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**SUMMARY OF THE ANSWERS TO THE QUESTIONNAIRE ON FACTUAL
INFORMATION REGARDING ADVERTISEMENT PRACTICES AND RELEVANT
LEGISLATION IN THE MEMBER STATES**

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11-13 avenue de Friedland - 75008 PARIS - FRANCE - Tel.: 33.(0).1.53.36.43.21 - Fax: 33.(0).1.58.36.43.30
Web site: www.europefesco.org



1. INTRODUCTION

The mandate from the European Commission formalised on the 1 October 2003 requires CESR to provide by 31 December 2003, at latest factual information regarding advertising practices and relevant legislation in the Member States

In order to provide the Commission with the information required, CESR prepared a questionnaire composed of the following chapters: Definition of advertisement, Advertisement Practices and Legislation.

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

This document aims to provide a synthesis of the answers received attempting to underline the existence of common or different rules and practices.

This summary either refers to the State/Country/Jurisdiction being considered or indicates the relevant competent authority, depending on the question and on the specific circumstances.

2. SUMMARY OF THE ANSWERS RECEIVED

A. DEFINITION OF ADVERTISEMENT

1. Does the regulatory framework in your country provide for a definition of advertisement? If so, please indicate such definition.

A definition of advertisement exists in Austria, Belgium, France, Ireland, Portugal and Spain while no definition can be found in the regulatory framework in Finland, Greece, Iceland, Italy, Norway and Sweden. Other countries have said that besides the non existence of a definition of advertisement there exists a generic law regulating marketing in general (in Denmark), or that advertising is regulated by the Law of Unfair Competition (in Germany).

In others a definition exists under the Listing and Issuing Rules of Euronext (in the Netherlands), or as in the United Kingdom, the UK legislation and regulatory Rules restrict the types of announcement admissible in relation to public offers and to admission to trading.

2. Are the following communications considered advertisements in your jurisdiction? Under which circumstances?

- a) **Press, radio, television and other media communications addressed to the public with the intention of announcing an offer of securities, or an admission to trading of securities on a regulated market** are usually considered as advertisements in all countries except Austria and Denmark; and Sweden, where no applicable regulatory framework exists.
- b) **Press, radio, television and other media communications addressed to the public with the intention of promoting the image of an issuer, its activity or performance** are considered advertisements in Finland, France, Germany, Greece, Iceland, Ireland, Netherlands and Portugal in opposition to Austria, Belgium, Denmark, Italy, Luxembourg, Norway, Spain, and the United Kingdom where they are not considered as such;
- c) **Roadshows** can be considered advertisements in Austria, Belgium, France, Germany, Netherlands and Norway. There is also a positive answer if they are addressed to the public – in Luxembourg, Portugal and Spain, if it is made in connection with an offer – Finland and Iceland – or, if the person who is advertising is authorised as an investment firm by the Central bank of Ireland. Roadshows are not considered as advertisements in Denmark, Italy

and in the United Kingdom. In Greece they are considered as common practices but only in the context of the information included in the prospectus.

- d) **Presentations to analysts or financial advisors** – the answers received under this questions had the same answers as in the previous question except in the case of Belgium, Portugal and Spain where they are not considered as advertisements, and in the case of Luxembourg has had not presented any position on this issue.
- e) **Financial analysis of the issuer published or disclosed in any way by its financial adviser or by a third party linked to the issuer** – the answers given on this question are very similar to the answers to the Roadshows, except in the case of Germany where they are considered as advertisements if indicated by the issuer, and in the case of Ireland, Luxembourg, Norway and Portugal, where they are not considered as advertisements.
- f) **Information given to financial intermediaries under a bookbuilding procedure;**
- g) **Rating reports.**

The answers to f) and g) reflect similar trends. They are considered advertisements in Austria, France and Netherlands while they are not considered as such in Belgium, Denmark, Finland, Germany, Iceland, Ireland, Italy, Luxembourg, Norway, Portugal, Spain and United Kingdom. Exception made to Greece since the information given to financial intermediaries under a bookbuilding procedure are considered as common practices in the context of the information included in the prospectus while the rating reports are not applicable.

A special remark must be made in relation to Sweden where none of the previous communications – a),b),c),d),e),f) and g) can be considered advertisements because no specific regulatory framework is applicable.

B. ADVERTISEMENT PRACTICES

I. THE COMPETENT AUTHORITY

1. **Does the regulatory framework in your country provide for an obligation to control advertising in relation to an offer to the public or to an admission to trading of securities on a regulated market?**

The control of advertising requires a previous submission of advertisements in Belgium but no previous approval is required. The examination can be made before or after the publication of the advertisements.

In Denmark, all advertisements in relation to admission to trading of securities must be filed with the Stock Exchange. There is no approval, control or scrutiny – the competent authority only checks if the reference to the prospectus is included. In case of misleading advertisements in the financial undertakings the competent authority is the Danish Financial Supervision Authority under the Financial Business Act, where honest business principles and good practice are required.

In Finland all advertising must be filed with the competent authority and usually they are commented before its publication.

In France, Greece and Luxembourg it is also required a previous submission/communication although it is not considered an approval while in Iceland the approval is needed before publication.

In Germany, the only competence BaFin has is the prohibition of advertising in some cases – when it does not give the correct picture about the extent of the scrutiny as well as when the approval can be interpreted as an official recommendation to acquire those securities.

In Ireland in the case of an admission to trading any advertisement must be authorised by the Irish Stock Exchange while in the case of a public offer there are some requirements imposed by the Central Bank of Ireland on the financial intermediaries that it authorises and in that case those advertisements are not approved in advance. However, where the advertisement practices are not performed correctly by any authorised intermediary it may require them to submit any further advertising in advance for prior approval. In Ireland and in Luxembourg two different authorities can intervene: the Luxembourg Stock

Exchange receives the major part of advertising, while if in the case of a public offer all advertisements must also be sent to the CSSF.

In the Netherlands, different situations can be found. In the case of an admission to trading all advertisements must all be sent to the stock exchange before its publication and then it will decide whether those announcements will be verified prior to its publication. In the case of a public offer, all advertisements must be submitted to the NAFM, although it does not have to approve them, and just to take disciplinary sanctions if those announcements are not in accordance with the law.

In Italy as well as in Portugal, all advertisements in relation to a public offer must be communicated in advance to the supervisory authority (in the latter case requiring its approval); while all other advertisements, such as those in relation to admission to trading are subject to a posteriori control by Consob/CMVM, as all information given to the public.

In Norway and in Sweden there is no obligation to control advertising in relation to a public offer or to an admission to trading. However, in Norway, for listed companies or for those who are seeking to be listed the Stock Exchange decides if they will be verified before or afterwards its publication, while for unlisted companies no competent authority is in charge of the control of advertising.

In Sweden, the Marketing Act is applicable to all marketing activities, including financial instruments and requires all information to observe the principles of fair and informative advertising.

In Spain no prior approval is required, although CNMV can require at any moment all announcements, its amendments or suspensions. Nevertheless the market practice is to send all advertisements to the CNMV on an informal basis and before the beginning of any advertising campaign.

Finally in the United Kingdom a previous approval by the UKLA before its publication is required in the case of “Formal Notices”, “Offer Notices”. If the advertisements are mini-prospectuses, summary particulars, issue notes or any other documents it is required authorization but without approval. In the case of public offers, the POSRegs requirements must refer to the existence of a prospectus and where it can be obtained.

2. Identification of the competent authority

COUNTRIES	Admission to trading	Public Offers
Austria		
Belgium	CBF – Commission Bancaire et Financière	
Denmark	Stock Exchange	No competent authority
Finland	Rahoitustarkastus (Financial Supervisory Authority)	
France	AMF – Autorité des marchés financiers	
Germany	Seven regional Stock Exchanges	BaFin
Greece	Athens Stock Exchange	Capital Market Commission, in the case of public offer where no admission to trading is required
Iceland	Icelandic Stock Exchange	Financial Supervisory Authority
Ireland	ISE - Irish Stock Exchange	Central Bank of Ireland, only in the case of public offers where no admission to trading is required and

		when the person advertising is an authorised financial intermediary
Italy	CONSOB - Commissione Nazionale per le Società e la Borsa	
Luxembourg	Luxembourg Stock Exchange ¹	
Netherlands	Euronext Amsterdam NV	NAFM – Netherlands Authority for the Financial Markets
Norway	Oslo Stock Exchange	
Portugal	CMVM – Comissão do Mercado de Valores Mobiliários	
Spain	CNMV – Comisión Nacional del Mercado de Valores	
Sweden		
United Kingdom	UKLA – United Kingdom Listing Authority	

3. Statutory powers

3.1 Does the competent authority have powers equivalent to those mentioned in the items below?

- a) **Previous filing of all advertising** – it is done in FR, and in the case of admission to trading in IRE and in NL.
- b) **Previous filing of advertising in connection with an offer to the public** – it is done in all countries except in DEN, GER, SP and UK.
- c) **Previous filing of advertising in connection with an admission to trading on a regulated market** - it is done in all countries except in GER, ICE, IT, LUX, PO and SP.
- d) **Approval of all advertising:**
 - 1) **previous approval** – imposed in IRE just in cases of a public offer.
 - 2) **control of released advertisements** – it is done in AUS, FR and IRE, where in this last case, just in the case of a public offer.
- e) **Approval of advertising in connection with an offer to the public:**
 - 1) **previous approval** ~ required in AUS, BE, ICE, IRE, IT, LUX, NO, PO and UK.
 - 2) **control of published advertisements** ~ it is done in FIN, FR, GER, ICE, IRE, IT, NL and SP.
- f) **Approval of advertising in connection with an admission to trading on a regulated market:**
 - 1) **previous approval** ~ it is done in AUS, BE, IRE, NL and NO.
 - 2) **control of published advertisements** ~ it is demanded in FIN, FR, GER, IRE, IT, PO and SP.
- g) **Require issuers and offerors to include in the advertising supplementary information (i.e. to harmonise with information disclosed in the prospectus or elsewhere)** – it can be done in AUS, BE, FIN, FR, GER, GR, IRE (in the case of a public offer), IT, LUX, NL (just in the case of an admission to trading), PO, SP and to a certain extent in the UK.

¹ Under the supervision of CSSF – Commission de Surveillance du Sector Financier.

- h) **Require issuers and offerors to include in the advertising risk disclaimers** – it can be required in BE, FIN, FR, IRE (just in the case of public offers), IT, LUX, NL (just in the case of an admission to trading), PO and SP.
- i) **Approval of advertising apart of any offer to the public or request for admission to trading on a regulated market** – it is only made in FR as well in IRE, where all advertising made by financial intermediaries must comply with the requirements set by the Central Bank of Ireland.
- j) **Suspend an advertising campaign** – it is possible to do it in BE, FR, GER, GR, ICE, IRE (just in the case of public offers), IT, LUX, NL (in the case of an admission to trading), PO, SP and UK.
- k) **Impose administrative sanctions where a violation has occurred** - it is possible in all countries except in FIN.
- l) **Make public that the issuer/offoror is failing to comply with its obligations or prohibit any illegal campaign** – it is just admissible in BE, FIN, FR, GER (in determined conditions), GR, ICE, IRE, IT, LUX, NL, PO, SP and the UK.

A special remark must be made in relation to SWE where none of the previous statutory powers – a),b),c),d),e),f),g),h),i),j),k) and l) are valid because no specific regulatory framework is applicable.

3.2. Do the competent authorities have other statutory powers or duties with regard to advertising?

In some countries additional powers can be exercised. In BE and IT the public offer can also be suspended, while in GR the Capital Market Commission can oversee underwriters and advisors regarding advertising in relation to a public offer or to an admission to trading. In IRE the Central Bank also has additional powers while in the UK criminal penalties can be applied. Others than those administrative sanctions can be applied in NL.

3.3. Are the powers of the competent authority the same regardless of the moment when its approval is required or advertising is disseminated?

The powers are the same in BE, FIN, FR, GR, LUX, IT, PO, SP and in the UK. In IRE and NL the powers are the same for those entities who supervises the advertising in the case of public offers.

4. Delegation of powers and/or outsourcing

4.1. In your jurisdiction, is it admissible for the competent authority to delegate its powers and/or tasks with regard to advertising?

A generic answer by each country was that delegation of powers and tasks in relation to advertising was not admissible. In GER some of the powers can be delegated although that is not the current practice. In the UK it is theoretically possible to delegate even though it has not been done and there is no suggestion that it will be.

4.2. Currently, does the competent authority delegate/outsource powers/tasks with reference to advertising?

In LUX, the scrutiny of advertising has been delegated to the Luxembourg Stock Exchange by law.

5. How often is advertising scrutinised/controlled/approved by the competent authority?

a) Public offers:

- 1) **In all offers (100%)** – Such is the case of FIN, FR, GR, ICE, IT, LUX, NL and SP.

- 2) **Frequently (more than 50%)** – BE and PO.
- 3) **Not frequently (less than 50%)** – AUS.
- 4) **Only occasionally (less than 20%)** – GER, IRE and NO.
- 5) **Never** – DEN and UK.

SWE has answered saying that nothing is applicable.

b) Admission to trading;

- 1) **In all admissions (100%)** –AUS, FIN, FR, GR, NL, SP and in the UK.
- 2) **Frequently (more than 50%)** – BE and in IRE.
- 3) **Not frequently (less than 50%);**
- 4) **Only occasionally (less than 20%)** – IT, NO and PO.
- 5) **Never** – DEN (even though it is checked that a reference to the prospectus exists and where it can be obtained) and in ICE.

SWE and GER have answered saying that nothing is applicable while LUX has not answered.

6. When and under which circumstances is information contained in advertisements considered false or misleading?

The information in advertisements can be considered false or misleading if it is not in harmony with the information disclosed in the prospectus – such is the case in BE, GR, IT, LUX, NL, NO and SP.

In FIN the notion of false information includes the presentation of any fact in an incorrect or distortive manner while by misleading information it is understood the wrong final impression because of the insufficient information or of the manner and form by which information is presented.

In LUX if the risk factors are omitted from the advertisements or if it only referred to the investment benefits it can be considered as misleading or false.

The information in advertisements can be considered misleading in PO if it is not objective, not clear, untrue out of date or inconsistent with the rest of the information disclosed by the issuer and the offeror.

7. Is false or misleading information contained in an advertisement regarded, in your jurisdiction, as market manipulation? Under which circumstances?

False or misleading information in advertisements can be considered as market manipulation if:

- (a) It has an impact on the price of the securities concerned or on the valuation of the securities – such is the case in BE, FIN, GER; IT, NO,
- (b) It may artificially alter the normal functioning of the securities market – in PO and UK;
- (c) It was disclosed with the intention of leading the public into error - SP.

It would also be considered as market manipulation without any other condition in ICE, GR and NL.

II. PROCEDURES RELATING TO ADVERTISING

1. Dissemination of advertising

1.1. When is the competent authority informed of the advertising campaign?

15 jurisdictions answered this question (BE, DEN, FIN, FR, GER, GR, ICE, IRE, IT, LUX, NL, NO, PO, SP, SWE). The following scenarios are envisaged from the responses:

(i) some authorities are informed in advance a campaign is made public (BE, DEN and NL, with regards admission to trading, FIN, FR, GR, IT and PO in relation with offers to the public, LUX, NO, SP), the others are not informed previously and gain knowledge of the campaign by complaints or by the publicity (GER, ICE, IRE, in relation to advertisements scrutinised by the Stock Exchange)

(ii) some jurisdictions only require previous notification in cases of public offers (IT, PO) and some others only before listings;

One jurisdiction answered that this was N/A (SWE).

1.2. Is it admissible for the issuer or the offeror to disclose any advertising campaigns before its approval by the competent authority?

16 jurisdictions answered this question (BE, DEN, FIN, FR, GER, GR, ICE, IRE, IT, LUX, NL, NO, PO, SP, SWE, UK). The following occurs:

(i) in 7 jurisdictions (IRE, IT, LUX, NL, NO, PO, ICE) dissemination is not allowed before approval by the competent authority. This relates, in some way, to situations where a previous approval of the advertising is required;

(ii) in the remaining respondent jurisdictions, dissemination is allowed in so far no previous authorisation is required.

2. Does the legal framework impose limits on:

a) Duration of the advertisement (e.g. a time limit for radio or television announcements) - 14 jurisdictions answered this question (DEN, FIN, GER, GR, ICE, FIN, IT, LUX, NL, NO, PO, SP, SWE, UK). In 13 jurisdictions there are no time limits. Only one jurisdiction has time limits, but these refer in fact to the timing of the dissemination of advertisements and not to the duration of the advertisement itself (GR).

b) The extent of a written text (e.g. only one page in a newspaper, one hundred lines) - 14 jurisdictions answered this question (DEN, FIN, GER, GR, ICE, FIN, IT, LUX, NL, NO, PO, SP, SWE, UK). In all the 14 jurisdictions there are no limits to the extent of a written text.

c) Font size used (e.g. is there a requirement for a specific font size for specific disclosures such as the information on a prospectus' availability) - 14 jurisdictions answered this question (DEN, FIN, GER, GR, ICE, FIN, IT, LUX, NL, NO, PO, SP, SWE, UK). In one jurisdiction (PO) information on the availability of the prospectus should be drafted in a legible way (requirement imposed under a current and accepted practice) and in another jurisdiction footnotes should be of sufficient size, prominence and easily legible (IRE). In the remaining jurisdictions there are no requirements on font size used.

d) Use of pictures, photographs or graphics - 13 jurisdictions answered this question (DEN, FIN, GER, GR, ICE, IRE, IT, LUX, NL, NO, PO, SP, UK). In one jurisdiction (PO) association of images that may induce investors to think that the investment proposed is an adequate and viable one, such as

graphics showing rising lines associated with the prices of securities, are not allowed. The remaining jurisdictions have no rules on this topic.

In IT, advertisements reporting past yields of a proposed investment must: a) specify the period to which the calculation of the yield refers; b) indicate clearly the risk profile associated with the yield; c) compare the yield with the benchmark indicated in the prospectus relating to investment funds; d) show such yield net of tax and, where it is not possible, specify that they are gross of tax; e) specify that there is no guarantee of obtaining equal yields in the future. Also, advertisements processing or referring thereto must specify the sources. In all advertisements relating to public offers a disclaimer saying “Read the prospectus before accepting” is included.

In SP the best practices on advertising specify: the inclusion of the relevant risk factors; information on prospectus availability in the same font size as used in the main text; inclusion of past performances in a not misleading way and that it cannot be taken as an indication of future performance.

PO also reported best practices (see question B II, 2 c) above).

3. Is the content of advertisement different depending on the different means of its dissemination (e.g. the requirements applicable to a radio advertisement are the same as to a press announcement)?

All 17 jurisdictions answered this question. In 13 jurisdictions the rules are the same irrespectively of the mean of its dissemination. In one jurisdiction (PO) the message relating to the availability of the prospectus can be reduced to a minimum considering the mean of advertisement (such a TV or radio announcement) and in another jurisdiction there are differences resulting from the best practices (GR).

4. Tasks to be performed by the competent authority:

4.1 Indicate in a clear and concise way what is the purpose of the scrutiny and/or the control and approval (if that is the case) of advertising performed by the competent authority in your country.

All 17 jurisdictions answered this question. The following tasks are performed by competent authorities:

(i) in 3 jurisdictions there is no control of advertisements (SWE, AUS, DEN);

(ii) in the remaining jurisdictions, control, scrutiny or approval aim at a better investor protection, at ensuring that the information is consistent with the information provided in the prospectus and that advertisements are accurate, precise and fairly presented.

4.2. Degree of judgment and nature of control:

Describe the nature and the degree of judgement of the competent authority when scrutinising the information contained in advertisements. State namely if the competent authority:

a) Receives the campaign and produces no administrative judgement on it? 14 jurisdictions answered this question (BE, DEN, FIN, FR, GER, GR, ICE, IRE, IT, LUX, NL, NO, PO, SP). In 2 jurisdictions, no administrative judgement is produced by the competent authorities (NL, DEN). In the remaining jurisdictions some sort of control exists.

b) Verifies if it complies with the minimum information requirements imposed by any laws or regulations or best practices? 12 jurisdictions provided answers to this question (DEN, FIN, FR, GER, GR, IRE, IT, LUX, NL, NO, PO, SP). In 10 jurisdictions competent authorities check if advertisements

comply with requirements for its contents. These requirements vary a lot from jurisdiction to jurisdiction.

4.3. Adaptability of the control, scrutiny or approval of advertising in different situations:

Are there differences between the control, scrutiny or approval of the advertising campaign:

a) For a public offer and for an admission to trading?

13 jurisdictions provided answers to this question (AUS, DEN, FIN, GER, GR, IRE, IT, NL, NO, PO, SP, SWE and UK). In 6 jurisdictions there are no differences between the control, scrutiny or approval of the advertising campaign for a public offer and for an admission to trading. In one jurisdiction only advertising in connection to listings is subject to review. In another jurisdiction only advertising in connection with a public offer is subject to review. In another jurisdiction, in so far the competent authorities for review of advertising in connection with an offer to the public and to an listing are different, the control, scrutiny or approval of the advertising campaign for a public offer and for an admission to trading is different. In one jurisdiction, control over an exchange offer is usually stricter, although this is not stated in the relevant legislation.

b) Regarding securities admitted to trading on a first tier regulated market and securities admitted to trading on a second tier regulated market?

12 jurisdictions provided answers to this question. In none of the jurisdictions differences arise when securities are admitted to first or second tier regulated markets.

c) Depending on the type of securities to be offered or to be admitted?

8 jurisdictions provided answers to this question. Only in one of these jurisdictions are there different requirements applicable to credit linked notes and convertible securities (PO). Those provisions demand for the inclusion, in all advertisements, of mentions stating whether investors may lose their entire investment and a description of the principal characteristics of the instrument, namely if investors can receive securities in exchange its investments.

d) Depending on the nature of the offer (e.g. IPO's, offer programmes)?

8 jurisdictions provided answers to this question. Only in one jurisdiction are there differences dependent upon the nature of the offer (NL).

e) Depending on the issuer (e.g. start up, SME's)?

8 jurisdictions provided answers to this question. None of the jurisdictions have differences regarding the nature of the issuer.

f) Depending on the nationality of the issuer?

7 jurisdictions provided answers to this question. None of the jurisdictions have differences regarding the nationality of the issuer.

In IT and PO the differences between review of advertising in connection to an offer or to a listing are not due to the contents of the prospectus.

4.4. To what extent and how often are amendments required?

16 jurisdictions provided answers to this question. In one jurisdiction the competent authority has no power to require amendments on advertisements (GER). In 4 jurisdictions amendments are only required when the advertising does not comply with the minimum requirements. One jurisdiction requires amendments quite often (FR) and another two quite rarely (NL, NO). Most of the amendments relate to:

- (i) warnings on the risks of the securities (5 jurisdictions), the issuer (4 jurisdictions) or the operation itself (3 jurisdictions);
- (ii) to adjust the contents of advertisement to the information contained in the prospectus (1 jurisdiction);
- (iii) warnings on past performance and the way it is presented (2 jurisdictions);
- (iv) not inclusion of the sources of data (2 jurisdictions);
- (v) not inclusion of the mandatory requirement that investors should read the prospectus before accepting the offer (1 jurisdiction) or to the availability of the prospectus (2 jurisdictions);
- (vi) insufficient data on any guarantee (1 jurisdiction);
- (vii) misleading comparison with other securities (1 jurisdiction).

4.5. Does the competent authority scrutinise all advertising campaigns? If not, is there a system for determining which ones are scrutinised?

16 jurisdictions provided answers to this question. In 11 jurisdictions all advertising that requires approval are scrutinised (BE, FIN, FR, ICE, IRE, IT, LUX, NL - only on offers to the public - PO, SP, UK). In one jurisdiction this is only true to one of the competent authority, the other one only scrutinises all advertising in relation to IPO's (NL). In one jurisdiction advertising is scrutinised on a case-by-case basis (GER) and in another one, where only some advertisements are scrutinised, there is no system to determine which advertisements are being scrutinised (NO).

5. Time Limits

5.1. Which are the time limits for the scrutiny, control or approval by the competent authority of an advertising campaign?

16 jurisdictions provide answers to this question (AUS, BE, DEN, FIN, FR, GER, GR, ICE, IRE, IT, LUX, NL, NO, PO, SP, UK). In 9 jurisdictions there are no time limits. Three jurisdictions answered N/A (AUS, GER, ICE). In 3 jurisdictions there are time limits: 10 days in IT, within a reasonable delay for the Netherlands Stock Exchange and one week in NO.

5.2. Under which circumstances can these time limits suffer changes?

15 jurisdictions answered this question. 10 jurisdictions answered N/A due mainly to the fact that there are no time limits (DEN, FIN, GER, ICE, IRE, LUX, PO, SP, UK, SWE). In two jurisdictions it is admissible to alter the time limits (NO, NL). In FR there are no situations where the time limits may be changed. In GR these changes have never happened so far.

5.3. If the competent authority fails to give a decision within the time limit is it deemed to be a rejection or an implied approval of the application?

15 jurisdictions answered this question. 10 jurisdictions answered N/A (DEN, FIN, GER, ICE, IRE, LUX, PO, SP, UK, SWE). In IT if the competent authority fails to answer it may be deemed an approval while in UK there is no implied approval or rejection.

5.4. Which are, if any, the deadlines for disclosure of an advertising campaign after its scrutiny or approval?

3 jurisdictions (AUS, BE, GR) did not answer this question while 6 have answered not applicable (DEN, FIN, GER, NL, SP, SWE). In FR, IRE, IT, LUX, NO and PO) no deadlines are applicable. There are some requirements in ICE, where advertisements of public offers once approved are required to be published in one newspaper at no later than four days before the beginning of the offer, and in the UK, where the formal notice must be issued no later than the business day after the publication of the listing particulars. In the latter if the Listing Rule 8.7 applies the advertisement must be issued at least two business days prior to the expected date of the application for admission to listing.

5.5. Is advertising allowed at all times since the intention to launch an offer or admission to trading is announced or are there blackout periods to dissemination of advertisements?

AUS did not answer this question and SWE answered not applicable. There are no blackout periods in DEN, FIN, IRE, LUX, NOR, PO, SP and the UK.

The new Belgian Law will allow blackout periods if a Royal Decree is taken in order to adopt this measure.

In FR and IT advertisements are permitted after the COB/CONSOB have approved the prospectus.

In GER a blackout period exists for issuers seeking for admission of equity securities to trading while no restriction is applicable in the case of public offers. Exactly the same situation is the current practice in NL: advertisements related with a public offer are allowed at all times while in the case of an admission to trading, in the case of an IPO, no publicity activities of any sort may be conducted after the publication of a prospectus.

In GR underwriters and advisors shall take every step necessary so as public announcements are not published during the time period starting 4 days before the beginning of the public offer or the admission to listing and ending with the end of the public offer or of the listing.

In ICE no blackout periods exist but an advertising campaign during a public offer would not be considered as best practice.

6. Consequences of the approval by the competent authority:

6.1. Can the competent authority revoke the approval of an advertising campaign?

There are 8 countries considering this as not applicable (DEN, FIN, FR, GER, ICE, NO, SP, SWE). The competent authority may revoke the approval of an advertising campaign/advertisements in BE, GR, IRE (where these power is just of the Central Bank of IRE) and in the NL, just in the case of admission to trading, in the latter. Such powers cannot be exercised in IT, in LUX nor in PO. An additional remark in the latter case is that the competent authority may order its withdrawal if it concludes that it contains any illegality that cannot be corrected.

6.2. After the approval of the advertisements can the issuer cancel it or request amendments? Does the requirement for amendments imply a new approval?

8 jurisdictions have answered that this was not applicable (BE, DEN, FIN, FR, GER, ICE, SP, SWE).

After the initial approval/submission/filing of any advertisements if the issuer decides to cancel or require new amendments it must submit all the new pieces of advertising to the same procedures that were implemented in the first analysis in GR, in IRE (just in the case where advertisements depend on the Central Bank of Ireland), IT, LUX, NL, NO, PO and the UK.

7. Does the legal framework or best practices allow advertising campaigns before the prospectus is made available? If so, under which circumstances?

The legal framework or best practices allows advertisement campaigns before the prospectus in DE, FIN, GER, IRE (unless for specific reasons the Central Bank of Ireland has restricted its dissemination), LUX, NL, NO, PO and SP.

In the case of SP it's limited to the content of the announcement of the transaction to the market (this content is determined by law).

Such practice is not allowed in AUS, BE, FR, GR, IT, UK. In GER the going public principles from Deutsche Börse AG require a blackout period for some time after the admission to trading. In ICE and in SWE, the publication of advertising campaigns before the publication of a prospectus would not be considered as a best practice.

8. Does the legal framework or best practices allow advertising campaigns after the prospectus is made available? If so, under which circumstances?

The legal framework or best practices allows advertisement campaigns after the prospectus has been made available in AUS, BE, DEN, FIN, FR, GR, IRE, IT, LUX, NOR, PO, SP, SWE.

In GER there are no restrictions although the above-mentioned going public principles from Deutsche Börse AG require a blackout period for some time after the admission to trading. In ICE the publication of advertising campaigns during a public offer of securities would not be deemed appropriate according to best practices.

In the NL in the case of an IPO and admission to trading there is a blackout period where no publicity activities of any sort may be conducted after the publication of a prospectus.

In the UK the relevant rules require that advertisement (formal notice and offer notice) must be published no later than the next business day after the publication of the listing particulars.

III - CONTENTS OF ADVERTISEMENTS:

1. Identify the different principles to which advertising campaigns must comply with.

- a) **General principles applicable to all information disclosed to the public** – this compliance is required in BE, FIN, FR, GER, GR, IT, LUX, NO, PO, SWE and UK.
- b) **Same principles applicable to prospectus** – this compliance is required in BE, FIN, FR, GR, IT, LUX, NO and PO.
- c) **Same principles applicable to advertising in general (outside financial markets)** – this compliance is required in BE, DEN, FIN, FR, GER, GR, LUX, NL, NO, PO, SP, SWE and UK.
- d) **Same principles applicable to consumer protection** - this compliance is required in FIN, FR, GR, LUX, NL, NO, SP, SWE and UK.
- e) **Principles that are different from the above and specific of advertisement concerning offers to the public or admission to trading** – There are guidelines with other principles in FIN, not specified in our questionnaire, as well as in FR, IT, PO, SP and UK.

2. Does the legal framework require that information contained in any advertisement:

- a) **Respects adequacy with the information enclosed in the prospectus** - It is required in BE, FIN, FR, GR, IRE, IT, LUX, NL (just in the case of admission to trading), NO, PO and SP;
- b) **Allows inclusion of prospective information referred to in the prospectus** - It is required in BE, FIN, FR, GER, GR, IRE, IT, LUX, NL (just in the case of admission to trading), PO and SP;
- c) **Allows or imposes the inclusion of specific mentions, such as:**
 - 1) **That a prospectus is available and where it can be obtained** - It is required in BE, DEN (just in the case of admission to trading), FIN, FR, GER, GR, IRE (by the ISE rules), IT, LUX, NL, PO, SP and the UK;
 - 2) **That investors should not rely solely on advertising when making an investment decision** - It is required in BE, GER (just on a recommendation basis), IT, LUX, NL (just in the case of admission to trading), PO (just on a recommendation basis);
 - 3) **That past information regarding the value of the securities does not guarantee future earnings** It is required in AUS, BE, FIN, FR, GER (just on a recommendation basis), GR (just in relation to close-end funds), IRE (by the Central Bank requirements), IT, NL (just in the case of admission to trading), PO and SP (in both countries, as a general accepted practice);
 - 4) **The liability for the contents of information disseminated through advertisements** It is just necessary in BE.

In FR any reference to the prospectus must include the visa number, its date of approval and when applicable the COB warning regarding the operation.

In ICE the minimum information in public offers advertisement is established by Regulation and it must contain the name of the issuer, the type of securities offered, the opening and closing day of the offer, the amount being offered, financial institutions and where the prospectus can be obtained.

IV. LIABILITY OF THE COMPETENT AUTHORITIES

1. **Indicate whether and to what extent may the competent authority be deemed liable when carrying out the control, scrutiny and approval of advertisement campaigns.**

The competent authority can be held liable in BE, FR, IT, PO and SP if they have failed to carry out its legal responsibilities. In NL, the NAFM (in the case of public offers) can also be deemed liable while in NO just in extraordinary cases.

The competent authorities cannot be held liable in IRE, LUX and the UK, unless, in this last case, the competent authority was in bad faith or unlawful as a result of the Humans Right Act 1988.

This question was not answered by AUS and DEN, FIN, GER, GR, ICE and SWE have said that this question was not applicable.

2. **Indicate whether and to what extent may the competent authority be deemed liable towards investors with relation to the information contained in advertisements.**

The competent authority can be held liable in BE, and IT, if any investor suffers damage with the false and misleading information and proves that it was caused by a gross negligence of the competent authority.

3. **In the case of delegation of powers from the competent authority, to what extent are these other entities liable?**



In LUX, the only jurisdiction where delegation of powers is in place, the Luxembourg Stock Exchange (delegated entity) cannot suffer any liability.

V. LIABILITY OF OTHER ENTITIES TOWARDS INVESTORS

Indicate whether and to what extent may entities involved with the advertising campaign (e.g. the issuer, the offeror, the financial intermediary, the sponsor) be deemed liable with relation to the information contained in advertisements.

In the generality of the jurisdictions (AUS, BE, FIN, FR, GER, IRE, IT, NO, PO and SP) the issuer can be held liable. Just in GR it cannot be held liable.

The financial intermediary can be held liable only in AUS, BE, FIN, GR, NL, NO, PO and SP.

The sponsor and the offeror can also be held liable but not in the generality of the jurisdictions.

The auditor was also referred as responsible in AUS as the issuer and the financial intermediary, on a joint and several liability. In PO the auditor is also responsible.

DEN, ICE, LUX and SWE have said that this question was not applicable.

C. LEGISLATION

- 1. Indicate the laws and regulations applicable to the approval and dissemination of advertising campaigns.**
- 2. Summarise the contents of this legislation, regarding aspects not considered in this questionnaire.**
- 3. Indicate the place or website where this legislation can be obtained in English or attach a copy of the relevant parts of it.**

The answers to this last part of the questionnaire – C. Legislation - can be found in the annex to this summary and in some case sin the answers given by each country/competent authority.