT– Members of the managing body, the promoters, in the case of offer for subscription for the incorporation of a company; the members of the auditing body, accounting firms, chartered accountants and any other individuals that have certified or, in any other way, verified the accounting documents on which the prospectus is based; the financial intermediaries in charge of assisting with the offer; any other entities that accept being appointed in the prospectus as responsible for any information, forecast or study included in the same.
- SI – auditor and other persons who could have an impact on the prospectus content.
- ES – The persons who declare in the prospectus that they assume responsibility for it, and the persons who have authorised totally or partially the content of the prospectus (and the fact is mentioned in it)
- UK – anyone else who has agreed to be responsible for the prospectus, and there are different regimes depending on whether the prospectus relates to equity or debt securities. Directors are also responsible for prospectuses relating to equity securities but not for prospectuses relating to debt securities.
- EE- the issuer and upon existence, the offeror; the approval of the issuer shall be signed by all members of the board; the approval of the offeror shall be signed by an offeror who is a natural person or, in the case of a legal person, at least one member of the management board of the offeror or of the body substituting therefore who has the right to represent the offerors.

137. NL- According to the Ministry of Finance, the Dutch Act on Civil Law regulates the responsibility of persons in relation to the prospectus. Article 6 of the Prospectus Directive is therefore not specified in the Act and Decree which implements the rest of the Prospectus Directive.

4.2 Civil liability

Powers

138. On a review of the responses from members relating to civil liability, it seems that the questions could have been drafted more clearly to ensure that the distinction between the competent authorities' general administrative powers, and those available for the purposes of enforcing civil liability could have been given in the answers.

139. This lack of clarity resulted in a number of members saying that they did not have the power to ensure that civil liability attaches because this power is exercised by the relevant judicial authority to which an application has to be made. In contrast, others stated that they have the power to ensure this directly- but the lack of explanation given to the response made it impossible to ascertain whether or not this power is exercised directly, or through application to the judicial authority.

140. On the basis of the responses:

- *Those with direct power to ensure that civil liability applies:* AT, CZ, FI, FR, EL, IE,HU, IS, IT, LV, LT, MT, NL, PL, PT, SI, SK, ES, SE, UK.
- *Those who exercise this power through application to the judicial authority:* CY (the persons making claims for damages have to apply themselves to the judicial authority), BE, DK, EE, LU, DE (prospectus liability is civil law matter)

5. Omission of certain information (Article 8.2 & 8.3)

141. This part of the report is divided as follows:

- 5.1 For the reasons of Article 8.2
- 5.2 Information equivalent to be included in the prospectus in case the regulation information is inappropriate –Article 8.3

5.1 For the reasons of Article 8.2

Powers

142. All members (other than NO) have the power to authorise the omission of information for the reasons set out in Article 8.2.

143. NO has delegated this power to the stock exchange.

Issues of interest

144. Overall there is reluctance to authorise the omission of information, which is something that is determined on a case by case basis on a few occasions following detailed examination of the stated justification for the omission. In addition, the following is considered to be interesting to note:

- IT,DE, – The underlying principle is that all information should be included, as such it is only in exceptional cases that information can be omitted.
- SE – It is considered that the reason for omission in Article 8.2(a) i.e. “disclosure of such information would be contrary to the public interest” can not in practice exist and can not authorise omission for this reason.
- ES, DE, AT – Historically the omission of information has only been authorised in very exceptional cases.
- IE – The initial request is made to the stock exchange which subsequently makes a recommendation to the authority. Following an assessment of all the relevant facts, the authority will make a decision regarding the request for the omission of information.

4.2. Inclusion of equivalent information when inclusion of required information is inappropriate –Article 8.3

145. There are two aspects to this question:

- A. Power to ensure equivalence of information;
- B. Power to issue regulations determining the information that will be considered as equivalent.

i. Power to ensure equivalence of information

Powers

146. Almost all members have the direct power to ensure that equivalent information is provided where the situation of Article 8.3 applies.

147. NO has delegated this power to the stock exchange. CZ has no powers on this field

(ii) Power to issue regulations determining the information that will be considered as equivalent

Powers

148. The following members **do** have the power to issue regulations determining what information will be considered as equivalent: DK, EE, FR, IE, IT, CY, LU, NL, MT, PT, SK, SI, UK.

149. The following members **do not** have the power to issue regulations determining what information will be considered as equivalent: AT, BE, CZ, DE, FI, EL, HU, IS, LV, NO, PL, SE, LT and ES. In one of these jurisdictions (LT) the authority has the right to establish requirements for prospectuses and the general right to issue recommendations according to the securities offering. However, no specific rules or regulations have as yet been adopted by the Securities Commission to this effect. In NO, the power rests with the Ministry of Finance.

Issues of interest

150. FR and IE have to date not found the need to issue regulations about what would be considered as equivalent. PT does not consider it necessary to issue additional regulations as their administrative practice is enough.
151. FI does not need the power because the inclusion of equivalent information requires the exemption granted by the authority. If needed the authority can issue an interpretation or provide examples of the cases where an exemption would be granted.
152. BE does not have the power to issue regulations but states that, according to the Directive, this is the responsibility of the issuer.
153. In ES, in relation to the availability of the equivalent documents, it seems that no systematic procedure exist in this field.

6. Validity of the prospectus, base prospectus and registration document (Article 9)

154. This section of the report deals with the power of the competent authorities to monitor the validity of the prospectus, the base prospectus and the registration document.

Power to monitor that the documents are valid for 12 months

155. All the authorities have the power to monitor that the documents referred to in Article 9 (prospectus, base prospectus and registration document) are only valid for a period of 12 months
156. In one jurisdiction (NO) the power is not exercised by the authority since it has been fully delegated to the stock exchange.

Issues of interest

157. In most of the jurisdictions, the supervision takes place ex ante i.e. when there is a public offer or an admission to trading on a regulated market; competent authorities check the validity of the relevant documents. In one jurisdiction (NO) this check is made by the stock exchange both in the case of public offer and admission to trading on this regulated market though in another jurisdiction (LU) the validity in the case of a public offer is checked by the authority and the validity in the case of admission to trading of securities on the regulated market is checked by the authority and/or the relevant stock exchange. In a third jurisdiction (DK) the supervision takes place both ex ante (see above) and ex post by surveillance of the media etc.
158. Some authorities (DE, FR, LU, PT, IE and PL) indicated how they exercise this power in practice: the date of publication and approval of the prospectus has to be filed with the authority (in PL only the date of publication has to be filed with the authority) and the authority using that record can calculate the 12 month period when an offer or admission to trading is going to take place. Two authorities (ES and UK) specifically stated that they have internal IT systems in place to detect documents that have been published for more than 12 months. One authority (LT) stated that it publishes on its website the prospectuses approved during the course of the previous 12 months.
159. Some authorities (BE, LU, IT and PL) specifically stated that they can suspend or prohibit an offer with an invalid prospectus and impose administrative sanctions. LU may also impose penal sanctions

7. Annual document (Article 10)

160. This section of the report deals with the powers of the authorities regarding the annual document of Art. 10 of the Prospectus.

Power to ensure that the annual document of Article 10 is published annually

161. All the authorities have the power to ensure that the annual document of Article 10 of the Prospectus Directive is published annually by the relevant issuers.
162. In two jurisdictions (DK and NO) this power has been fully delegated to the relevant stock exchanges. In one jurisdiction (NO) even the sanctioning power has been delegated to the stock exchange. Finally, in another jurisdiction (EE) the issuer is required to submit the annual document to the authority which subsequently forwards it to the stock exchange for filing.

Issues of interest

163. In relation to the timing of the publication of the annual document, some differences in practice have been identified across the EU. In six jurisdictions (BE, CY, PT, FI, NO and IE) this document must be filed with the authority (in IE, submitted to the stock exchange for filing with the authority) within 20 working days after the publication of annual financial statements and in one jurisdiction (FR) 20 days after the interim financial statements. In NO, the annual document must be published within 20 working days after the publication of the annual financial statements as proposed by the Board of Directors. In one jurisdiction (DK) the document can be part of the financial statement. In another jurisdiction (LT), annual reports must be published and submitted to the authority within 30 days after the approval of audited financial statements in a shareholders' meeting that must be organized in a four month period after the end of the year and in another jurisdiction (SI) 30 days after the publication of a summary of audited financial statements.
164. In relation to the means of publication of the annual document, in four jurisdictions (BE, FR, PT and SE) the annual document should also be published on the issuer's website, if it has one. In the case of PT it is compulsory to disclose the document on the authority's website. In another jurisdiction (IE), the authority will publish annual documents received on its website unless the relevant issuer requests the non-publication of the document. In that later case, the issuer must notify the authority of the method of publication. In another jurisdiction (NO) the stock exchange has developed a solution for easy compliance by use of the company disclosure system.

Problems

165. Two authorities (CY and NO) stated that they have encountered problems with a number of issuers that argued that the annual document is unnecessary since all the relevant information could be accessed directly via their website or the official site of the stock exchange. Another authority (NL) considers that Article 10 is unnecessary because all the relevant information is also accessible through the other directives such as the Transparency Directive and the Market Abuse Directive. This is also the opinion of a number of LU and UK issuers who have questioned whether it is necessary to continue to have the annual information update pursuant to Article 10 when the Transparency Directive is implemented and the central storage mechanism fully operational.
166. On the issue of the relation between Article 10 of the Prospectus Directive and the provisions of the Transparency Directive, another authority (LT) believes that the publication of the management report (provided for in the Transparency Directive) and the audited financial statements suffice for the purpose of complying with the requirements of Article 10 of the Prospectus Directive.

167. Other authorities (SK and CZ) stated that they have not encountered any similar problem to date.
168. Another authority (AT) advised issuers via a “guideline” which stated that they have to submit the annual document and most of the issuers followed the advice.
169. In one jurisdiction (NO) even the sanctioning power in relation to the annual document of Article 10 of the Prospectus directive has been delegated to the stock exchange.

Power to ensure that the annual document of Article 10 is filed after the publication of financial statements

170. All the authorities have the power to ensure that the annual document is filed with them after the publication of the financial statements.
171. In two jurisdictions (DK and NO) this power has been delegated to the stock exchange.

Issues of interest

172. Two authorities (CY and ES) specifically stated that they undertake ongoing supervision to ensure that issuers have filed the annual document even if there is no suspicion of irregularity. On the other hand, another authority (UK) stated that it conducts random checks to ensure that issuers comply with this obligation.
173. LU and PT maintain records of filings of these annual documents. Another authority stated that it maintains a database including due dates of financial statements for each issuer and in that way it supervises whether the annual documents have been filed on time. A third authority (PL) undertakes audit and explanatory proceedings to verify how this requirement is executed and if the authority has reasonable grounds for suspecting that the provisions of this Directive have been infringed. Finally, two authorities (ES and SE) stated that the annual document has to be filed and disclosed on their website.
174. Many authorities (AT, BE, CY, FI, IE, IT, DE, LU, MT, NL, PL, PT, SE, SI, UK and ES) declared that if an issuer fails to publish the documents within the prescribed term after the publication of the annual financial statements, the authority can require the publication of the document (in one jurisdiction- NL by sending a letter to the issuer) and if necessary impose financial sanctions. In one jurisdiction (PT), the authority has also the power to publish the required information at the issuers’ expense as a general rule. Another authority (IT), can additionally veto subsequent offers of the same issuer and suspend the trading of its securities if there is an infringement of the obligation.

Power to ensure the compliance of disclosure requirements regarding the annual document

175. All the authorities have the power to ensure the compliance of disclosure requirements with regard to the annual document in accordance with Article 10.2 of the Prospectus Directive.
176. In two jurisdictions (DK and NO) this power has been delegated to the stock exchange. In some other jurisdictions (IS and HU), the power is exercised in cooperation with the relevant stock exchange.

Issues of interest

177. In one jurisdiction (ES) the different pieces of information listed or included in the document referred to in Article 10.2 have to be published on the authority’s website. Therefore, the issuer only needs to refer to the authority’s website where these

publications have been produced in the previous year. Another authority (SE) responded that the information is followed up on a manual basis by qualified investigators. A third authority (EL) has issued a Decision by which issuers include the information of the annual document in the annual report that they publish every year in accordance with the national legislation.

Power to ensure that the exemption provided for in Article 10.3 is used correctly

178. All the authorities have the power to ensure that the exemption provided for in Article 10.3 of the Prospectus Directive (of issuers of non equity securities whose denomination per unit amounts to at least 50,000) is used correctly.
179. In two jurisdictions (DK and NO) this power has been delegated to the regulated market. Two authorities (CY and LT) specifically stated that they have not dealt with such cases in practice up to now.

8. Incorporation by reference (Article 11)

180. This section of the report deals with the power of the competent authorities regarding the incorporation of documents by reference provided for in Article 11 of the Prospectus Directive.

Power to ensure that the documents incorporated by reference are those permitted in the Prospectus Directive

181. All the authorities have the power to ensure that the documents incorporated by reference in a prospectus are those permitted in the provisions of Article 11.1 of the Prospectus Directive.
182. In one jurisdiction (IE), the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The stock exchange will scrutinize the prospectus to ensure that documents incorporated by reference are those permitted within the provisions of Article 11. 1 but the approval of the prospectus rests with the authority. In another jurisdiction (NO) this power is delegated as part of the delegation of the power to scrutinize and approve prospectuses.

Issues of interest

183. Many authorities (AT, EE, DE, LU, EL, IE, FI, IT, BE, MT, PL, ES, DK, PT, SI, CY, UK and NL) stated that they control ex ante this provision i.e. they do not approve the prospectus if the issuer does not comply with Article 11.
184. One authority (AT) specified that during the approval process it checks which documents are incorporated, if the incorporation does follow the legal requirements and if the documents incorporated by reference are available. One authority (IT) requires that the documents to be incorporated are made available to the public free of charge. Another authority (LT) specifically stated that the documents containing information to be included in the prospectus or the documents comprising it by reference shall be drawn up in the same language as the prospectus itself or the documents comprising the prospectus.

Problems

185. In one jurisdiction (SE) the legislation is formulated "... by reference to one or more previously published documents ..." which means that "simultaneously published documents" are excluded from the implementation text. Because of this there has been quite a strong reaction from the part of the issuers and the authority has developed

“praxis” (i.e. case law) that follows Article 11 of the Prospectus Directive instead of the Swedish legislation.

Power to ensure a cross reference list

186. All the authorities apart from one (CZ) have the power to ensure the inclusion of a cross reference list where applicable in accordance with Article 11.2.
187. In one jurisdiction (NO) this power has been delegated to the stock exchange. Another authority (IE) has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The stock exchange will scrutinize a prospectus to ensure the inclusion of a cross reference list where applicable but the approval of the prospectus rests with the authority.

Issues of interest

188. Most of the authorities supervise the inclusion of the cross reference list in the context of the prospectus scrutiny.
189. One authority (IT) requests that each separate document must indicate where the other documents making up the complete prospectus can be obtained.
190. In FR, issuers are required to file the “documents de reference” with the AMF. This document contains all the information required by Annex 1 of the Prospectus Regulation. It is valid for 12 months and it can be incorporated in any subsequent prospectus. The issuers which have a valid “document de reference” can have their prospectus approved in five (5) days instead of the ten (10) days required under the Prospectus Directive.

9. Approval of the prospectus and the supplement (Articles . 13, 16 and 17.2)
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191. This section of the report deals with the powers of the competent authorities regarding the approval of the prospectus and the supplement to the prospectus.

Approval of the prospectus and transfer of approval (Article 13)

Power to approve prospectuses

192. All the authorities have the power to approve prospectuses.
193. In one jurisdiction (NO) this power has been delegated to the stock exchange. In another jurisdiction (IE) the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange but the approval of the prospectus lies with the authority.

Issues of interest

194. One authority (DE) specifically stated that it reviews the completeness, coherence and comprehensibility of the prospectus. Another authority (FR) stated that it checks whether the legal requirements are complied with, and before issuing the visa, the authority may request additional investigations from the statutory auditors or ask for an audit to be carried out by an external specialist, appointed with its agreement, if it considers that the statutory auditors have not exercised due care. A third authority (EL) stated that it checks whether the prospectus content is in accordance with the national law and the directive. Another authority (CY) specifically stated that it checks that the prospectus contains all the information required by the Law and Regulation 809/ 2004 and ensures the consistency of its contents and comprehensibility.

195. During the process of approval one authority (AT) can obtain an expert opinion from the stock exchange or from a so called prospectus controller.

Problems

196. In one jurisdiction (NO) the power of approval has been delegated to the stock exchange. This is a transfer of (a very important) power and not a transfer of tasks as the one envisaged in Article 21.2 of the Prospectus Directive and might create problems at the cooperation level because competent authorities from other Member States will have to cooperate with a stock exchange. However, NO claimed that the delegation of the power was decided by the Ministry of Finance and was considered to be in accordance with the Prospectus Directive. NO pointed out that they have so far not encountered or been made aware of specific difficulties in this respect.
197. Two authorities (ES and IT) reported that problems have been encountered with companies offering securities to the public without having a prospectus approved by the authority and published. There have been exceptional cases relating to small companies and small amounts and the authority imposed administrative sanctions upon the responsible persons. Other authorities (NL and CZ) encountered similar problems mostly with non-listed companies. In CZ they have not taken any action yet, it is under process right now but before the Prospectus Directive was implemented they had imposed fines on the responsible persons.
198. One other authority (LT) declared that no such sanctions have been imposed yet since the transposition of the Prospectus Directive. However, if they notice public advertising in mass media of an issue of a value of up to EUR 2.5 m they will consider imposing sanctions.
199. Other authorities (CY, LU, AT, SK) reported no problems on this issue. DK has only detected a few numbers of non-listed companies making public offers without an approved prospectus. This is mostly the case of small companies and small amounts. The relevant sanctions have been imposed by the State Attorney.
200. An exercise on statistical data regarding prospectuses has been undertaken by CESR under the aegis of the Prospectus Contact Group and the outcome has been published.

Power to prohibit publication of a prospectus until its approval

201. Almost all the other authorities have the power to prohibit the publication of a prospectus until it has been approved.
202. In relation to the power of the authorities to prohibit the publication of a prospectus until it has been approved, there is great diversity across the EU. One authority (CY) does not have the power. On that issue, CY specified that it does not, explicitly, have the power to prohibit the publication of a prospectus until it has been approved, however, the publication of a prospectus without approval is subject to administrative measures. In addition the law states that the prospectus and any supplements can only be published after their approval by the authority.
203. AT stated that it exercises this power with application to judicial authorities and another authority (NO) declared that it has delegated this power to the stock exchange as well as the sanctioning power for violation of this provision.

Power to supervise that no prospectus can be published until its approval

204. Most of the authorities declared that no prospectus can be published until it has been approved by the authority/ or the stock exchange (NO).

205. In one jurisdiction (NO) this power has been delegated to the stock exchange which approves the prospectus. In another jurisdiction the authority collaborates with the relevant exchanges (MT). Two authorities (AT and DK) stated that they also undertake ex post supervision.

Issues of interest

206. Some authorities (AT, MT, PT, DE and ES) specifically stated that they get information from consumer/ investor complaints and their own research of the media, whistle-blowing (PT) and cross checking with other departments of the authority (PT). One authority (HU) stated that the subscription of securities that were offered in the absence of a prospectus approved by the authority will be null and void.
207. In AT the power is exercised with application to judicial authorities. If the authority obtains knowledge that a prospectus has been published without approval, it will request the issuer to correct this shortcoming. If the issuer does not follow this request, the authority will submit a formal complaint to the State Attorney for criminal proceedings.
208. In most of the jurisdictions (BE, CY, DE, EE, FI, IS, IT, LU, IE, ES, SI, SE and UK) non compliance with this obligation can lead to administrative measures such as suspension/ prohibition of the offer by the authority, the publication of the fact that the issuer is failing to comply (LU and IT) or administrative sanctions such as fines can be imposed (BE, DE, EL, FI, LV, IT, NL, NO sanctions imposed by the stock exchange, PT for serious infractions a fine ranging between EUR 25.000 to 2.500.000). In six jurisdictions (BE, CY, AT, FI, PL and the UK) it can lead to penal sanctions.

Power to notify the approval of a prospectus

209. All the authorities have the power to notify the approval of a prospectus to the issuer, the offeror or the person asking for admission to trading.
210. In one jurisdiction (NO), this power has been delegated to the stock exchange. One authority (IT) stated that it notifies the person making the offer of the receipt of the communication, of the receipt of additional documents and information that were required and at the end of the final decision.

Issues of interest

211. In relation to the means of this notification, there are some divergences around the EU. Most of the authorities notify the approval of the prospectus by letter (AT, EE, FR, BE, IS, IE, CY, FI, EL, MT, NL, IT, PT and ES) by a letter signed by the Chair or the Vice Chair of the authority (BE and CY), by fax (DE) by fax and then by letter (LV), by phone, fax, email and later by letter (EE) only by mail (SE), first by e-mail or fax and then the original by mail (FI, LU and DK), orally once the prospectus has been approved and then by an official letter (NO, stock exchange) by sending the copy of the Board of Directors decision which approves the prospectus (EL and SI), by publishing the approval in the official newspaper (HU), by posting the decision on its website (LV, PT, LV and SE).
212. In one jurisdiction (LI) the authority sends to the relevant person one copy of the prospectus the first page of which is stamped with an official seal of the authority and the mark “Approved” indicating the number and the date of the resolution of the approval of the prospectus. Additionally, each page of this copy is stamped with the official seal of the Commission. One authority (PL) notifies the approval of the prospectus by its decision sent to the issuer by post. The relevant information is also published on the website provided by the authority. In the UK, approval is notified by telephone and other electronic means. A copy of the approved prospectus with a stamp marking it as approved is then forwarded to the issuer or its advisers.

213. One authority (SI) informs, in addition to the issuer, the stock exchange and the clearing company for approvals regarding admission to trading but not in the cases of IPOs (therefore only in respect of a prospectus for admission to trading with securities previously issued in a private placement or any other of the exemptions). Another authority (LU) informs the “filing agent” in addition to the issuer.
214. One authority (ES) specifically stated the content of the notification which contains, among other things, the date of the approval, the relevant Articles in the regulations granting the authority the power to approve prospectuses and identification of the prospectus approved.

Power to approve prospectuses within the timeframes of the Prospectus Directive

215. All the authorities declared that they approve prospectuses within the timeframes provided for in Articles 13.2, 13.3 or 13.4 as appropriate.
216. In one jurisdiction (NO) this power has been delegated to the stock exchange.

Issues of interest

217. One authority (ES) stated that it has the power to issue regulations reducing these timeframes but up to now this power has not been exercised.
218. Another authority (PT) stated that the issuer/ offeror may choose whether it will receive a formal notification of approval/ request for supplemental information or alternatively an informal guidance as to which amendments/ additions should be made to the prospectus. The vast majority of issuers/ offerors follow the informal route.
219. In relation to the timeframes of Article 13 of the Prospectus Directive, one authority (CY) pointed out that where circumstances described in Article 13.4 apply, the Prospectus Directive does not specify any deadline for the issuers to submit the requested information. There should be a procedure in cases where issuers fail to submit the requested information within a certain time limit. Another authority (SI) stated that although the timeframes of Article 13 were implemented into national law, in practice the authority’s procedure is somewhat longer.
220. Another authority (NL) reported that sometimes it takes an issuer half a year to submit the requested information and it would be helpful if there was a procedure in case issuers fail to submit the requested information within a certain timeframe.
221. Another authority (IE) stated that given that an issuer cannot proceed with its offer and/ or admission to trading without an approved prospectus, the authority would expect the issuer to respond promptly to any request for further information.
222. Another authority (LU) stated that where issuers fail to provide requested completed information within a reasonable timeframe, they remind them of the fact that they may not approve the prospectus. They do not consider it necessary to impose a specified time limit but if the authority wants to close the file after a reasonable time during which it has not received complete information, it may choose to do so.
223. In PL according to the administrative procedure there are some general rules concerning timeframes for the administrative procedure to be closed when the applying person fails to the requirements of the authority.
224. AT gives the issuer a certain timeframe to submit the required information (usually between 1 and 3 weeks). If the issuer fails to submit the information, the prospectus can be rejected.

225. CZ gives the issuer a specific timeframe which is to be determined in a case by case basis and is usually 30 days.
226. DE- depending on the circumstances of the case, the authority may deny approval if the issuer fails to submit the documents requested and does not give any indication to do so within a foreseeable period of time.

Power to notify the issuer that the documents submitted are incomplete or require supplemental information

227. All the authorities declared that they have the power to notify the issuer that the documents submitted to it for approval are incomplete or require supplemental information within the timeframe provided for in Article 13.4 (i.e. within 10 working days of the submission of the application).
228. In one jurisdiction (NO) this power has been delegated to the stock exchange. In another jurisdiction (IE), the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange but the approval of the prospectus rests with the authority. The stock exchange will notify the issuer/ advisor by e-mail, within the timeframe provided for in Article 13.4, that the documents submitted are incomplete or that supplemental information is required.

Issues of interest

229. Authorities use different means to communicate to issuers/offerors or persons asking for admission to trading about additional information. Authorities usually notify by letter (BE, EL, FI, IS, LI, ES, LV, PL, PT and CY), by fax (DE) by e-mail (BE, IE and LI), by phone (IS and ES) and meetings (ES and PT). AT uses all these means depending on the issue in question. One authority (SI) stated that it is the authority's practice to issue a decree by which it requests the issuer to correct/ clarify/ amend and/ or change certain data and information in the prospectus. The timeframe in which issuers have to respond ranges from 8 to 15 days and could be prolonged if the issuer requests so. Whenever an issuer would not respond in time and would not request for an extension of the deadline, the authority would refuse the approval of the prospectus.

Power to transfer the approval of the prospectus to another authority

230. All authorities except two (DE and LV), have the power to transfer the approval of a prospectus to the competent authority of another Member State and notify this transfer within three working days from the date the decision was taken by the authority.
231. In one jurisdiction, NO, the power of approval of prospectus has been delegated to the stock exchange, which means that the power to transfer the approval to the competent authority of another member state will also rest with the stock exchange. This delegation of powers was decided by the Ministry of Finance.
232. Two authorities (DE and LV) do not have the power to transfer the approval of a prospectus to the competent authority of another Member State.

Issues of interest

233. Most of the authorities (AT, BE, CY, CZ, FI, IE, LT, LU, MT, PL, PT, SI, IT, DK and NL) reported that in practice the transfer of approval has not taken place yet. In ES there has been one case of transfer of the approval of a prospectus from the Spanish competent authority to another competent authority of the EU.
234. One authority (NL) has to notify the Ministry of Finance if it transfers the approval of a prospectus.

235. In relation to the reasons for this transfer, one authority (LU) stated that it will use this option only where there are reasons preventing it from approving the prospectus. Such reasons could be multi-issuers, language, highly sophisticated products unfamiliar to the competent authority. Another authority (NL) stated that according to the national law, the power of transfer should not be used lightly and that the transfer of the power of approval has to contribute to the proper functioning of the capital markets and the protection of investors. In the UK, the authority will deal with the transfer of approvals on a case by case basis. In CY, if the issuer requests the transfer of approval they would examine the reasons behind the request and decide accordingly.

Problems

236. In relation to the transfer of approval, one authority (LU) reported that issuers asked for transfer of approval to the competent authority of the regulated market where admission takes place without any further justification. In those jurisdictions, the authority considered that such a transfer would result in a circumvention of the definition of the home member state.

B. Approval of the supplements to the prospectus (Articles 16 and 17.2)

Power to ensure that the supplement is produced and published in accordance with the Prospectus Directive

237. All the authorities declared having the power to ensure that the supplement to the prospectus is produced and published in accordance with Articles 16 and 17.2.
238. Two authorities (AT and DK) stated that they exercise this power in cooperation with the judicial authorities. In one other jurisdiction (NO) this power has been delegated.

Issues of interest

239. The authorities learn about the relevant changes which require a supplement via ad hoc information but also via requests, complaints, whistle blowing, cross information with the relevant departments of the authority and own research.
240. When they learn about the relevant changes which require a supplement, they will require the issuer to publish a supplement (FR, PL, AT, BE, IT, CY, NL, NO/ stock exchange, UK and PT), request an explanation from the issuer (PL, MT) suspend or prohibit the offer (PL, IT, BE), make a public statement (PL, IT, BE) or impose a pecuniary sanction (BE, DE, IT, MT and NL). In two jurisdictions (LU and FI) if the competent authority learns about a change between the time when the prospectus is approved and the final closing of the offer to the public or as the case may be, the time when trading on a regulated market begins, it will require the issuer to publish a supplement. However, if the relevant fact is noted after the above referred timeframe, the authority will request an explanation and/ or public statement and/ or may impose a fine as the case may be. In another jurisdiction the authority will file a complaint with the State Attorney for criminal proceedings (AT).

Power to approve the supplement according to the method used for the Prospectus

241. All the authorities stated that the method followed for the approval of the supplement is that of the original prospectus with the exemption of the 7 working days period for the approval of the supplement provided for in Article 16 of the Prospectus Directive.
242. In one jurisdiction (IE), the authority has delegated certain tasks relating to the scrutiny of prospectuses (including supplements) to the stock exchange. The approval of supplements

rests with the authority. In another case (NO) the power has been fully delegated to the stock exchange.

Problems

243. Three authorities (CY, SI and NL) pointed out that it is difficult to know for non listed issuers whether there are any significant new factors unless an announcement is made. Any material mistakes or inaccuracies usually come under the authority's attention via complaints. Another authority (LU) stated that it is difficult to evaluate the nature of an event regardless of whether the issuer is listed or not or whether the event has been announced or not. Therefore, they cannot consider that they may evaluate a priori whether a supplement should be drafted or not. This authority (LU) and another authority (NL) consider that this is not a problem. Three authorities (LU, NL and IE) consider that the responsibility lies with the issuer to determine whether a supplement is required and to publish it. Another authority (LT) pointed out that if the company omits material information from its announcements, it will be obliged to publish the prospectus supplement after the receipt of a complaint from market participants.
244. Some authorities (AT, DK, PL, and SK) stated that they have not so far had any public offers of a non-listed company and therefore this problem has not been encountered.

10. Filing, publication and availability of the prospectus (Article 14)

245. This section deals with the way in which a prospectus should be filed, published and made available to the public

Powers

246. All the authorities have the power to ensure that the approved prospectus is filed, even if in NL, LT and DK, there is no specific legal obligation to file a prospectus because the filing is considered a result of the approval of the prospectus.
247. The filing occurs before the publication of the prospectus.

Issues of interest

248. The publication of the prospectus on the regulator's website occurs either directly or via a reproduction of a list of the approved prospectuses with a hyperlink to the prospectuses published on the website of the issuer. MT publishes the prospectuses on the regulator website for a period longer than 12 months.
249. In several countries (BE, CZ, FR, IS, LU, LT, NO, SE), the electronic form for a prospectus is mandatory but a paper copy must be delivered on request free of charge.
250. Certain countries (AT, CY, EE, EL, IT, LV, and PL) require the publication of a notice stating how the prospectus has been made available to the public and where the public can obtain it. DE notes that the publication of such notice is also required for prospectuses that are passported into Germany. In respect of a prospectus relating to equity securities (other than equity securities issued by collective investment undertaking), one authority (IE) requires the publication of a notice stating how the prospectus has been made available and where it can be obtained by the public.
251. All the authorities have the power to ensure whether the prospectuses have been made available to the public in time. Depending on the countries concerned, the legal availability can be 1, 2 or 3 days before the beginning of the public offer, when subscription is ready to begin or at least 3 days before the closing of the offer and at the latest at the start of the offer and "usually on the day of approval or shortly afterwards". The deadline is always longer in case of IPOs (usually 6 days).

252. Some of the countries (AT, LT) check the availability of the prospectuses on a reactive basis (investigations are made on the basis of complaints from investors or ex post checking) while some of the others (CY, EL, LU, NO, SE) take a proactive profile (checking the website of the issuer, putting in place a procedure where the stock exchange cannot list a security without having checked the availability of the prospectus).
253. In the NL, LT and DK, there is no specific legal obligation to file a prospectus because the filing is considered a result of the approval of the prospectus.

11. Advertisements (Article 15)

254. This section deals with the supervision of the advertisements.

Powers

255. All competent authorities have the power to supervise advertisements, although NO has delegated by law this power to the stock exchange and SE exercises it in collaboration with the stock exchange
256. Some authorities (BE, CY, EE, EL, FR, HU, IE, LT, PT) have the power to supervise this activity ex ante. Supervision ranges from the approval of advertisements, to the suspension of publicity or asking for the necessary corrections and even to the substitution of the offender in the advertisement activity.
257. Other countries (CZ, DK, EE, IS, LV, LU, NL, NO, SI, ES, SE,) practice ex post supervision of the advertisements. In IT and MT, the regulator can check ex ante and ex post, since it receives notification of the advertising.

Issues of interest

258. In FR, advertisements shall contain a notice alerting the public of the section “risk factors” of the prospectus and where applicable and at the request of the regulator a warning about exceptional characteristics of the issuer, the guarantors or the relevant financial instruments.
259. The competent authority of the home Member State shall have the power to exercise control over the compliance of advertising activity. Since in practice this task is difficult to be executed, countries were asked whether they had encountered any problems as a host competent authority from the fact that they are not the competent authority responsible for the supervision of the advertisements (related to a public offers of which the prospectus was approved by another authority) and the answers vary as described below.
260. In ES if the regulator is the home authority, it sends its remarks only if the issuer has decided to submit its advertisements. This voluntary procedure limits the risk for the issuer of suspension or prohibition of the campaign by the ES regulator in case of violation of Article 15. The voluntary procedure set for issuers submitting the advertising material to the Spanish competent authority for an informal control can also be used by issuers when ES is host Member State, thus reducing the possible problems.
261. DK stated that there has been no problem relating to advertisement of issuers in DK, where DK is host Member State. Conversely, EL, as a host competent authority, indicates that the advertisements as filed at the home competent authority might not included all the statements required by Article 15 of the Prospectus Directive and for this reason when introduced to the host country they might have to be adapted.
262. In the IE and UK, issuers are required to insert a bold and prominent statement on advertisements that the advertisement is not a prospectus but an advertisement and investors should not subscribe for any transferable securities except on the basis of the

information in the prospectus. This is so as to ensure that investors are offered the protection of the prospectus including obtaining the full information on the issuer.

12. European passport of prospectuses (Articles 17 and 18)

263. This section deals with the procedure followed when passporting a prospectus to a host competent authority and the issuing of the certificate of approval attesting that the passported prospectus has been drawn up in accordance with the directive.

Procedures of passporting as a host member

Powers

264. When acting as host Member States, it seems that all the competent authorities have the relevant powers and, along with the provisions of the directive, do not undertake any approval or administrative procedures relating to prospectuses notified by the relevant home Member State when acting as the host Member State and accept validity of the prospectus and supplements approved by the competent supervisory authority of another Member State of the European Union, and if they provide proof to the authorities that the prospectus or base prospectus is in compliance with the regulations of the European Union.

265. Some authorities specifically stated that they verify if all the documents are provided and whether the translation of the summary is needed and do not accept incomplete notifications, notifications in a language not accepted, missing summary or outdated prospectuses (AT, DE, DK, IE, PL). Some authorities (CZ, DK for instance) stated that the documents are looked at, i.e. for validity, but are not examined in detail.

266. In NO, the powers are delegated to the stock exchange. All the authorities except CZ have the power to ask for the supplement and when acting as a host to inform the home authority about the need for a supplement.

Issues of interest

267. DE stated that, when a prospectus has been passported to a host Member State, they will not automatically passport any subsequent supplement and specify that a passport request from the issuer in respect of each supplement has to be received by them. LU stressed that it is the issuer's responsibility to assess whether an event may trigger the preparation of a supplement, but at the same time underlined that they were vested with the power to require a supplement if they consider it necessary. Many countries (AT, BE, CY, CZ, LT, LU and NL) judge that it is up to the home/host regulator to draw the attention of the issuer to the obligation to passport the supplement in the host country (i.e. the issuer is obliged to demand the passporting of the supplement to the home/host regulator). But in IE, where a prospectus has been passported to a host Member State, the default position is that the authority will automatically passport any subsequent supplement.

268. NO declares the decision whether a supplement is required may be very difficult and consequently wishes further guidance on the content of supplements.

Certificate of approval

Powers

269. All the authorities except NO where the power is delegated will provide the competent authorities of the host Member State with a certificate of approval attesting that the prospectus has been drawn up in accordance with the Prospectus Directive and with a copy of the prospectus. The timeliness of these provisions has also been taken into account in the practice of the members.

270. This provision would be made within three working days, and some members specified that, if the request was submitted together with the application for authorization of the prospectus for publication, on the business day that follows the date of authorization of the prospectus for publication.

Issues of interest

271. In practice, some CESR members (IE and LU for example) stated that they did their best to provide the certificate as soon as possible i.e. on the approval date (unless approval takes place in the late afternoon for instance). Some authorities still do not have experience of this power (MT, SI). In BE, HU and LT, it is observed that a part of the requests for passporting are not coming with either the final terms or an advertisement or the both. It means that a part of the requests for passporting is made automatically to a certain number of countries without the real intention to launch a public offer in some of these countries.
272. In this respect it may be worth mentioning that the CESR contact group has already adopted detailed procedures concerning the notification of prospectuses.
273. Several countries (AT, CY, LT and PL) judge that the passport procedures function well.
274. However, it was also stated that sometimes problems are encountered in relation to size limits with mailboxes. Moreover, IE and NL think that if all countries would require the same, the functioning of the passport would be easier. The NL competent authority indicates that there are countries that require for example a fax of the certificate or countries that require all the documents incorporated by reference.
275. If the HU and LT competent authority finds that an issuer established in another Member State is violating the regulations on public offering (including advertisement rules), it shall notify the competent supervisory authority of the Member State where the issuer is established.

13. Language regime for the prospectus (Article 19)

Powers

276. Most authorities (with the exception of LV) stated that they had the power to accept prospectuses written in their national language(s) and/or English. Authorities require the prospectus to be written in a language acceptable by them which in all the cases is the local language(s) plus English. In one case, other similar languages are also accepted (NO accepts Swedish and Danish as those languages are close to the local language).
277. In ES, the regulator might also accept an additional third language but it is currently not the case.
278. LV, LT, SK, SI prescribe that such a prospectus shall be drawn up in their official language. LV answered that when acting as a home Member State, they do not have the power to accept the prospectus in any other language.
279. In FR, regarding the use of *“a language other than French that is customary in the sphere of finance”*, France has a detailed regime (see RGAMF Article 212-12).
280. In EL, when the offer to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding EL, the language of the prospectus can be either in Greek or a language customary in the sphere of international finance at the choice of the issuer, offeror or the person asking for admission to trading. When the offer to the public is made or admission to trading on a regulated market is sought in one or

more Member States including EL, the language of the prospectus must be Greek and a language customary in the sphere of international finance or a language accepted by the host Member State at the choice of the issuer, the offeror or the person asking for admission to trading.

281. Prospectuses for non-equity securities admitted to trading on a regulated market and whose denomination per unit amounts to at least EUR 50 000 can be written in English in all countries.
282. In BE, the prospectus is in Dutch, French or in a language customary in the sphere of international finance. The summary has to be drawn in Dutch and/or French when there is an offer.
283. The issue of the languages accepted is also dealt with by the CESR Prospectus Contact Group.

Translation of the summary

284. In most countries, the summary must be translated in a national language,
- When Article 19.2 applies – BE, CZ, NL, NO do not require translation of the summary
 - When Article 19.3 applies – NL and NO do not require translation of the summary.
 - When Article 19.4 applies – BE, CY, DK, FI, FR, DE, EL, IS, IE, NL, SE, ES do not require translation of the summary.

In NO this power has been delegated to the stock exchange

285. In EL, the law provides the authority with the discretion to request a Greek translation of the summary on a case by case basis with the exemption of prospectuses relating to non-equity securities with a denomination of at least EUR 50.000. In CY, the law also gives the authority the discretion to request a translation of the summary in the official language on a case by case basis. LT answered that according to their rules they require the translation of the summary into their national language.
286. The issue of the summary is also dealt with in the CESR Prospectus Contact Group.

14. Issuers incorporated in third countries (Article 20)

Powers

287. All the authorities except MT and NO have the power to approve prospectuses from third country issuers. In NO this power has been delegated to the stock exchange. Some authorities require a cross reference list if all the elements listed in Reg. 809 are not included in the prospectus. One authority (AT) mentioned more specifically that it requires checking the prospectus of the third country issuer together with the cross reference list. If they reach the conclusion that the prospectuses coming from this country are equivalent they would accept them in the future without any review

15. Competent authorities and delegation of powers (Articles 21.1 and 21.2)

Powers

288. All authorities are the designated central competent administrative authorities in their respective country. However in NO all the powers have been delegated by law to the Stock Exchange. In IS, AT and ES other administrative authorities may apply Chapter III of the PD. In the case of ES, the regional governments may apply chapter III of the Prospectus

Directive in relation with prospectuses for the admission of securities to the regional exchange of their competence.

289. Almost half of the authorities do not have the power to delegate responsibilities related to the Prospectus Directive (CZ, FI, EE, DE, HU, LV, LT, MT, NL, PL, SK, SI, SE, UK) while the other half does have this power (AT, BE, CY, DK, FR, EL, HU, IE, IT, LU, NO, PT, ES) but little instances of delegation were evidenced yet.
290. In one case (AT) there is a different filing authority (OeKB) and in NO the powers were delegated to the stock exchange. In IE the authority has delegated certain tasks to the stock exchange subject to such conditions as the authority specifies. Notwithstanding any delegation, the final responsibility for supervising compliance with the Prospectus Directive lies with the authority.

16. Powers (Articles 21.3 and 21.4)

Powers to require issuers, offerors or persons asking for admission to trading on a regulated market to include in the prospectus supplementary information, if necessary for investor protection

291. All authorities have the power to ask for additional information to be included in the prospectus directly.
292. In IE the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The approval of the prospectus rests with the authority. The stock exchange will scrutinize a prospectus to ensure that, where necessary, the issuer provides all the information required to satisfy the requirements of Irish and EU law pursuant to the Prospectus Directive. In NO this power has been delegated to the stock exchange

Issues of interest

293. FI reported that it has used this power in the case of complex financial histories. DK cannot obtain supplementary information without consent from an applicant, but the authority can refuse to approve a prospectus if the necessary information is not provided. It also reported that it is often necessary to require supplementary information for investor protection. This is primarily information required according to laws or Regulation 809/2004, but can also be additional information.
294. In EL if the prospectus has material mistakes, inaccuracies or omissions that degrade its content, it asks for the inclusion in the prospectus of supplementary information. In the case of significant events that happened after the approval of the prospectus and before the time when trading on the regulated market begins, the regulator asks for a prospectus supplement in which the new factors are mentioned. There have been cases since the implementation of the Directive of EL and LU using the powers set out in Article 21.3(a)-(c) of the PD. CY and IT reported that it is usual practice to require the issuer to insert additional information as a result of the scrutiny of the prospectus.
295. Requests for submitting additional documentation is also the usual procedure followed by the regulator in several jurisdictions.

Powers to require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents

296. All the authorities have also the power to ask for information and documents.
297. In IE the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The approval of the prospectus rests with the authority. The stock exchange will scrutinize a prospectus to ensure that, where necessary, the issuer provides all the information and documents required to satisfy the requirements of Irish and EU law pursuant to the Prospectus Directive. In NO this power has been delegated to the stock exchange.

Issues of interest

298. In IT it is common to hold meetings with members of the board and auditors and the authority may exercise enforcement powers with respect to any person possessing relevant information in order to obtain information and document FI, HU, IS, LT, MT reported no cases so far.
299. AT reported that they usually ask for contracts, advisory opinions, proof of ownership and statements on current financial status. CY usually asks for valuation reports, material contracts and resolutions.

Powers to require auditors and managers of the issuer, offeror or person asking for admission to trading on a regulated market, as well as financial intermediaries commissioned to carry out the offer to the public or ask for admission to trading, to provide information

300. All the authorities have the power to require auditors, managers and financial intermediaries to provide information except NL, which does not have the power to require auditors to provide information.
301. NO has delegated this power to the stock exchange. In IE the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. The approval of the prospectus rests with the authority. The stock exchange will scrutinize a prospectus to ensure that, where necessary, the auditors, managers and financial intermediaries provide the information required to satisfy the requirements of Irish and EU law pursuant to the Prospectus Directive.

Issues of interest

302. AT asks for information and advisory opinions on various issues (such as the financial status, tax issues, interpretation of national laws etc). FI requests the financial intermediaries to provide information on the allotment of shares. In FR the regulator may require from issuers, or persons who control them or are controlled by them, any additional useful information. In addition, it may request that a modification be published. In IT the regulator may require issuers, the persons that control them and companies controlled by them to provide information and documents and use a variety of supervisory tools to monitor the accuracy of info provided (including hearings and on site inspections).
303. In ES in complex transactions such as IPOs, it is normal for the regulator to have regular contacts during the approval procedure, not only with the managers of the issuer, but also with its auditors and the lead manager of the syndicate. For simpler offers/admissions, communication with the representatives of the issuer is normally enough. PT requires the auditors of the company to give additional information on the accounting procedures followed by the company. In BE all these means of examination are used. In DE there is usually direct contact with the issuer's advisers that will instruct the issuer, its managers and auditors accordingly.

Powers to suspend a public offer or admission to trading for a maximum of 10 consecutive working days on any single occasion if it has reasonable grounds for suspecting that the provisions of this Directive have been infringed

304. All the authorities have the power to suspend the public offer or the admission to trading. In NO this power has been delegated to the stock exchange

Issues of interest

305. DK can prescribe the issuer to suspend a public offer or admission to trading. In IT the regulator may suspend the public offer, prohibit implementation of admission or order revocation of a suspension order, – both of trading and of intermediaries – and can request the management body to suspend trading of financial instruments. The regulator may suspend the public offering as a precautionary measure for a maximum of ninety days in the event of a well-founded suspicion of violation of the relevant legal provisions. In 2005, two cases of suspension of public offer were recorded. No cases in practice have been reported so far by most jurisdictions. In BE, all these powers exist too.

Powers to prohibit or suspend advertisements for a maximum of 10 consecutive working days on any single occasion if it has reasonable grounds for believing that the provisions of this Directive have been infringed

306. All the authorities, except EE, have the power to prohibit or suspend advertisements for a maximum of 10 days. In FI the power to prohibit advertisements is exercised with application to judicial authorities (Market Court). In NO the power has been delegated to the stock exchange.

Issues of interest

307. AT reported a case where the authority forced the issuer to stop the advertising. DK can, if it has reasonable grounds for believing that the provisions of the law have been infringed, suspend the offer. In HU the draft of all advertisements shall be submitted to the regulator at least five business days before the conclusion of the marketing procedure or before the commencement of trading on a regulated market. The regulator may ban the publication of the advertisement if it contains any information that is in contrast with the draft version submitted and approved for publication as well as any information that is misleading. In BE, all these powers exist too.

Powers to prohibit a public offer if it finds that the provisions of this Directive have been infringed or if it has reasonable grounds for suspecting that they would be infringed

308. All the authorities except EE have the relevant power of prohibition or suspension to trading and prohibition of public offers. In FI the power to prohibit public offer or admission to trading is exercised with application to judicial authorities (Market Court). In NO the power has been delegated to the stock exchange.

Issues of interest

309. In DK if the regulator finds that the provisions of the Directive have been infringed or if it has reasonable grounds for suspecting this, the prospectus is not approved. If this occurs after the approval of the prospectus, a supplement will be requested. No cases in practice have been reported so far in most of the jurisdictions.

Powers to suspend or ask the relevant regulated markets to suspend trading on a regulated market for a maximum of 10 consecutive working days on any single occasion if it has reasonable grounds for believing that the provisions of this Directive have been infringed

310. All the authorities except EE and DE have the powers to ask the relevant regulated market to suspend the trading on a regulated market and to prohibit trading for 10 days. NO has delegated this power to the stock exchange. In DE this power lies with the stock exchange/ stock exchange supervisory authority.

Issues of interest

311. DK can suspend trading on a regulated market if an order issued by the authority, i.e. because of infringement of provisions implementing the Directive, is not followed. In IT the regulator may request the market management company to suspend financial instruments from trading. In case the market operator does not comply the regulator can intervene directly on the market platform to suspend the trading. This has happened in the past. However normally the regulator informally requests this of the market operator and the market operator implements the request.

312. In SI the regulator has the relevant powers but technically the Agency cannot suspend trading but has to request this action from the stock exchange. The stock exchange can suspend trading on a regulated market also by itself and in accordance with its Rules that become valid after Agency's approval and also for reasons not relevant for this issue. In BE all these powers exist too.

Powers to prohibit trading on a regulated market if it finds that the provisions of this Directive have been infringed

313. All the authorities with the exception of one (CZ) have the power to prohibit trading on a regulated market. In FI the power is exercised with application to the judicial authority. In DE the powers under Article 21.3(h) are within the competence of the German Stock Exchange Supervisory Authority. In NO the power has been delegated to the stock exchange. In CZ the authority cannot prohibit trading, it can only suspend it for a maximum of six months.

Issues of interest

314. DK can remove a financial instrument from trading if an issuer doesn't comply with the regulations, after the authority has issued an order. In IT the regulator can order market operator to adopt all necessary measures (including trading prohibition) to ensure adequate transparency of the market and orderly trading. No recent cases.

Powers to make public the fact that an issuer is failing to comply with its obligations

315. In relation to the power of the authority to make public the fact that an issuer is failing to comply with its obligations, all the authorities have this power with the exception of NO. In this latter case (NO) the power is not considered necessary as such information will normally *not* be subject to professional secrecy. Breaches of prospectus requirements will normally be published by the stock exchange, *sometimes* on a no-name basis.

Issues of interest

316. In DE under certain circumstances, the regulator may publish non-appealable measures against the issuer's infringement of the PD law. In DK an injunction regarding Article. 10

of the Directive can be made public. In IT the regulator can publish non-compliance by issuers- either in Consob's or Bank of Italy's bulletin and establish other methods of making this public – the expenses for which are passed on to the issuer. All the decisions adopted by the regulator in IT on suspension of offers or prohibition of offers have been published on the web-site of the regulator and on the weekly newsletter. In SE the regulator has the power to make public that the issuer does not comply. The decision must be taken on a case by case basis. Generally, these powers exist in BE too

Powers to require the issuer to disclose all material information which may have an effect on the assessment of the securities admitted to trading on regulated markets in order to ensure investor protection or the smooth operation of the market, once the securities have been admitted to trading on a regulated market

317. All the authorities except DE and NO have the power to require the issuer to disclose all material information.
318. In DE this power with respect to Article 21.4 (a) lies with the stock exchange. In LT the regulator can exercise this power either directly or in collaboration with the stock exchange. In SE disclosure of material information is ensured by the market operator. It is also reported that the regulator can indirectly control this through supervision of the regulated markets. In NO, the necessary powers are considered to be provided (to the stock exchange) in the Exchange Act and Stock Exchange Regulation's provisions regarding the issuer's disclosure obligations.

Issues of interest

319. For AT this power has to be seen in connection with the obligation of the issuer to publish price sensitive information related to securities. In LU, in practice, this kind of power is normally used under the market surveillance legislation or the Market Abuse Law in coordination with the Stock Exchange and not under the PD law. In IT, if the issuer fails to comply with the request to publish material information, the regulator can publish the information at the expenses of the issuer.

Powers to suspend or ask the relevant regulated market to suspend the securities from trading if, in its opinion, the issuer's situation is such that trading would be detrimental to investors' interests, once the securities have been admitted to trading on a regulated market

320. All the authorities except NO and DE have the power to suspend or ask the regulated market to suspend the securities from trading. In NO and DE such power lies with the stock exchange. In LT the regulator can exercise this power either directly or in collaboration with the stock exchange.

Powers to ensure that issuers whose securities are traded on regulated markets comply with the obligations provided for in Articles 102 and 103 of Directive 2001/34/EC and that equivalent information is provided to investors and equivalent treatment is granted by the issuer to all securities holders who are in the same position, in all Member States where the offer to the public is made or the securities are admitted to trading

321. All the authorities except NO and DE have the power to ensure that issuers whose securities are traded on regulated markets comply with the obligations of Articles 102 and 103 of Directive 2001/34/EC.
322. In DE the powers under Article 21.4 are within the competence of the German State Stock Exchange Supervisory Authority. In DK this power is exercised with application to the judicial authorities. In NO this power is considered to be covered by the national law that

implemented Directive 2001/34/EC. In SE the regulated market has the primary power to stop the trading, but if they do not, the regulator has that power.

Powers to carry out on-site inspections in its territory in accordance with national law, in order to verify compliance with the provisions of this Directive and its implementing measures. Where necessary under national law, the competent authority or authorities may use this power by applying to the relevant judicial authority and/or in cooperation with other authorities

323. In relation to the power to carry out on site inspections, all the authorities except DE, DK, NO and PL have the relevant power.
324. In DE the powers under Article 21.4 are within the competence of the German State Stock Exchange Supervisory Authority. NO considers that instead of on site inspections it can impose penalties. The reason for not empowering the authority to carry out on site inspections was partly that the offeror/issuer will be subject to disclosure obligations where non-compliance may be sanctioned with day penalty, and partly that breaches of the prospectus rules may be a criminal offense. The prosecutor authority has adequate powers to secure evidence. DK states that it is only possible for the regulator to carry out on-site inspections in financial companies.
325. PT can exercise this power directly but it can also ask for the cooperation of judicial authorities and the police. In SI the relevant power is exercised directly since, on-site inspection as regards prospectuses is the regulator's competence and it is not exercised together with the stock exchange (those actions apply for other areas of supervision). In SE the regulator has the power only to carry out on-site inspections of those issuers who are directly under the Authority's supervision

17. Professional secrecy (Article 22.1)

Powers

326. The provisions on professional secrecy are directly applicable by all authorities.

Issues of interest

327. In FR and CY professional secrecy cannot be invoked against judicial authorities acting within the scope of criminal proceedings or in connection with judicial liquidation proceedings instituted against persons. In NL and MT confidential information may be disclosed to public authorities or to a court for the purpose of preventing, revealing, detecting or prosecuting the commission of acts that amount or are likely to amount to a criminal offence, or to prevent a miscarriage of justice. A person shall not be deemed to be compelled by law to give information to the public authority unless there is a statutory requirement to that effect. Public authority can be any body administering, holding or using funds belonging directly or indirectly to the Government. In addition, a competent authority or a court may require this disclosure in accordance to law in the course of a criminal investigation. In LU, professional secrecy of the authority may not be invoked against judicial authorities acting within the scope of criminal proceedings. In PL in cases related to supervision by the regulator or its authorised representative may provide and receive from other supervisory authorities in PL as well as from a foreign supervisory authority competent for the securities or financial market, information necessary for the proper performance of specific supervisory responsibilities and ensure proper conduct of court, administrative, criminal, explanatory and audit proceedings. SK has reported lack of experience on this issue.

328. Professional secrecy rules may be also imposed apart from by laws, by codes of conduct of the authorities (AT, PT DE).
329. In FI the provisions on professional secrecy apply also to these other persons. In NO the provisions on professional secrecy apply to the authority's board members, employees etc and to the stock exchange which has been delegated tasks under the relevant provisions of the Directive. In AT professional secrecy would also apply to other persons providing services to the authority. In EL and PT all persons who perform directly or indirectly, permanently or occasionally any service to the authorities are subject to professional secrecy as to facts of which they have knowledge when rendering services. The obligation of confidentiality persists after the services rendered have ceased.

18. Co-operation between authorities or with the market operators (Article 22.2)

Consultation with market operators

Powers

330. All the authorities except LV have the power to consult operators of regulated markets as necessary and, in particular, when deciding to suspend or prohibit (or to ask to suspend) trading it appears that the authorities have the power to consult. They exercise this power directly. In most cases (all except ES) the authorities consult with the market operator (including when the market operator is established abroad) before taking a final decision.
331. It is difficult, however, to understand from the content of the responses whether or not the response of the market operator has any legal value (i.e. is binding or not) and which is the precise procedure followed.

Issues of interest

332. Five authorities (CY, IE, LV, LT, and SI) expressly referred to the fact that they do not have any experience in this field or that no such cases were recorded following the implementation of the Directive.

Provision of assistance to foreign regulators

Powers

333. All the authorities but one (NO) have the power to provide direct assistance to foreign regulators in cases where there is shared competence or when the approval has been transferred. However, in SL the law does not contain special provisions dealing with cooperation among competent authorities in the area of approval of prospectus. The competent authority believes that general provisions for mutual cooperation apply.
334. All the authorities but two (NO and SI) are required to cooperate with the competent authorities of other Member States, when requiring suspension or prohibition of trading for securities traded in various Member States.
335. All the authorities but three (MT, NO, SI) are required to provide assistance to the competent authority of a host Member State from the stage at which the case is scrutinized, in particular as regards new type or rare forms of securities. However, nineteen authorities (AT, BE, CY, CZ, DK, EE, IE, FI, EL, ES, HU, IS, LT, LU, LV, NL, PL, PT

and SE) specified that they do not have had any experience in this respect since the implementation of the Directive. PL specified that any decision will be taken on a case by case basis.

Issues of interest

336. Summing up, it appears that the authorities possess a certain amount of powers in order to provide assistance to foreign regulators. However some differences in the perception of the cooperation to be provided seem to exist.
337. In IT and HU the competent authorities have extensive powers to provide assistance and cooperation including performing on-site inspections on behalf of the requesting authority. In case of IT the requesting authority may ask for its staff to be allowed to participate in the course of the investigation in IT.
338. Other countries such as LU stated that they shall, in particular, exchange information and cooperate when an issuer has more than one home competent authority including this authority because of its various classes of securities, or where the approval of a prospectus has been transferred to the competent authority of another Member State.
339. Reference was also made to the cooperation that can take place at CESR level to promote a common implementation of the directive. This activity appears to be particularly meaningful in cases of new securities or multiple offering/listing as well as with respect to provisions on derogations and exemptions.
340. A particular need for cooperation is envisaged by the respondents when a competent authority requests either suspension or prohibition of trading of securities traded in various Member States to ensure a level playing field between trading venues and the protection of investors.
341. However the responses do not provide any meaningful information on experiences or procedures used for cooperation in the different areas described above and the lack of actual practice in the implementation makes it difficult to draw clear conclusions with respect to the practical implementation of Articles 22.2 and 23 of the Directive.

19. Precautionary measures (Article 23)

Powers

342. All the authorities but two (NO and CZ) when acting as the host Member State authority have the power to communicate to the home authority the irregularities or other violations committed by the issuer or the financial institution in charge of the public offer. In the case of PL reference is made to the fact that no case occurred so far whilst the response on the existence of the power is missing. Eighteen authorities (AT, BE, CY, DK, FI, IE, EE, EL, HU, IS, LT, LU, LV, MT, NL, PL, PT, SE) expressly state that they do not have had any experience in this respect since the implementation of the Directive.
343. Ten authorities (AT, CY, CZ, DK, ES, FI, IR, IT, LU, SL) specifically refer in their response to the CESR mechanism of cooperation (CESR MOU, CESR contact list). In NO such irregularities would be notified by the Stock exchange to the regulator who, in turn, would refer to the home Member State, informally or in accordance with the CESR MOU as the case requires.

344. All the authorities except two (NO and SI), when acting as host authorities, have the power to take all appropriate measures in order to protect investors under the conditions laid down in Article 23(2) of the Directive. In particular, pursuant to the directive the host regulator can take measures directly against the issuer to ensure investor protection in cases in which notwithstanding measures taken by the home regulator or because such measures appear to be inadequate and the violations continue to be perpetrated.

Issues of interest

345. In their responses a number of authorities (ES, IT, PT, SE) indicated the following measures: the postponement of the public offer or the admission to trading, the disclosure to the public of the non-compliance from the issuer, the replacement of the managing entities to protect the market and the investors, the giving of orders, the imposition of administrative sanctions and the filing of a formal complaint with the state attorney for criminal sanctions. ES, LU and PL expressly indicated that they apply the same regime applicable to domestic issuers. IT and NL referred to the possibility to impose pecuniary fines in addition to the other usual measures. DE referred to measures available according to general administrative enforcement law depending on the individual case.
346. FR referred expressly to the possibility to adopt measures such as the sequestration of funds or securities. Such measures cannot be adopted directly by the authority. The authority in power is the presiding judge of the tribunal de Grande Instance who acts on the basis a grounded request from the authority.
347. However, from the responses it appears that there have not been cases since the implementation of the Directive that would enable to test the use of such powers in case of cross border offering.

20. Sanctions and right of appeal (Articles 25 and 26)

348. This section deals with the types of sanctions the different competent authorities can impose, the range of administrative fines, the publication of the sanctions and the right of appeal against the decisions imposing sanctions. Different types of sanctions and range of administrative fines

Powers

349. Almost all the authorities have the power to impose sanctions in case of infringement of the directive provisions. In the case of NO, this power is delegated to the stock exchange. In other cases (DK, FI) certain sanctions are imposed with application to the judicial authority (market court). As for ES the authority can not impose sanctions for very serious infringements.
350. In ES, the regulator can impose sanctions for minor and serious infringements. Sanctions for very serious infringements rest with the Ministry of Finance on basis of a proposal by the regulator. In addition, regional Spanish governments which can supervise their regional exchanges have also the power to impose administrative sanctions.

351. The authorities stated in their responses the following sanctions/ measures that can be imposed on an issuer⁵:

- ask the issuer to justify its actions
- ask the issuer to comply with the law
- prohibit the trading of the issuer's securities
- suspend trading of the issuer's securities
- fines
- file a complaint with the State Attorney
- disclosure of infractions, issue public reprimand or public warning
- interim measures of protection (when necessary to protect the market)
- order an audit or change of auditor
- issue private caution or reprimand
- prohibit or suspend advertisements

Range of administrative fines

AT	Up to EUR 50,000
BE	From EUR 2,500 to EUR 2,5 M
CY	From CYP 25,000 up to CYP 200,000 or a fraction of the illegally conducted offer (up to 1/3 if first time or 1/2 if repeated)
CZ	Up to EUR 356,300
DK	Up to EUR 1350
DE	Up to EUR 500,000
EE	For natural persons a fine of up to 18.000 EEK and for legal persons a fine up to 50.000 EEK; plans to amend the regulation to accommodate the ranges of the fine with the developments of the market
EL	From EUR 3,000 to EUR 1, 000,000
FI	a) Legal persons EUR 500-10.000, natural persons EU 50-1.000 b) Penalty payments (administrative sanction imposed by the Market Court upon the authority ;s proposal) : legal persons EUR 500-200.00, natural persons EUR 100-10,000 c) Fines imposed in criminal proceedings : legal persons EUR 850-850.000, natural persons 1-120 day fines (the amount of one day fine depends on the income, assets and solvency of the person)
FR	Up to EUR 2,5 M
HU	From HUF 200,000 to HUF 10 M
IE	Up to EUR 2,5 M
IT	From EUR 25,825 to EUR 516,, 455
LT	Up to LTL 100,000
LU	From EUR 125 to EUR 125,000
LV	Up to EUR 14,200
NL	EUR 87,125
NO	From NOK 110,000 to NOK 1 M
PL	Up to PLN 1 M (in a few cases up to PLN 5M)

⁵ Editor's note: due to the lack of information transmitted by certain countries, it is impossible to give a global accurate picture of CESR's Members relating to the different types of sanctions/measures they may use.

PT	From EUR 2,500 to EUR 2, 500,000
SE	From SEK 50,000 to SEK 10, 000,000
SI	From EUR 2,500 to EUR 375,500
UK	From £5, 000 to an unlimited fine

352. The imposition of the above measures/ sanctions and the selection of the appropriate measure/ sanction depend on the gravity of the infringement.

Publication of the sanctions

Powers

353. All the authorities except DK declare that they have the power to disclose to the public the sanctions imposed.

Issues of interest

354. AT specified that this publication takes place on the authority’s homepage or in a newspaper. PT specified that in case of very serious infractions for which a fine has been imposed, the rule is publication of the sanction. When a warning sanction has been applied, publication is decided on a case by case basis. All the decisions that are, exceptionally not published are to be found on the authority’s website in an anonymous format. In ES, the regulator does not disclose to the public sanctions for minor infringements. In SI, the regulator is not allowed to disclose sanctions for which an appeal is possible. In IE, not all sanctions imposed are disclosed to the public. CZ says its disclosure is partial because it only discloses “legitimate decisions”. In DE the authority may only publish non-appealable measures. CY states that as a rule all sanctions over CYP5.000 are announced. For sanctions below CYP5.000 a decision whether to announce is made on a case by case basis.

Right of appeal against the decisions imposing sanctions

Powers

355. All jurisdictions provide for a right of appeal to the courts against the decisions imposing sanctions.

21. Procedure for the election of a home Member State by a third country issuer

356. In relation to the procedures for notifications received from third country issuers electing a home Member State, the large majority of the authorities responded that no specific procedures are established. In one case (NO) the stock exchange sent a letter to the third country issuers outlining their right to choose their home Member State and describing the procedures to be followed for this election. The UK explained that the issuer submits a letter and that the authority acknowledges it.

Issues of interest

357. Some countries stated that a deadline had been set for issuers to apply: In IS such issuers had to apply formally in writing before 1 June 2006 while in IE issuers from third countries who choose IE as their competent authority were required to notify their decision in writing to the regulator by 31/12/2005.

358. LU also said that issuers which are incorporated in a third country and whose securities have already been admitted to trading on a regulated market situated or operating within its territory may choose this authority as competent authority and must notify them of their decision by no later than 31 December 2005. With regard to DE, the same requirement applies. Furthermore, for third country issuers, DE is deemed to be the competent authority, if the issuers already have made a public offer in DE before the transposition of the Prospectus Directive, or filed an application for admission to trading on a regulated market in DE before the transposition of the Prospectus Directive and the offer/application for admission has been the first in the EU since 31-12-2003.

<p>22. Questions in relation with the Regulation (CE) n° 809/2004 (Articles 3.3, 22.1, 23.1, 23.3, 25.4, 26.3, 30.2 of Regulation (CE) n° 809/2004)</p>
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Powers to require information on the prospectus or base prospectus to be completed on a case by case basis

359. All jurisdictions have the power to require information on the prospectus or base prospectus to be completed on a case by case basis.
360. In IS however either the regulator or the Stock Exchange can also ask the issuer for more detailed information. In NO the regulator has delegated this power to the Stock Exchange. In IE the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. Therefore, the stock exchange will scrutinize a prospectus and will require further information where necessary. The approval of the prospectus rests with the authority.

Powers to ask for adapted info in the prospectus or the base prospectus

361. All jurisdictions but DK, HU and SI have the power to ask for adapted info in the prospectus or the base prospectus.

Issues of interest

362. In CY they have experienced one case which involved an issuer with shipping activities and where CY requested adapted information in the prospectus. In LT the authority, when approving the prospectus, may require the issuer to arrange the items in the sequences indicated in the specific Annexes of the Regulation. SI reported lack of experience on this subject. In IE, the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. Therefore, the stock exchange will scrutinise a prospectus and will request adapted information where necessary. The approval of the prospectus rests with the authority.
363. In EL they have experienced a few cases which involved issuers with shipping and property companies, and where EL requested adapted information in the prospectus. In AT property companies will be required to provide a valuation report in the prospectus. Start-ups will be required to provide a business plan. In CZ they have not met such a problem yet. In NL they have the power to ask for adapted information and until now they have not encountered any problems. They only used the power provided under Article 23.1 of the Prospectus regulation. In NO they ask all Annex XIX issuers for adapted information in accordance with the CESR recommendation of February 2005. The interpretation of the recommendation may however be quite difficult, especially with regard to valuation reports. In PL the competent authority has doubts if it is able to require a pro forma information in case of future transaction as there is no such a provision in the Regulation. SK has reported lack of experience on this issue.

Powers to require the issuer to provide more detailed information about every item of the prospectus

364. All regulators have the power to require the issuer to provide more detailed information about every item of the prospectus. They can also ask the issuer to provide a cross reference list when the order of the items of the prospectus does not coincide with the order of the building block and schedules.
365. In DK, some units in collective investment schemes not covered by the UCITS-Directive are difficult to adapt to the requirements in the Regulation.
366. In IE the authority has delegated certain tasks relating to the scrutiny of prospectuses to the stock exchange. Therefore, the stock exchange will scrutinize a prospectus and will require a cross reference list where necessary. The approval of the prospectus rests with the authority.

Issues of interest

367. In MT, the competent authority, does not currently ask for a cross reference list, however it is considering requesting it. In DE it is common practice for issuers to submit a cross reference list.

Powers to determine a newspaper whose circulation is deemed appropriate

368. Concerning the power to determine a newspaper whose circulation is deemed appropriate, all jurisdictions do have this power (apart from HU and MT). In NO this power has been delegated to the Stock Exchange.

Issues of interest

369. In AT, BE, FR, IS, IE, SI, PL there are instructions/regulations specifying the criteria for considering a newspaper appropriate (e.g. in AT it is the official gazette or a national newspaper with high print run and high diffusion of copies; in IE the newspaper must have national or supra-regional scope; in SI it must be issued daily and must be accessible in the territory of the entire country or in a substantial part of it or in the entire territory or in a substantial part of the territory of another Member State if securities are offered or admission to trading is sought also in the other Member State). In LU this question is not considered very relevant since most publications are done electronically.
370. In SK the regulator has the relevant power to determine a newspaper whose circulation is deemed appropriate but it is not clear whether this possibility has been used or is in place. In PT this question is set up by the prospectus regulation. However if any doubts arise, the authority has the powers to determine what newspaper is deemed appropriate. In CY newspapers have never, so far, been used as a method of publication of a prospectus. Most publications are done electronically. In IT, the regulator has the power to order the issuer to publish information in a manner it deems appropriate. For newspapers, the identification of newspapers with appropriate coverage of the national territory should be taken into account. MT reported that chosen newspaper should be any widely circulated newspaper.

ANNEX
COUNTRY CODES

<u>Country name</u>	<u>Code</u>
Austria	AT
Belgium	BE
Czech Republic	CZ
Cyprus	CY
Denmark	DK
Estonia	EE
Finland	FI
France	FR
Germany	DE
Greece	EL
Hungary	HU
Iceland	IS
Ireland	IE
Italy	IT
Latvia	LV
Lithuania	LT
Luxembourg	LU
Malta	MT
Netherlands	NL
Norway	NO
Poland	PL
Portugal	PT
Slovenia	SI
Slovakia	SK
Spain	ES
Sweden	SE
United Kingdom	UK