



Date: 27 March 2002

Ref.: CESR/02-048

POSSIBLE IMPLEMENTING MEASURE ON PROSPECTUSES REQUEST FOR ADVICE AND CALL FOR EVIDENCE

Background:

On Wednesday 27 of March 2002, the European Commission published its requests to CESR for advice on technical implementing measures under the draft Directive on Prospectuses to be published when securities are offered to the public or admitted to trading (Prospectuses). CESR has been asked to deliver its advice by March 2003. The request for advice is attached.

To this end, CESR has set up an Expert Group on Prospectuses, chaired by Pr Fernando Teixeira dos Santos, Chairman of the Portuguese Comissão do Mercado de Valores Mobiliários (CMVM).

Call for evidence:

In releasing these requests for technical advice, CESR is inviting all interested parties to submit views as to what CESR should consider in its advice to the European Commission. All contributions should be addressed to Mr Fabrice Demarigny, Secretary General, CESR, 17 Place de la Bourse, 75082 Paris Cedex 02, France or by email to fdemarigny@europefesco.org by Friday 17 May 2002.

Timetable:

In order to meet the Commission's deadline of March 2003, the provisional timetable for the work that CESR will be undertaking in response to the request from the European Commission, is as follows:

- Call for evidence - March 2002
- First contributions to be received by Friday 17 May 2002
- Publication of a first consultation paper - by end 2002
- Final paper to be signed off by CESR in March 2003.

More precise details on the consultation will be disclosed once a more precise evaluation of the work necessary will be achieved.

Previous papers published by CESR (or FESCO) in this area:

- Stabilisation and Allotment, a European Supervisory Approach – April 2002 – (Ref. CESR/02-020b)
- A European “Passport” for Issuers: an additional submission to the European Commission – August 2001 – (Ref. FESCO/01-045).
- A European “Passport” for Issuers – A report for the European Commission – January 2001 – (Ref. FESCO/00-138b)



EUROPEAN COMMISSION
Internal Market DG

Brussels, 18 March 2002
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Orig.

Provisional Request for Technical Advice on Possible Implementing Measures on the Future Directive on the prospectus to be published when securities are offered to the public or admitted to trading

In its Resolution on more effective securities market regulation, the Stockholm European Council called for rapid implementation of the prioritised Financial Services Action Plan, in order to achieve an integrated securities market **by the end of 2003**, including notably the priorities set out in the Lamfalussy Report.

To meet this challenge, the European Council not only endorsed the proposed four-level approach (essential principles, implementing measures, co-operation and enforcement); it also welcomed the proposed establishment of an independent Regulators Committee (CESR) to act as an advisory group to assist the Commission in its preparation of draft implementing measures.

If the deadline of 2003 is to be met, this will mean not only Directives being adopted before this deadline, but the technical implementing measures as well. If this is to be achieved, it means beginning the groundwork now. On the draft Directive on the prospectus, the Commission proposed text in particular provides for the adoption of implementing rules within 180 days of the entry into force of the Directive.

This is one of the two first provisional requests for technical advice from DG Internal Market to CESR and follows the recent agreement on implementing the Lamfalussy recommendations reached with the European Parliament on 5 February 2002. In this agreement, the Commission committed itself to a number of important points including on transparency. For this reason, this request for technical advice will be made available on DG Internal Market's web site once it has been sent to CESR.

This request for technical advice to CESR does not prejudice in any way the discussions in the Council and the European Parliament on the final split between Level 1 "principles" and Level 2 "implementing measures". The formal mandate will be sent to CESR once the directive has been adopted by the European Parliament and Council.

1. THE PRINCIPLES THAT CESR SHOULD TAKE ACCOUNT OF

1.1. The working approach agreed between DG Internal Market and the European Securities Committee

On 5 December 2001, DG Internal Market consulted the European Securities Committee on a draft request for technical advice. At that meeting, it was agreed that DG Internal Market would request technical advice on certain priority issues, and that CESR should immediately start the groundwork on these to meet the 2003 deadline set by the Stockholm Resolution. The meeting agreed that this request should be based on the following approach:

- CESR should take account of the principles set out in the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
- The beginning of work on certain aspects of technical advice within CESR shall not, in any way, prejudice the outcome of the discussions between the European Parliament and Council. The request for technical advice does not cover Level 1 issues at any stage.
- CESR should start work on the basis of the Commission's proposal on the Prospectus to be published when securities are offered to the public or admitted to trading (COM/2001/280 final) of 30 May 2001), but also take full account of developments in the Council and Parliament. For this purpose, the Commission representative attending meetings of CESR or its working parties will regularly inform CESR of any such developments.
- The Commission itself will not issue formal mandates to CESR until the final adoption of the Directive on prospectus in Council and Parliament.
- The technical advice given by CESR will not take the form of a legal text.

In addition, DG Internal Market invites CESR to take account of the European Parliament's Resolution on the implementation of financial services legislation of 5 February 2002 and of the Commission's formal declaration in response.

1.2. Consultation of the public

The Stockholm European Council endorsed the Lamfalussy recommendations on consultation and transparency. In particular, it invited the Commission to make use of early, broad and systematic consultation with the institutions and all interested parties in the securities area, especially by strengthening its dialogue with consumers and market practitioners. It also stated that CESR should "*consult extensively, in an open and transparent manner, as set out in the final report of the Committee of Wise Men and should have the confidence of market participants*".

Article 5 of the Commission Decision establishing the CESR provides that "*before transmitting its opinion to the Commission, the Committee [CESR] shall consult*



extensively and at the early stage with market participants, consumers and end-users in an open and transparent manner”.

DG Internal Market therefore welcomes CESR’s recent public statement on its own consultation practices. In addition, DG Internal Market would endorse the setting up of a panel composed of market participants and other investors. In this respect, DG Internal Market also draws CESR’s attention to the European Parliament Resolution on the implementation of financial services legislation and the Commission’s formal Declaration in response.

DG Internal Market will ensure that the Stockholm European Council recommendations on consultation have been fully met. In particular, it will satisfy itself that CESR has consulted all interest parties on its technical advice in accordance with the CESR Public Statement on Consultation Practices.

1.3 Access to finance and investor protection

In giving its advice on possible implementing measures, CESR should take full account of two key objectives: the need to encourage and build an efficient, cost-effective and competitive pan-European capital market on the one hand, and to provide the necessary levels of investor protection on the other. In its technical advice, CESR is invited to explain how an optimal balance between the two objectives could be struck and how such a balance would be achieved by the possible implementing measures.

2 CESR IS INVITED TO PROVIDE ADVICE ON THE FOLLOWING PRIORITY ISSUES BY 31 MARCH 2003 AT THE LATEST :

2.1 Minimum Information (Article 6 (1) of the proposed Directive)

DG Internal Market requests CESR to provide technical advice on possible disclosure requirements based on the basic structure and typical main features of different types of securities (“building block approach”) involving at least the following types of transferable securities:

- (1) Shares: shares in companies and other securities equivalent to shares in companies which are negotiable on a regulated market;
- (2) Bonds: bonds and other forms of securitized debt which are negotiable on a regulated market;
- (3) Any other securities normally dealt in giving the right to acquire transferable securities under (1) and (2) by subscription or exchange or giving rise to cash settlement, excluding instruments of payment.

This list may need to be amended as discussions evolve in Council and Parliament.

The draft schedules should take account of the different categories of issuers, investors and markets: thus, for example, the schedules, where necessary, should include specific provisions for newly created issuers (“start ups”). In particular, DG Internal Market is seeking CESR’s advice on disclosure requirements adapted to issuers who are small or medium-sized companies (SMEs).

The draft schedules should be structured respecting the new format of the prospectus (registration document, securities note and summary note).



The draft schedules should be based on the information items required in the IOSCO Disclosure Standards for cross-border offering and initial listings (Part I) and the existing schedules of the Directive 80/390/EEC¹. The elements concerning the financial information should be in line with the EU accounting strategy and international accounting and auditing standards. DG Internal Market seeks in particular CESR's advice as to the scope and contents of the annual updating of the registration document.

2.2 Incorporation by Reference (Articles 10 (1) and (3) of the proposed Directive)

DG Internal Market requests CESR to provide technical advice on possible draft rules on at least on the following:

- (1) The documents that can be incorporated by reference in a prospectus (e.g. memorandum of association, annual and interim accounts, press releases);
- (2) The documents that can be incorporated by reference in order to fulfil annual update requirements linked to the registration document;

2.3 Availability of the prospectus (Article 12 (7) of the proposed Directive)

DG Internal Market requests CESR to provide technical advice on possible draft implementing rules on at least the following:

Availability in an electronic format - principles on ensuring a wide electronic access;

Availability via the press (periodicity of newspapers: minimum circulation, nature of the newspaper: financial, general).

3 CESR IS INVITED TO PROVIDE INFORMATION BY 30 JUNE 2002

DG Internal Market would also be grateful if CESR could provide factual information on the way in which prospectuses are controlled, scrutinised and approved in all Member States. DG Internal Market would also like CESR to provide factual information on the deadlines/time allowed for the publication of the prospectus once it has been approved by the competent authority.

¹ Council Directive of 17 March 1980 co-ordinating the requirements for the drawing-up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing (OJ L 100/1, 17/04/1980)