

**Working Paper related to the Interim Report of the
Inter-institutional Monitoring Group of
7 May 2003**

The attached three appendices served as background material for the discussions of the Inter-institutional Monitoring Group between October 2002 and April 2003. In the course of its discussions, the Group decided to make this material as a working paper available to the public, in addition to its Interim Report of 7 May 2003. The working paper is composed of three appendices:

- **Appendix 1** reflects the procedural steps taken by the European Institutions and the Committee of European Securities Regulators with respect to level 1 and level 2 measures. Please note that steps which were taken before the start of the Lamfalussy Process were also included.
- **Appendix 2** contains an inventory of recommendations and principles on consultation and transparency, which only focus on the Final Report of the Committee of Wise Men. It compiles extracts of the Report and contains statements of the Institutions by which they clarified their understanding of the need for consultation and transparency in the Lamfalussy process. When assessing public consultation and transparency, it is important to recall the already existing general consultation framework and practices for Community legislation¹ which also includes other bodies (Economic and Social Committee, European Central Bank). The overall framework for all types of Community legislation also continues to be developed through new initiatives, including the Commission communication of 7 December 2002 on its consultation policy².
- **Appendix 3** comprises an inventory of concrete steps taken by the Institutions, as well as by CESR. The inventory is split into two parts: a horizontal part and a part linked to the four legislative initiatives – the Market Abuse Directive (Directive 2003/6/EC), the Prospectus Directive, the Investment Directive and the Transparency Directive. In order to provide a full picture, it starts before February 2001 (date of publication of the Final Report of the Committee of Wise Men). In addition, the overview covers the entire legislative process at Levels 1 and 2 involving all Institutions and CESR.

¹ Such as the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Official Journal L 145, 31/05/2001

² see <http://europa.eu.int/comm/governance/docs/comm-standards-en.pdf>

Appendix 1: Procedural steps and according timelines

<i>LEVEL 1 A. Preparation of a Level 1 measure</i>		
<i>Title of the legislative initiative: Prospectus Directive</i>		
Phases	Actions	Timetable (steps in the pre-Lamfalussy phase in italics)
Pre-legislative public consultation	<ul style="list-style-type: none"> • Consultation paper 	<i>FESCO consultation paper on prospectus ("A European Passport for Issuers") of 10/5/2000; FESCO second consultation paper of 20/12/2000; Additional FESCO Submission to the Commission on a "European Passport" for issuers (1/8/2001)</i>
	<ul style="list-style-type: none"> • Comment and summary of the replies 	
	<ul style="list-style-type: none"> • Open hearings 	
Preparation of the draft proposal	<ul style="list-style-type: none"> • Consult European Securities Committee (ESC) on draft proposal 	<i>Meeting with Member States' experts in January 2001</i>
	<ul style="list-style-type: none"> • Transmission of draft legislative proposals (at an advanced stage) to EMAC 	
	<ul style="list-style-type: none"> • Transmission of Level 1/Level 2 note to EP (EMAC) within 15 working days for reaction 	Meeting with EMAC members in May 2001
Commission proposal	<ul style="list-style-type: none"> • Presentation of a formal proposal 	30 May 2001

LEVEL 1 B. Co-decision procedure			
<i>Title of the legislative initiative: Prospectus Directive</i>			
<i>Actions EP (First Reading)</i>	<i>Timelines</i>	<i>Actions Council</i>	<i>Timelines</i>
Date of receipt of Commission proposal	1 June 2001	Date of receipt of Commission proposal	1 June 2001
First discussion in Economic and Monetary Affairs Committee (EMAC)	19 June 2001	First meeting of the Council working party	3 July 2001
Hearings in the EMAC Committee	15 October 2001		
Draft report of rapporteur	4 December 2001	First progress report to the ECOFIN Council	4 December 2001
Vote of Economic and Monetary Affairs Committee (EMAC)	26 February 2002		
Vote of EP Plenary (first reading)	14 March 2002	First COREPER meeting after EP Vote Policy debate in ECOFIN Council	22 May 2002 4 June 2002
Adoption by the Council after a single reading in the European Parliament (fast track procedure)			None
Amended Commission proposal			12 August 2002
<i>Actions EP (Second Reading)</i>		<i>Actions Council</i>	
Hearings in the EMAC Committee	2 October 2002	First meeting of the Council working party discussing amended proposal	16 September 2002
		Political agreement on common position by ECOFIN Council	5 November 2002
Report of rapporteur to EMAC		Adoption of the common position by Council	24 March 2003
Recommendation by EMAC to EP			
Vote of EP plenary (Second reading)			
		Final adoption by the Council	
Signature by EP		Signature in Council	
Publication in the Official Journal and entry into force of the Directive			

<i>LEVEL 2: Preparation of the implementing measure</i>		
<i>Title of the measure: Implementing measures on the Prospectus Directive</i>		
Phases	Actions	Timelines
Preparation of first set of provisional mandates for CESR	• Consultation of Commission committees (ESC) on a draft mandate	5/12/2001
	• Prior information of EMAC on the draft	13/3/2001
	• Publication of provisional mandate on the Internet	27/3/2001
CESR Consultation on first provisional technical advice	• Call for evidence on the mandate	27/3/2002 – 17/5/2002
	• Public consultation on a draft technical advice	16/10/2002 – 31/12/2002
	• Addendum to the consultation document	19/12/2002 – 6/2/2003
	• Hearings • Publication of comments received during the consultation	26/11/2002 26/1/2003
Deadline for CESR	• Extension of deadline for CESR's first provisional mandate	4/4/2003
	• Additional Hearing	27/5/2003
CESR first provisional advice	• Transmission of provisional technical advice to Commission	
	• Publication of provisional technical advice on the Internet	
Preparation of second provisional mandate for CESR	• Consultation of ESC on a draft mandate	30/1/2003
	• Prior information of EMAC	23/12/2002
	• Publication of mandate	7/2/2003
CESR Consultation on second provisional technical advice	• Call for evidence on the mandate	7/2/2003

LEVEL 1 A. Preparation of a Level 1 measure		
Title of the legislative initiative: Market Abuse Directive (Directive 2003/6/EC)		
Phases	Actions	Timelines (steps in the pre-Lamfalussy phase in italics)
Pre-legislative public consultation	<ul style="list-style-type: none"> • Consultation paper • Comment and summary of the replies • Open hearings 	<ol style="list-style-type: none"> 1. <i>Three meetings of Forum Group between 11/1999 and 02/2000</i> 2. <i>IOSCO paper on market manipulation, 05/2000</i> 3. <i>FESCO paper on market abuse 09/2000</i>
Preparation of the draft proposal	• Consult ESC on draft proposal	<i>Meeting with MS experts on 15 January 2001</i>
	• Transmission of draft legislative proposals (at an advanced stage) to EMAC	May 2001
	• Transmission of Level 1/Level 2 note to EP (EMAC) within 15 working days for reaction	
Commission proposal	• Presentation of a formal proposal	30 May 2001

LEVEL 1 B. Co-decision procedure			
Title of the legislative initiative: Market Abuse Directive			
Actions EP (first reading)	Timelines	Actions Council	Timelines
Date of receipt of the Commission proposal	1 June 2001	Date of receipt of the Commission proposal	1 June 2001
First discussion in Economic and Monetary Affairs Committee (EMAC)	19 June 2001	First meeting of the Council working party	16 July 2001
Hearings	15 October 2001	First progress report to the ECOFIN Council (informal Council)	21 September 2001
Draft report of rapporteur	30 November 2001		
Vote of Economic and Monetary Affairs Committee (EMAC)	26 February 2002	First Council Working Party discussing EP draft amendments	1 March 2002
Vote of EP Plenary (first reading)	14 March 2002	First Council Working Party discussing final EP amendments	20 March 2002
Adoption by the Council after a single reading in the European Parliament			None
Amended Commission proposal			None
		Political agreement by ECOFIN Council on common position	7 May 2002
EP receives Council common position	5 September 2002	Adoption of common position by ECOFIN Council	19 July 2002
Draft report of rapporteur to EMAC	9 September 2002		
Vote of Economic and Monetary Affairs (EMAC)	8 October 2002	Meeting of the Council working party to examine draft EP amendments	23 September 2002
Vote of EP plenary (Second reading)	24 October 2002	First meeting of the Council working party to examine final EP amendments	8 November 2002
		Final adoption by Council which agrees with EP opinion after the second reading	3 December 2002
Signature by EP	28 January 2003	Signature in Council	28 January 2003
Publication in the Official Journal and entry into force of the Directive			12 April 2003
End of transposition period for Member States (18 months after the entry into force)			12 October 2004

<i>LEVEL 2: Preparation of the implementing measure</i>		
<i>Title of the measure: Implementing measures of the Market Abuse Directive</i>		
Phases	Actions	Timelines
Preparation of CESR provisional mandates	• Consultation of Commission committees (ESC) on a draft mandate	5/12/2001
	• Prior information of EMAC on the draft	13/3/2002
	• Publication of provisional mandate on the Internet	27/3/2002
CESR Consultation on provisional technical advice	• Call for evidence on the mandate	27/3/2002
	• Consultation on a draft technical advice	5/7/2002 – 30/9/2002
	• Publication of the answers received	
	• Hearings	6/9/2002 + 21/11/2002
CESR provisional advice	• Transmission of provisional technical advice and Feedback Statement to Commission	31/12/2002
	• Publication of provisional mandates on the Internet	
Preparation of CESR first final mandate	• Consultation of Commission committees (ESC) on a draft final mandate	19/12/2002
	• Prior information of EMAC on the draft	10/12/2002
	• Publication of final mandates on the Internet	17/1/2003
CESR final advice	• Transmission of final advice to the Commission	13/1/2003
	• Publication on the Internet	
Preparation of draft implementing measures	• Publication of tentative legal texts for level 2 measures	10/3/2003
Preparation of second CESR mandate	• Consultation of the ESC	30/1/2003
	• Prior information of EMAC	3/1/2003
	• Publication of second mandate on the Internet	4/2/2003

LEVEL 1 A. Preparation of a Level 1 measure		
Title of the legislative initiative: Investment Services Directive		
Phases	Actions	Timelines (steps taken in the pre-Lamfalussy phase in italics)
Pre-legislative public consultation	<ul style="list-style-type: none"> • Consultation paper 	1. 15/11/2000 (<i>deadline for replies 31/3/2001</i>) 2. 24/7/2001 (<i>deadline for replies 30/10/2001</i>) 3. 25/3/2002 (<i>deadline for replies 31/5/2002</i>)
	<ul style="list-style-type: none"> • Comment and summary of the replies 	24/7/2002 (1) 25/3/2002 (2)
	<ul style="list-style-type: none"> • Open hearings 	18/19/9/2001 22/4/2002
Preparation of the draft proposal	<ul style="list-style-type: none"> • Consult ESC on draft proposal 	11/10/2002
	<ul style="list-style-type: none"> • Transmission of draft legislative proposals (at an advanced stage) to EMAC 	6/9/2002
	<ul style="list-style-type: none"> • Transmission of Level 1/Level 2 note to EP (EMAC) within 15 working days for reaction 	21/10/2002
Commission proposal	Presentation of a formal proposal	19/11/2002

LEVEL 1 B. Co-decision procedure			
Title of the legislative initiative: Investment Services Directive			
Actions EP (first reading)	Timelines	Actions Council	Timelines
Date of receipt of the Commission proposal	20/11/2002	Date of receipt of the Commission proposal	20/11/2002
First discussion in Economic and Monetary Affairs Committee	2/12/2002	First meeting of the Council working party	
Hearings	18/2/2003		
Draft report of rapporteur	10/3/2003		
Vote of Economic and Monetary Affairs Committee (EMAC)			

LEVEL 1 A. Preparation of a Level 1 measure		
Title of the legislative initiative: Directive on transparency obligations for security issuers		
Phases	Actions	Timelines
Pre-legislative public consultation	• Consultation paper	1. 17/7/2001 (deadline for replies: 30/09/2001) 2. 08/05/2002 (deadline for replies 05/07/2002)
	• Comment and summary of the replies	11/12/2001 (1)
	• Open hearings	None
Preparation of the draft proposal	• Consult ESC on draft proposal	19/11/2002
	• Transmission of draft legislative proposals (at an advanced stage) to EMAC	5/11/2002
	• Transmission of Level 1/Level 2 note to EP (EMAC), 15 working days for reaction	6/2/2003
Commission proposal	• Presentation of a formal proposal	26/3/2003

Appendix 2: Inventory of the principles on public consultation and transparency

The present inventory compiles both the recommendations of the Committee of Wise Men and the statements made by the European Institutions (in particular Council and the European Parliament) on the need for public consultation and transparency in the area of securities markets.

1. Recommendations of the Committee of Wise Men

Page 18 of the Final Report (Chapter II, Section 3)

- Level 1 Consultation and Transparency mechanisms

The European Commission alone has the right of initiative under the Treaty. However the Committee recommends that in the future, before the Commission draws up a proposal in these areas, it should take the following steps:

1. Consult, beforehand, in an open, transparent and systematic way with market participants and end-users (issuers and consumers). Deadlines should be set and made clear. Where necessary, open hearings should be held. There should be a strengthened and open dialogue with market participants and end-users so as to advise the Commission on a continuous basis on Level 1 work. Use of the Internet should be used to encourage more participation. A summary of the consultation process undertaken should be made available when the final proposal is made. The Committee recognises that this will take a little time to set up and that there are resource implications for the Commission services.

The Commission must put in place a more rigorous consultation and transparency mechanism for Level 1 work

Strengthened and open dialogue with market participants and end-users is essential

Page 21 of the Final Report (Chapter 2, Section 3):

- Level 2 working methods

The main tasks of the European Commission and the Securities and Regulators Committees³ can be summed up in the following way:

Level 2 working methods

2. The ESRC⁴, having thoroughly and openly consulted the markets and end users, according to a prescribed process, with fixed deadlines (see below) would forward its technical advice to the Commission in due time.

ESRC consults openly and widely.....

Page 24 of the Final Report (Chapter II, Section 3):

³ Nb: CESR today

⁴ Nb: CESR today

- **Consultation procedures and transparency**

The Committee considers that the ESRC must consult market participants, consumers and end-users according to a fixed, preferably mandatory set of procedural rules that should be set out in its statutes and rules of procedure. The following principles should apply to the consultation process:

ESRC must also set up an open and transparent consultation process

- market practitioners must be involved...
- at every level...
- in a continuous process...
- with particular weight given to those with knowledge and expertise on the subject in question...
- in an open process, using, *inter alia*, the Internet...
- with end-users views being considered at the same time.

Principles of consultation process

The Committee considered the merit of “*practitioner forums*” at European level, but given the complexity of deciding who should be members, bearing in mind that there are 15 Member States (and soon more) as well as a wide range of interests to be covered, the Committee prefers the alternative outlined below.

Committee looked at practitioner forum idea....

Once advice on implementing measures has been requested from the European Commission, and with a specified timeframe agreed for the work, the ESRC would set up the consultation process.

but prefers the following ESRC consultation process....

Four basic procedures could be envisaged:

- In the case of complex issues, the ESRC should consult first on the basis of a “*concept release*” – outlining the problem and the options and asking for public input on what, if any, regulatory approach would be appropriate. The time for such a consultation should not exceed 3 months.
- Once a regulatory approach had been decided, a draft proposal would be released by the ESRC for consultation with markets and end users (3 months maximum).
- Where necessary the ESRC could use hearings, or roundtables, as this Committee has done. Use of the Internet should be compulsory for the consultation process.
- A summary of the public comments should be appended to each of the ESRC’s final recommendations.

Four basic procedures must be followed for an ESRC consultation...

With hearings, roundtables....

Public comments should be disclosed.....

The Committee recommends the Commission to maintain a similar level of transparency and openness as these proposals move to the Securities Committee.

Page 31 of the Final Report (Final comments)

In its final comments, the Committee of Wise Men stressed amongst others:

- Full transparency throughout the system, coupled with deadlines in the decision making process.
- Active, well defined involvement of market participants and consumers.

2. Statement by the Institutions

1. The Resolution of the European Council on More Effective Securities Market Regulation of 23 March 2001

Paragraph 1 of the resolution states:

“... The proposed four-level approach (framework principles, implementing measures, co-operation and enforcement) should be implemented to make the regulatory process for European Union securities legislation more effective and transparent, thus improving the quality of the legislative measures proposed”

Paragraph 2 of the resolution states:

“The Commission is invited to make use of early, broad and systematic consultation with the institutions and all interested parties in the securities area, in particular strengthening its dialogue with consumers and market practitioners”

Paragraph 6

“.....It (the future 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”

2. The European Parliament Resolution on the implementation of financial services legislation of 5 February 2002

Paragraph 8 states:

(The European Parliament) regards information and transparency as essential if all the market participants are to be involved as effectively as possible in the establishment of a single European securities market; calls for as much information as possible about all legislative proposals and the work of the committees, in particular the market regulators committee, to be made available to the public, for example vi the Internet; draws attention, in that connection, to the provisions of European Parliament and Council Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents

Paragraph 11 states:

(The European Parliament) *considers essential to guarantee market operators and consumers wide-ranging consultation by setting up a market participants advisory committee under the supervision of the regulators committee.*

3. President Prodi's declaration of 5 February 2002

Paragraph 3 of this declaration states amongst others: *...in this context, the Commission is now in a position*

- *To ensure full transparency vis-à-vis Parliament throughout the entire procedure for the adoption of implementing measures. The Commission will also ensure that there is wide public consultation before draft implementing measures are drawn up;*
- *To support Parliament's wish to see the establishment of a market participants group attached to the Committee of European Securities Regulators and it strongly encourages its establishment in as short a time as possible.*

4. Commissioner Bolkestein's letter to Mrs Randzio-Plath of 2.10. 2001

Paragraph 1 states

"As much information as possible will be posted on the Internet for consultation on all future legislative initiatives in the securities domain so that a broad range of market participants, users or consumer groups from different Member States can put forward their views on pending proposals. My services will publish and comment on the results of these consultations"

Paragraph 6 states:

"the mandates that we given to the European Securities Regulators Committee (CESR) will be made public. The Regulators Committee's formal opinion will be forwarded to EMAC and published on the Internet. as to access to the internal documents of the Regulators Committee, the Commission has already invited this Committee to be as open and transparent as possible."

5. Commission Decision of 6 June 2001 establishing the Committee of European Securities Regulators

Recital 11 of the Commission decision states:

The Committee of European Securities Regulators should consult extensively and at an early stage with market participants, consumers and end-users in an open and transparent manner.

Article 5 of the Commission decision determines:

Before transmitting its opinion to the Commission, the Committee shall consult extensively and at the early stage with market participants, consumers and end-users in an open and transparent manner.

Appendix 3: Inventory on the taken steps until 7 May 2003

1. Horizontal steps

The horizontal steps taken already reflect to a large extent current practice and have been introduced prior to or independently from the recommendations made in the Final Report of the Committee of Wise Men.

1.1. *European Parliament*

All documents throughout the legislative process in the EP, such as draft reports, reports of the rapporteur, amendments thereto as well as final texts adopted are available in the Public Register accessible through the European Parliament's Internet sites⁵.

The EP's Committee of Economic and Monetary Affairs established an advisory panel of ten Financial Services Experts⁶ on 24 April 2002. The panel shall advise the Committee on the measures set out in the Financial Services Action Plan. In the context of the implementation of the Lamfalussy Report on securities regulation, the panel also provides evaluations of Commission proposals for implementing measures submitted to the European Securities Committee, as well as, consultation documents issued by CESR. The panel is composed of four experts drawn from universities and six market practitioners. The panel met for the first time on 17 May and presented its first reports on 18 September 2002. The experts' reports are only made available to members of the Committee, and not to the public.

1.2. *Council*

Meeting documents of working parties are available on the Council's Internet sites⁷. In addition, all Member States consult to a greater or less extent at national level before taking a position in Council. This consultation process does not take place at Community level. Nevertheless, it represents one of the most important inputs from outside into the legislative process.

1.3. *Commission*

⁵ http://www.europarl.eu.int/opengov/default_en.htm

⁶ The experts drawn from the academic world are: Prof. Nils Jul Clausen, University of Odense, Prof. Philip Molyneux, University of Wales, Prof. Marco Pagano, Università di Salerno, Prof. Blanche Soussi, Université de Lyon 3; the six market practitioners: Mr Didier Davydoff, Observatoire de l'épargne européen, Paris; Mr Manuel Esteve, Madrid; Ms Marianne Kager, Bank of Austria/Creditanstalt, Wien; Mr Hans-Helmut Kotz, Landeszentralbank Bremen; Mr Ruben Lee, Oxford Finance Group, London; Ms Fields Wicker-Miurin, Vesta Capital Advisors, London

⁷ see <http://register.consilium.eu.int/utfregister/frames/introfs.EN.htm>

The Commission (DG Internal Market) uses its Internet sites⁸ for providing information about all ongoing initiatives, including in the area of securities markets. The Commission also holds a public register⁹.

In respect of securities markets, the names of the members of the European Securities Committee are made available on the Internet¹⁰. The same applies with respect to summary reports of the meetings since January 2003. Moreover, it is current practice that Commission services regularly meet with market participants, issuers and investors (or representatives of their associations) upon the latter's request.

1.4. Committee of European Securities Regulators (CESR)

CESR's list of members, the names of the members of the secretariat and the existing expert groups are published on CESR Internet sites, as well as consultative documents and other documents adopted by the Committee

1.4.1. CESR Public Charter

The CESR adopted a proper charter on 11 September 2001 by which it determined the rules for its internal functioning. On consultation and transparency, Article 5 of the Charter states:

5.8. The Committee and its expert groups will work in an open and transparent manner.

5.10. The Committee will use the appropriate processes to consult (both ex-ante and ex-post) market participants, consumers and end-users, which may include inter alia: concept releases, consultative papers, public hearings and roundtables, written and Internet consultations, public disclosure and summary of comments, national and/or European focused consultations. The Committee will make a public statement of its consultation practices.

5.11. For the purpose of facilitating the dialogue with market participants, consumers and other end users of financial services, the Committee will establish working consultative groups, whenever appropriate.

1.4.2. CESR Public Statement

In October 2001, CESR published a draft public statement on its consultation practices and invited the public to comment on this draft until November 2001. In December 2001, CESR published its final public statement.

⁸ see http://europa.eu.int/comm/internal_market/en/index.htm# under the section "securities"

⁹ see http://europa.eu.int/comm/secretariat_general/sgc/acc_doc/index_fr.htm

¹⁰ see press release on the first ESC meeting of 21 September 2001

http://europa.eu.int/comm/internal_market/en/finances/mobil/01-299.htm

The list of the members (updated version of 2 July 2002) are available under

http://europa.eu.int/comm/internal_market/en/finances/mobil/index.htm

1.4.3. Market participants consultative panel with CESR

On 10 July 2002, CESR announced to the public that it has established a market participants' consultative panel¹¹. In its press release of the same day, CESR described the functions of this panel as follows:

“In addition to this (the Public Statement on Consultation Practices), a Market Participants Consultative Panel is established to assist CESR in the performance of its functions. The Panel will act as a “sounding board” for CESR and will, in particular,

- *Express views on the work programme of CESR;*
- *Provide comments on the way in which CESR is exercising its role and, in particular, implementing its Public Statement of Consultation Practices;*
- *Assist CESR in the definition of priorities;*
- *Alert CESR on regulatory inconsistencies in the Single Market and suggest areas for Level 3 work;*
- *Inform CESR on major financial market evolutions.*

The Panel is composed of eleven members¹² who are appointed in a personal capacity initially for a two-year mandate; it will then be renewed by thirds annually. Following proposals by individual CESR members, CESR agreed the final composition in its meeting in June 2002. The panel met for the first time on 24 September in Paris and then on 12 January 2003. The panel's conclusions are public and posted on the CESR Web Site.

2. Background on the four legislative initiatives

The following lists up the consultative steps undertaken so far.

2.1. The future Prospectus Directive

2.1.1. Level 1 measure

¹¹ Press release of 10 July 2002, CESR/02-111, see on CESR's website <http://www.europefesco.org>

¹² Pr Luis Miguel Beleza, Consultant of the Executive Board, Banco Comercial Português, Dott Salvatore Bragantini, CEO, Centrobanca, S.p. A.; Dr Rolf Breuer, Chairman of the Supervisory Board, Deutsche Bank AG; Mr Donald Brydon, Chair of the Financial Services Practitioner Panel and Chairman of AXA Investment Managers; Mr Ignace Combes, Vice-President, Management Committee of the Board of Directors, Euroclear Bank; Mr P.P.F. de Vries, Director, Association of Shareholders, Vice-President, Euroshareholders; Mrs Lars-Erik åForsgardh, President and CEO, Swedish Shareholders Association; Mr Dominique Hoenn, Deputy General Manager of BNP Paribas, Vice-Chair of the Supervisory Board of Euronext; Ms Sonja Lohse, Group Compliance Officer, Nordea AB; Mr Mariano Rabadan, Chairman of the Spanish Association of Investment and Pension Funds (INVERCO); Pr Dr Emmanuel D. Xanthakis, Non-Executive President, Marfin Bank and Marfin Portolio Investment Company

Commission

There has been no formal consultation prior to the Commission proposal presented in May 2001. The explanatory memorandum of the Commission proposal (COM (2001) 280 final)¹³ contains the following statements:

Page 1:

“FESCO (the Forum of European Securities Commissions) has published for public consultation in May 2000 a paper on European Public Offer¹⁴. After this consultation, and as a result of the process, FESCO published on 17 January 2001¹⁵ a document titled “A European Passport for Issuers – A report to the EU Commission” calling, also for an urgent overhaul of the existing regulation, and suggesting possible new approaches.....

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“... FESCO (Forum of European Securities Committee) to whose work the Commission take part as an observer has published for consultation in May 2000 a paper on the European public offer. The answers to the consultation have been made available to the Commission. Among others, 18 EU and national Federations submitted their comments. Following the outcome of the consultation FESCO has submitted to the Commission a new paper on European Public Offer, the content of which is broadly consistent with the Commission proposal.

In order to draft the Final Report on the Regulation of European Securities Markets, the wise men consulted the industry collecting written statements and organising ad hoc hearings. As it comes out from the initial report (page 36) the need for introducing a single passport for issuers was at the top of the list of key issues to be urgently addressed by the Commission.

The third progress report on the implementation of the Action Plan (and the discussion in the FSPG) also indicates the upgrading of the existing regulation in the field of prospectuses and the introduction of the single passport for issuers as a top priority ... “

European Parliament

The proposal was transmitted to the European Parliament on 5 July 2001. The Committee of Economic and Monetary Affairs held public hearings on 15 October 2001 and on 1 October 2002 (the latter primarily on the revised Commission proposal of 9 August 2002). Representatives¹⁶ reflecting the

¹³ See the entire proposal on

http://europa.eu.int/comm/internal_market/en/finances/mobil/prospectus.htm

¹⁴ see the FESCO Consultative Paper of 10 May 2000 Fesco/99-098e available under <http://www.eurofefesco.org> in the section “consultative papers” for the year 2000

¹⁵ see the FESCO Report of 20 December 2000, Fesco/00-138b published on CESR’s website on 17 January 2001 under <http://www.eurofefesco.org> in the section “recent publications and speeches” - year 2001

¹⁶ The representatives were the following: Mr Clifford Dammers , Secretary General; International Primary Markets Association (IPMA), Professor Francesco Chiapetta (UNICE), Mr Iain Richards, Schroeder Investment Management, Mr Erwan Barre, APCIMS-EASD (France) (Association of

following interests were amongst those invited to the hearings: Issuers, Marketplaces, Institutional Investors, Small Investors and the legal profession.

In addition, the proposal was considered in public sessions of the Committee on 19 June, 11 July, 15 October, 4 December 2001, and 8 January 2002, 20 and 26 February 2002 and by the full Parliament on 14 March 2002.

2.2.2. Level 2 measures (Preparatory phase)

Commission:

On 27 March 2002, the Commission services published provisional requests for a technical advice on possible implementing measures¹⁷. It was highlighted in the request that this does not prejudice the decisions of Council and EP on the final split between level 1 and level 2 measures. CESR was asked to widely consult and to provide its advice by 31 March 2003. On 4 April 2003, the Commission published a letter to CESR by which it extended the deadline until 31 July 2003.

Along the same conditions, the Commission published a second set of provisional requests for technical advice on 7 February 2003.

Committee of European Securities Regulators:

- On 27 March 2002, CESR published a call for evidence inviting all interested parties to submit their views by 17 May as to what CESR should take into account when considering in its advice. The five submissions received were integrated into CESR's further work. CESR has set up a Consultative Working Group to advise its Expert Group during the drafting process. The Consultative Working Group includes in particular representatives of the following market participants: issuers, intermediaries as well as institutional and individual investors.
- On 1 July 2002, CESR published a fact finding summary¹⁸ on the way, in which prospectuses are controlled, scrutinised and approved in Member States.
- On 16 October 2002, CESR published a detailed consultative paper¹⁹ (composed of the proper consultation paper and 14 technical annexes) in view of its possible future technical advice. The deadline for response

Private Clients Investment Managers and Stockbrokers-European Association of Securities Dealers), Ms Natalia BUTRAGUENO, Banco Santander Central Hispano, Ms Elisabeth ROEGELE, Stuttgart Stock Exchange and Mr Josef TOBIEN, Weil, Gotshal and Mages, Frankfurt.

¹⁷ see DG Internal Market's website

http://europa.eu.int/comm/internal_market/en/finances/mobil/index.htm

¹⁸ see the CESR papers under <http://www.europefesco.org> under the section "recent publications and speeches" – year 2002

¹⁹ see the CESR consultative paper under <http://www.europefesco.org> under the section consultative paper – year 2002

expired on 31 December 2002. An open meeting was held on 26 November.

- On 19 December 2002, CESR published an Addendum to the Consultation Paper; the deadline for response was 6 February 2003. An open hearing was held on 26 January 2003. An additional hearing will be held on 27 May 2003.

2.2. The Market Abuse Directive (Directive 2003/6/EC)

2.2.1. Level 1

Commission

Prior to its proposal, the Commission services established a forum group composed of 15 representatives from market participants, stock exchanges, investors and national securities regulators. The representatives were selected by associations. Three forum group meetings took place on 4 November 1999, 9 December 1999 and 17 February 2000.

Thereafter, there has been no formal public consultation prior to the Commission proposal in May 2001. The explanatory memorandum of the Commission proposal (COM (2001) 281 final)²⁰ contains the following statements on consultation:

Page 4:

In view of the urgency of action in the area of market abuse, and in view of the extensive consultations on the issue already carried out with Member State governments, regulators and supervisors²¹, financial industry (Forum group meetings²²) and other interested parties, the Commission has decided to come forward with the proposal now rather than to delay it through the recourse to a more formal consultative process. In line with the report of the Wise Men, the Commission will engage in consultations, as foreseen in the Stockholm European Council resolution, when it prepares the implementing measures in accordance with the relevant provisions of the proposed Directive.

European Parliament

²⁰ See the entire proposal on

http://europa.eu.int/comm/internal_market/en/finances/mobil/prospectus.htm

²¹ see the FESCO Report of 29 June 2000, Fesco/00-0961, published on 25 September 2000 under <http://www.eurofefesco.org>

²² The forum group was composed of about 15 representatives representing interests of market participants, stock exchanges, investors and national securities regulators. The representatives were selected by associations. Three forum group meetings took place on 4 November 1999, 9 December 1999 and 17 February 2000.

The Committee of Economic and Monetary Affairs held a public hearing on 15 October 2001. Representatives²³ reflecting the following interests were invited to the hearings: An academic expert on stock market legislation, as well as experts with considerable regulatory experience. In addition, the proposal was considered in public sessions of the Committee on 19 June, 11 July, 15 October, 4 December 2001, and 8 January 2002, 20 February 2002 and 26 February 2002 and by the Parliament on 14 March 2002.

The Council Common Position was received by the Parliament on 5 September 2002. The Committee considered it in public on 11 September, 2 October and 8 October and by the full Parliament on 24 October 2002.

2.2.2. Level 2 (Preparatory phase)

Commission

On 27 March 2002, the Commission services published a provisional request for technical advice on possible implementing measures.²⁴ It was highlighted in the request that this does not prejudice the decisions of Council and EP on the final split between level 1 and level 2 measures. CESR has also been required to widely consult all interested parties and to provide its advice to the Commission by 31 December 2002.

The technical advice was received in December 2002. Thereafter, the Commission elaborated draft legal rules towards an implementing measure to be discussed in the European Securities Committee. For this purpose, working documents containing tentative drafts were published on the Commission's website and the public received the opportunity to send any comments by the end of April 2003.

Committee of European Securities Regulators

- On 27 March 2002, CESR published a call for evidence inviting to submit their views by 26 April as to what CESR should take into account when considering its advice to the Commission. The ten submissions received (mainly from associations representing banks, issuers and investment firms) were integrated into CESR's further work. At the same time, CESR set up a Consultative Working Group advising its own expert group, which includes representatives from issuers, intermediaries as well as institutional and retail investors.
- On 5 July 2002, CESR published a detailed consultative paper²⁵ on its possible future technical advice. The deadline for responses expired on 30

²³ The representatives were the following: Dr Stavros Thomadakis, Chair of the Greek Capital Markets Commission and CESR working group on Market Abuse, Mme Claude Ducouloux-Favard Paris IX Dauphine and Mr Jjean-Louis Duplat, former Charmain of CBF (Belgium).

²⁴ see DG Internal Market's website

http://europa.eu.int/comm/internal_market/en/finances/mobil/index.htm

²⁵ see the CESR consultative paper under <http://www.europefesco.org> under the section consultative paper – year 2002

September. An open meeting took place on 6 September, which was followed by another hearing held on 21 November 2002. CESR has received over 100 responses, which are posted on the CESR Web site. A Feedback Statement was published.

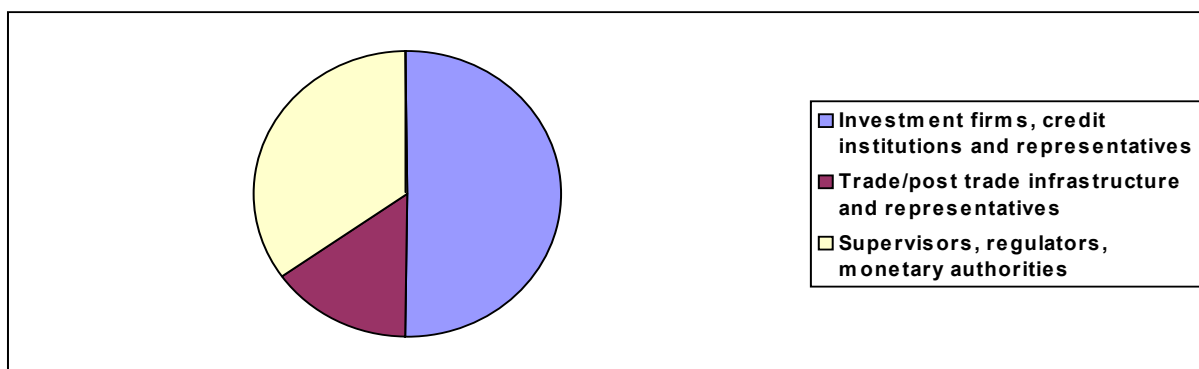
- On 13 January 2003, the provisional and the final technical advice from CESR were published on the Internet.
- On 7 February 2003, the Commission published a further mandate asking for a technical advice on other issues. This concerns aspects on which the Council and the European Parliament asked for implementing rules which have initially not been proposed by the European Commission.

3.2. Investment Services Directive

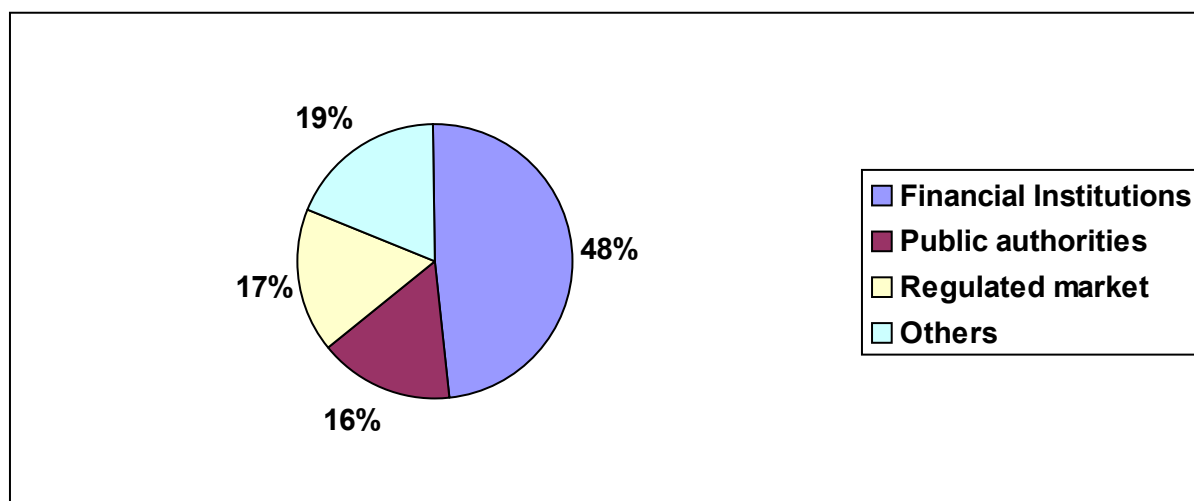
3.2.1. Level 1

Commission

- The Commission published a Green Paper on 15 November 2000 (“Upgrading the investment services directive”) exploring a number of themes relating to the operation of the ISD (Document COM (729 2000)). The deadline for replies was 31 March 2001. The Green Paper analysed the current situation, identified possible problems and posed 16 questions on possible policy options for the future.
- In July 2001, a summary of the 42 replies received was published by the Commission services. The summary presented the background of the respondents as follows:



- A consultation document, which mapped out possible modifications to the Directive, was published on 24 July 2001 through the Internet. The consultation paper contained an overview of the possible policy lines as well as detailed implementing proposals. Responses were expected by 30 October 2001. 77 submissions were received in response to this consultation. The spectrum covered by these consultations were presented as follows in the published summary of the replies:



- The orientations of the first consultation were discussed in an open hearing, attended by 150 interested parties, in Brussels in September 18-19 2001. Representatives introduced the hearing with a series of statements on the strategic and institutional issues arising from these orientations from the European Parliament, the financial community, securities regulators and the academic world. Thereafter, the hearing was structured in four workshops where Commission representatives introduced the subject and comments by outside speakers were made.
- In the light of the responses received to the first consultation, the Commission published a substantially revised set of orientations for ISD revision on 31 March 2002. The consultation paper comprised an overview paper and a detailed annex. The Commission services received more than 110 responses in this second consultation round.
- The second consultation document was again subjected to scrutiny in open forum (22 April 2002) attended by 200+ participants. The hearing was introduced by statements of representatives from financial intermediaries, exchange operators and supervisory authorities.
- The Commission published its formal proposal for a directive on 19 November 2002.

European Parliament

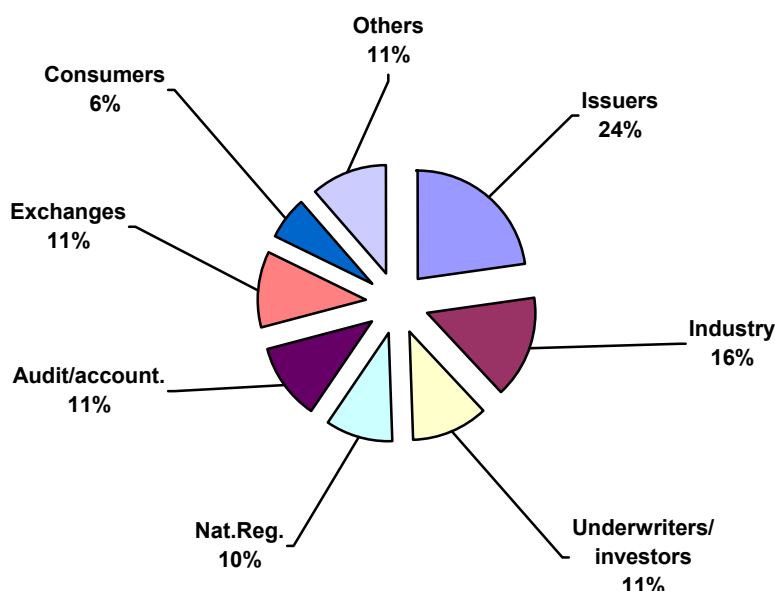
The Committee of Economic and Monetary Affairs held a public hearing on 18 February 2003. Representatives²⁶ reflecting a wide range of interests, from small retail investors to banks and regulated markets were invited.

²⁶ The representatives were the following: Mr BUCHBAUER (ESBG), MR DE LAS CUEVAS (EASD), Dr. FINCKH (Allianz Dresdner), Mrs HAY (ProShare), Mr LEFEBVRE (Euronext), Mr MIJS (EBF), and Mr. PINATTON(AFEI)

4.1. Proposal for a directive on transparency for publicly traded companies (Transparency Directive)

Commission

- The Commission published a first consultative paper on 11 July 2001 through the Internet and invited for comments by 30 September 2001²⁷. In this document the Commission presented its first views towards a future initiative and asked the public to respond to 10 targeted questions.
- A summary of the replies received was published on 11 December 2001. It showed amongst others the following spectrum of interests involved²⁸:



- The Commission services launched a final consultation on 8 May 2002²⁹. It revised particular aspects and presented a detailed outline of its ongoing work towards a possible proposal on its Internet sites. Again, the Commission received 93 replies.
- On 26 March 2003, the Commission published its formal proposal for a directive on transparency obligations for issuers whose securities are traded on a regulated market (COM (2003) 138 final). In the explanatory memorandum of the proposal, the Commission also provided information about the outcome of the two consultation rounds. The Commission

²⁷ see http://europa.eu.int/comm/internal_market/en/finances/mobil/transparency/index.htm

²⁸ see http://europa.eu.int/comm/internal_market/en/finances/mobil/trans_en.pdf

²⁹ see http://europa.eu.int/comm/internal_market/en/finances/mobil/transparency/index.htm

showed the following spectrum of interests involved in the two consultation rounds:

