

**DG INTERNAL MARKET SERVICES' WORKING DOCUMENT  
ON THE IMPLEMENTATION OF ARTICLES 5, 7, 10, 11, 14 AND  
15 OF THE EUROPEAN PARLIAMENT AND COUNCIL  
DIRECTIVE 2003/71/EC ON THE PROSPECTUS TO BE  
PUBLISHED WHEN SECURITIES ARE OFFERED TO THE  
PUBLIC OR ADMITTED TO TRADING ON A REGULATED  
MARKET AND AMENDING DIRECTIVE 2001/34/EC**

**WORKING DOCUMENT ESC 36/2003**

**- Invitation to comment -**

This document from DG Internal Market services is a working document for comments and is without prejudice to any final decision that might be taken by the Commission. **This document is therefore informal and not definitive. It does not have the status of a Commission official draft for implementing measures.** This document is addressed to the members of the European Securities Committee (ESC) and simultaneously to the European Parliament. **The period provided for the ESC to vote upon such measures, and for the European Parliament to consider them, is therefore not triggered by this publication.**

**The document does not cover the entirety of the first set of level 2 measures that the Commission has the intention to adopt and which, according to the relevant provisions of the Directive, have to be adopted within 180 days from the entry into force of the Directive or are essential for the effective entry into force of the Directive.**

**The level 2 provisions to be based on the part of the technical advice that CESR has to deliver by 31<sup>st</sup> December will be discussed at a later stage.**

Any technical drafting comments should be sent to the Commission via a dedicated e-mail address ([Markt-ESC@cec.eu.int](mailto:Markt-ESC@cec.eu.int)). Any comments received will also be made public and posted on the same Commission website. Taking into account the Commission's timetable, notably the six months time limit for adopting implementing measures, comments should be received by 15 December 2003.

Field Code Changed

## **Overview of possible implementation of Articles 5, 7, 10, 11, 14 and 15 of Directive 2003/71/EC (Prospectus Directive)**

### **INTRODUCTION:**

This working document provides an overview of the possible implementation of Articles 5, 7, 10, 11, 14 and 15 of the European Parliament and Council Directive 2003/71/EC on prospectuses as detailed below. Regarding Articles 7, 10, 11, 14 and 15 the Directive provides for the adoption of implementing rules within 180 days following its entry into force –the date of publication of the Directive in the Official Journal of the EU. This deadline has not been foreseen with respect to implementing measures for Article 5, however, immediate adoption of such measures is also essential in order to allow the Directive to produce its full effect.

In order to speed up the implementation process, the Commission is considering the adoption of one single regulation for the implementation of Level 2 measures for all the abovementioned provisions. The Stockholm European Council, the European Parliament itself and the Lamfalussy report all urged the use of regulations whenever possible. Furthermore, given the detailed nature of the implementing rules that need to be adopted to complement the Articles of the Directive in question and the need for uniform solutions in all EU Members States, the Commission considers that a regulation is the most appropriate legal form for the adoption of level 2 measures in the present case.

### **1. GENERAL COMMENTS**

The Commission Communication of 11 May 1999 entitled “Implementing the framework for financial markets: action plan” identifies a series of actions that are intended to create a legislative framework to support a single market for financial services. The Lisbon European Council of April 2000 called for the implementation of that action plan by 2005. One of the identified initiatives in the action plan is the need to create the conditions for a European passport for issuers.

The Stockholm European Council of March 2001 endorsed the final report of the Committee of Wise Men chaired by Baron Lamfalussy on the regulation of European securities markets. This report proposed the introduction of a four-level approach for securities markets regulation: namely framework principles (Level 1), implementing measures (Level 2), co-operation among regulators (Level 3) and enforcement (Level 4). “Level 1” should be confined to broad general framework principles, while “Level 2” should consist of technical implementing measures to be adopted by the Commission with the assistance of the European Securities Committee.

The Stockholm Council also called for the legislative process to be speeded up and made more flexible in order to be able to respond to market developments and new regulatory standards, whilst respecting the requirements of openness, transparency, and legal certainty.

The European Parliament agreed to this new approach in a Resolution adopted on 5 February 2002 - subject to some additional conditions that were specified in President Prodi's Declaration to the EP Plenary of the same date and in Commissioner Bolkestein's letter of 2 October 2001 addressed to Mrs Randzio-Plath, Chairperson of Parliament's Committee on Economic and Monetary Affairs.

The European Parliament and Council Directive 2003/71/EC<sup>1</sup> on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, follows this new approach and establishes framework principles for the drawing up, approval and publication of prospectuses in the EU. In order to guarantee uniform application of its provisions throughout the Community and to take account of developments on financial markets, the Directive requires the necessary technical implementing measures to be adopted through the comitology procedure, following the agreements made between the three institutions.

In line with this new approach for regulating securities markets and in conformity with the above agreements, the European Commission addressed on 18 March 2002 and 5 February 2003 two provisional mandates to the Committee of European Securities Regulators (CESR)<sup>2</sup> for technical advice on possible implementing measures. These provisional mandates by the Commission were formalised on 1 October 2003 after the adoption of the Prospectus Directive (2003/71/EC). The European Parliament has been informed of all mandates given to CESR, both provisional and final. These mandates have also been posted on Commission's Internal Market website.

The first provisional CESR mandate focussed on a number of priority issues and was drafted on the basis of initial Commission proposal adopted on 30.5.2001 COM(2001) 280 final. CESR was asked to provide advice on following priority issues:

- (1) Minimum Information (Article 6 (1) of the initial proposal for a Directive)
- (2) Incorporation by Reference (Articles 10 (1) and (3) of the initial proposal for a Directive)
- (3) Availability of the prospectus (Article 12 (7) of the initial proposal for a Directive)

A number of changes were introduced in the Commission's proposal in the ongoing negotiations on the prospectus Directive. On the basis of the amendments proposed by the European Parliament after its first reading the Commission prepared its amended proposal for a Directive; further changes were introduced during the negotiations in Council which led to a political agreement on 5 November 2002.

Taking into account these developments, the initial CESR mandate was adapted in a second provisional mandate and supplemented in order to reflect the changes introduced into the text during the negotiations; priority areas for provisional technical advice were also defined. CESR was asked to provide advice on the following issues:

- (1) Format of the Prospectus (art. 5(5) of the proposed Directive)
- (2) Minimum Information (Article 7(1) of the proposed Directive)
- (3) Annual Information (Article 10 (1) and (4) of the proposed Directive)

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<sup>1</sup> OJ L xxx

<sup>2</sup> CESR was established by Decision 2001/527/EC of 6 June 2001, OJ L 191, 13 July 2001, p.43

- (4) Incorporation by Reference (Articles 11 (3) of the proposed Directive)
- (5) Publication of the prospectus (Article 14 (3) of the proposed Directive)
- (7) Advertising (Article 15 (7) of the proposed Directive)

In order to guarantee the necessary transparency, CESR has consulted market participants and the broader public prior to finalising its advice. CESR has been asked to deliver its finalised advice to the Commission in three different stages: on 31 July, 30 September and 31<sup>st</sup> December 2003.

This working document takes into account the measures proposed in CESR's high quality level 2 advices.

*The missing elements according to the information provided by CESR that form part of the advice which has to be delivered by CESR at the latest on 31<sup>st</sup> December will be included in the draft text at a later stage. Those elements mainly consist in:*

*- a schedule for Member States and Member State's regional and local authorities (sovereign issuers and municipalities) – this will form part of Article 3 and Annex 1*

*- a schedule for certain collective investment undertakings of the closed-end type – this will form part of Article 3 and Annex 1*

*-financial information requirements:*

*- for non EU issuers*

*- for companies asking for a first admission to trading of their securities on a regulated market*

*These elements will complete the relevant registration document schedules provided for in Article 3 and Annex 1*

*- advertising*

## **2. STRUCTURE OF THE DRAFT REGULATION**

Chapter I of the draft Regulation includes an Article detailing the subject-matter covered by the proposed Regulation as well as an Article providing for definitions.

Chapter II of the draft Regulation intends to implement Article 7 (Article 6 of the initial proposal) of the Directive. This Article provides for minimum disclosure requirements to be included in different models of prospectuses depending on the different types of information needed by investors relating to equity securities, different types and nature of offers and admission to trading of non-equity securities, the format used and the information required for non-equity securities, the size or the public nature of the issuer. The different schedules and building blocks and possibilities of combination of schedules and building blocks are included respectively in Annexes 1 and 2.

Chapter III of the draft Regulation is intended to implement Article 5 of Directive 2003/71/EC. This Article refers to the format of prospectuses as drawn up either as a

single document or composed of three separate documents. It covers both the prospectus or base prospectus and its possible supplements.

Chapter IV of the draft Regulation intends to implement Article 10 of the Directive. According to Article 10 (1) the content of information required in the document or list of documents provided for in this same article is limited to information that would be required to be published outside the context of a prospectus and, more particularly in compliance with obligations imposed upon issuers under Community and national laws and rules dealing with the regulation of securities, issuers of securities and securities markets. Issuers shall at least refer to the information required pursuant to Company Law Directives, Directive 2001/34/EC and Regulation (E) No. 1606/2002 on the application of International Accounting Standards. According to Article 10 (4) the requirement for implementing measures has been limited to measures related to the method of publication of the disclosure requirements provided for in this Article.

Chapter V of the draft Regulation intends to implement Article 11 of the Directive (Article 10 of the initial proposal). This Article establishes the possibility for issuers to incorporate information in the prospectus by reference to previously or simultaneously published documents that have been approved by the home competent authority.

Chapter VI of the draft Regulation intends to implement Article 14 (Article 12 of the initial proposal). This Article provides for an obligation imposed upon the issuer, the offeror or the person asking for admission to trading on a regulated market to make the prospectus available to the public. Methods of publication, establishing assuming that the prospectus has been made available to the public, are also included in this Article.

Chapter VII of the draft Regulation intends to implement Article 15 of the Directive. This provision sets the conditions that advertisements should fulfil – for instance in terms of content, presentation and quality of information. The requirement for implementing measures is limited to the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading, in particular before the prospectus has been made available to the public or before the opening of the subscription.

### **3. DESCRIPTION OF ARTICLES**

#### **Article 1 – Scope**

This Article, by reference to the Articles of Directive 2003/71/EC for which a first set of implementing rules is being proposed, defines the various issues that fall within the scope of the proposed Regulation.

#### **Article 2 – Definitions**

A number of definitions are created for the purposes of this Directive. Those definitions shall not prejudice the use of those terms other parts of EU or national legislation.

#### **Article 3 – Minimum information requirements to be included in a prospectus**

This Article, completed by the different appendices to the Annex 1, defines the main schedules and "building blocks" setting the detailed minimum information items to be included in a prospectus depending on the type of issuer and the nature of the securities

involved. The list of information items included in its schedule and building block is imperative; however the competent authority might ask for adaptations to the content of the information covered by those items on a case by case basis.

This Article also provides that a prospectus shall be drawn up by following one of the different applicable combinations of schedules for the most common types of securities provided for in Annex 2. This is the "building block approach" meaning that the issuers must combine several "blocks" in order to draft their prospectus. The combination will depend on the type of issuer and security concerned. This table of combinations will also help issuers of securities comparable to the ones included in this Annex. This table of combination will also apply for prospectuses composed of separate documents (registration document, securities note and summary) according to the possibility provided in Article 5(3) of Directive 2003/71/EC. This system has been favoured because of the flexibility it offers, especially in the perspective of the creation of new products in the future. It is clear that this table of combinations does not cover all existing securities, but reflects the combinations of the most common types of securities in order to show how the system works.

#### **Article 4 – Minimum information to be included in a base prospectus and its related final terms**

This Article provides for an adapted regime related to the contents of base prospectuses and their final terms in order to ensure a proper functioning concerning the documentation for frequent issuers. Paragraph 2 provides for an abstract generic rule which should be used in order to determine which line information elements are to be classifiable as final terms and which have to be included in the base prospectus. Paragraph 3 addresses the additional information requirements in the base prospectus in order to establish a link with the final terms that will be published at a later stage. Paragraph 4 sets out the different categories of base prospectus depending on the type of securities issued. Paragraphs 5 deals with the supplement to the base prospectus to be published for each issue depending on the events (provided for in Article 16 (1) of Directive 2003/0071/EC) triggering such a requirement, whereas paragraph 6 includes a specific provision with respect to the supplement to the summary of base prospectus.

#### **Article 5 – Adaptations to the minimum content of prospectuses and base prospectuses**

This Article provides for flexible solutions in case of securities which are not comparable to those covered by the existing schemes or for completely new products. In the latter case - which in practice will occur rather rarely given the number of schedules and possible combinations - the competent authority, following a notification of a draft prospectus or base prospectus by the issuer, the offeror or the person asking for admission to trading on a regulated market should be able to decide on a case by case basis and after consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market what elements should be included in the prospectus. Such prospectus should benefit from the European passport. If the new type of security becomes a mainstream product it is clear that further harmonisation would be necessary.

Moreover, the last paragraph of this Article includes a "blanket clause": There is only limited number of main schedules applicable for all types of offers or admission to

trading. Therefore some disclosure requirements may be inapplicable in some specific cases; in those cases the issuer, the offeror or the person asking for admission to trading will not be able to provide the required information. In this context, this Article clarifies that the applicable minimum information items shall only be disclosed in the prospectus, 'if any'.

A different matter is the case, where the disclosure requirements are applicable but might be inappropriate to the issuer's sphere of activity or to the legal form of the issuer or the securities to which the prospectus relates. This concern has already been dealt with under Article 8(3) of Directive 2003/71/EC.

#### **Article 6 – Content of the summary**

This Article provides that issuers, offerors or persons asking for the admission of securities to trading on a regulated market should have the freedom to determine the detailed content of the summary, in accordance with the general principles of the Directive. Given the limited extent recommended in recital 21 of Directive 2003/71/EC for the summary (2.500 words) some flexibility should be allowed to the issuer to choose, among the elements included in the other parts of the prospectus, those which he considers to be of importance for the investor.

#### **Article 7 - Format of the prospectus**

Article 7 of this draft text contains detailed rules regarding the presentation and the order of the items included in a prospectus: The summary and the risk factors should be placed at the beginning of a prospectus (after the table of contents), whereas, for the other information elements, the issuer, the offeror or the person asking for admission to trading on a regulated market is free to choose the order of their presentation (i.e. there is no obligation to follow the order of the information items of the applicable schedules and building blocks as presented in the appendices of Annex I) . The issuer, offeror or person asking for admission to trading on a regulated market is also free to choose the method for supplementing the summary (there is a double possibility, i.e. by integrating new information elements in the original summary or by producing a new summary).

#### **Article 8 – Format of the base prospectus and its related final terms**

Article 8 establishes the different possibilities for drawing up base prospectuses and their related final terms: Various possibilities are offered in this context compared to a traditional prospectus. This is due, on the one hand, to the division of the content of the information to be disclosed between the base prospectus and its final terms and, on the other hand, on the specific provisions in Article 5 (4) of Directive 2003/71/EC. More flexibility is provided regarding the organisation of the different parts of the documentation including the summary without hampering the general principles applicable to prospectus.

#### **Article 9 – Method of publication of the document provided for in Article 10 (1) of Directive 2003/71/EC**

This Article sets out the method of publication of the yearly document compiling the information or the references to all periodic and ongoing disclosures made during the past year by a listed issuer.

## **Article 10 – Modalities of incorporation by reference**

This Article contains the different arrangements related to the documents that may be incorporated by reference in a prospectus. It provides for an illustrative list of documents containing information that may be incorporated by reference in a prospectus. Some additional safeguards and principles related to language, accuracy and comprehensibility of the information are provided in order to maintain the consistency of the whole prospectus.

## **Article 11 – Publication in electronic form**

This Article, together with Articles 11, 12, 13 and 14 deals with availability of prospectuses. Those Articles provide for the various modalities and the respective conditions that have to be respected in order to ensure adequate publicity of approved prospectuses. Article 11 contains some additional safeguards due to the particular nature of a publication in electronic form in order to ensure that this is an equal alternative to the traditional means of publication. Integrity of the document is obtained by imposing a file format that cannot be modified and a restriction to the use of hyperlinks. The territorial scope of a particular offer of securities to the public shall be prominently mentioned in an adequate warning.

## **Article 12 – Publication in newspaper**

This Article provides for the minimum conditions for newspapers in order to be considered as suitable for effective dissemination to the public.

## **Article 13 – Publication of the notice**

This Article describes the arrangements and the detailed contained of the notice referred to in Art. 14 (3) of Directive 2003/71/EC to be published where a Member State has opted to require the publication of this notice.

## **Article 14 – List of approved prospectuses**

This Article is a complement to the previous three Articles; it adds an additional obligation for the competent authorities to mention in the list of approved prospectuses posted in their web-site how such prospectuses have been approved and where they can be obtained. This allows investors to have access to the whole prospectus – for instance in those cases where documents are incorporated by reference and various methods of publication have been chosen.

## **Article 15 – Publication of the final terms**

This Article provides for an adaptation of the publication methods for documentation composed of a base prospectus and its related final terms.

## **Article 16 – Advertisements**

*This Article will be drawn up at a later stage after the publication of CESR's technical advice on this issue on 31 December 2003. A consultation document was published by CESR on this issue.*

## **Annex 1**

The appendices of Annex 1 contain different applicable schedules and building blocks depending on the type of issuer and the nature of its securities. This annex is not of an indicative nature.

## **Annex 2**

This annex describes possible combinations of schedules and building blocks for the most common type of securities.

## ANNEX

### DRAFT REGULATION

(1) Whereas 7, 10, 11, 14 and 15 of the Directive 2003/71/EC, on minimum information requirements to be included in a prospectus, on the method of publication of the document referred to in Article 10 of that Directive, on the information to be incorporated by reference in a prospectus, on the publication methods of a prospectus and on dissemination of advertisements, provide that implementing measures should be adopted 6 months after the date of entry into force of that Directive;

(2) Whereas Article 5, on the format of the prospectus, is one of the key Articles for the functioning of Directive 2003/71/EC; implementing measures with respect to this Article should also be adopted as soon as possible in order to allow the Directive to produce its full effect;

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(3) Whereas, depending on the type of issuer and securities involved, a typology of minimum information requirements should be established corresponding to those schedules that will in practice most frequently apply; whereas the schedules should be based on the information items required in the IOSCO Disclosure Standards for cross-border offering and initial listings (Part I) and on the existing schedules of the Directive 80/390/EEC which has been replaced by Directive 2001/34/EC of 28 May on the admission of securities to official stock exchange listing and on information to be published on those securities;

(4) Whereas care should be taken that, in those cases where a prospectus is composed of separate documents, duplication of information should be avoided; to this end separate detailed schedules for the registration document and for the securities note, adapted to the particular type of issuer and the securities concerned, should be elaborated in order to cover each type of security;

(5) Whereas, in most cases (given the variety of issuers, the types of securities, the involvement or not of a third party as a guarantor, whether or not there is a listing etc), one single schedule will not give the appropriate information for an investor to make his investment decision; therefore the combination of various schedules should be possible. A table of combinations, providing for different possible combinations of schedules and "building blocks" for most of the different type of securities, should be set up in order to assist issuers when drafting their prospectus. This table of combinations should not be considered as exhaustive;

(6) Whereas the schedule share registration document should be applicable to shares and other transferable securities equivalent to shares but also for some other equity securities;

(7) Whereas voluntary disclosure of profit forecasts in a share registration document should be presented in a consistent and comparable manner and

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accompanied by a statement prepared by independent accountants or auditors. This information should not be confused with the disclosure of known trends or other factual data with material impact on the issuers' prospects. Issuers may stop making forecasts, however they should provide an explanation of any changes in disclosure policy when supplementing a prospectus or drafting a new prospectus;

| (8) Whereas pro forma information is needed in case of significant gross change in the situation of an issuer due to a particular transaction (with the exception of those situations where merger accounting is required), where a significant gross change would normally be a variation of more than 25% relative to one or more indicators of the size of the issuer's business. Pro forma financial information should be preceded by an introductory explanatory paragraph that states in clear terms the purpose of including this information in the prospectus;

| (9) Whereas the schedule for the share securities note should be applicable to any class of share since it considers information regarding a description of the rights attached to the securities and the procedure for the exercise of any rights attached to the securities;

| (10) Whereas some debt securities such as structured bonds incorporate certain elements of a derivative security, therefore additional disclosure requirements related to the derivative component in the interest payment should be included in the securities note schedule for debt securities;

| (11) Whereas the additional 'building block' related to guarantee should apply to any obligation in relation to any kind of security;

| (12) Whereas the asset backed securities registration document should not apply to mortgage bonds as defined in Article 5 (4) (b) of the Directive 2003/71/EC and other covered bonds. This should be also valid for the asset backed securities additional 'building block' that will be combined with the securities note for debt securities;

| (13) Whereas a differentiated content of prospectus is necessary for debt and derivative securities aimed at those investors who purchase debt or derivative securities with a denomination per unit of at least EUR 50 000 or a denomination in another currency provided that the value of such minimum denomination when converted to EURO amounts to at least EUR 50 000. Wholesale investors should be able to make their investment decision on other elements than those taken into consideration by retail investors;

| (14) Whereas, in the context of depository receipts, emphasis should be put on the issuer of the underlying shares and not on the issuer of the depository receipt. Where there is legal recourse to the depository over and above a breach of its fiduciary or agency duties, the risk factors section in the prospectus should contain full information on this fact and on the circumstances of such recourse. Where a prospectus is drafted as a tripartite document, the registration document should be limited to the information on the depository;

(15) Whereas a special purpose vehicle, issuer of debt and derivative securities and guaranteed by a bank, should not use this schedule. This schedule should also be applicable to non EU banks which do not fall under the definition of credit institution provided for in Article 1 (1) (a) of Directive 2000/12/EC but have their registered office in a state member of the OECD;

(16) Whereas the schedule securities note for derivative securities should be understood as an 'everything else box'. The scope of this schedule is determined by reference to the other two generic categories of shares and debt securities. In order to provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying, appropriate examples may be used by issuers on a voluntary basis. For instance, for some complex derivatives securities, examples might be the most effective way to explain the nature of those securities;

(17) Whereas the additional information 'building block' on the underlying share for certain equity securities should be added to the securities note for debt securities or substitute the item referring to "information required in respect of the underlying" of the schedule securities note for derivative securities, depending on the characteristics of the securities being issued;

(18) Whereas a base prospectus and its final terms should contain the same information as a traditional prospectus. All the general principles in the Directive applicable to a prospectus are applicable also to the final terms. Nevertheless, where the final terms are not included in the base prospectus they do not have to be approved by the competent authority;

(19) Whereas in the case of completely new types of securities which cannot be covered by the existing schedules or any of their combinations, the issuer should still have the possibility to apply for approval for a prospectus; in those cases he should be able to discuss the content of the information to be provided with the competent authority. The prospectus approved by the competent authority under those circumstances will benefit from the single passport established in Directive 2003/71/EC. The competent authority should always try to find similarities and make use as much as possible of existing schedules. Any additional new requirements should be proportionate and appropriate to the type of securities involved. If the new type of security becomes a mainstream product the Commission should assess whether further harmonization is necessary;

(20) Whereas certain information items required in the schedules and building blocks or equivalent information items are not relevant to a particular security and thus may be inapplicable in some specific cases; in those cases the issuer should have the possibility to omit this information;

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(21) Whereas the enhanced flexibility in the articulation of the base prospectus with its final terms compared to a single issue prospectus should not hamper the easy access to material information for investors.

(22) Whereas, with respect to base prospectuses, it should be set out in an easily identifiable manner which kind of information will be included as final terms. This requirement may be satisfied in a number of different ways, for example,

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if the base prospectus contains blanks for any information to be inserted in the final terms or if the base prospectus contains a list of the missing information;

- (23) Where the final terms contain only the detailed pricing characteristics of one or more issues of securities without any material information on the issuer, there is no need for the issuer the oferror or the person asking for admission to trading on a regulated market to supplement the summary of the base prospectus;
- (24) Whereas issuers should be allowed to choose, for the publication of the document referred to in Article 10 of the Directive 2003/71/EC, the method of publication they consider adequate among those referred to in Article 14 of this Directive. In selecting the method of publication they should consider the objective of the document and that it should permit investors a fast and cost-efficient access to that information;
- (25) Whereas the aim of incorporation by reference is to simplify and reduce the costs of drafting a prospectus; however this aim should not be achieved to the detriment of other interests the prospectus is meant to protect. For instance, the fact that the natural location of the information required is the prospectus, and that the information should be presented in an easily and comprehensible form, should also be considered. Particular attention should be granted to the language used for information incorporated by reference and its consistency with the prospectus itself. Information incorporated by reference may refer to historical data, however if this information is no more relevant due to material change, this should be clearly stated in the prospectus and the updated information should also be provided;
- (26) Whereas, where a prospectus is published in electronic form, additional safety measures compared to traditional means of publication are necessary in order to maintain the integrity of the information(e.g. should be published in the form of a PDF-file), to avoid altering its comprehensibility and to escape from possible adverse consequences from different approaches on offer of securities to the public in third countries;
- (27) Whereas, where a prospectus is published in a newspaper, the assessment of circulation (number of copies sold) should depend upon the geographic area, number of inhabitants and reading habits in each Member State.
- (28) Whereas a home Member State should be able to require publication of a notice stating how the prospectus has been made available and where it can be obtained by the public. Where a Member State requires publication of notices in its legislation, the content of such a notice should be kept to the necessary items information to avoid duplication with the summary. These Member States may also require that an additional notice in relation to the final terms of a base prospectus should be published;
- (29) Whereas a mention should be included in the list of approved prospectuses posted in the web-site of the competent authority of the home Member State, indicating how a prospectus has been published and where it can be obtained; this would facilitate centralizing useful information for investors.

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(30) (Advertisements).

(31) Whereas the measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee.

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## CHAPTER I – (Scope and definitions)

### Article 1

#### Scope

This Regulation lays down:

- (1) the format of prospectus referred to in Article 5 of Directive 2003/71/EC
- (2) the minimum information requirements to be included in a prospectus provided for in Article 7 of Directive 2003/71/EC
- (3) the method of publication referred to in Article 10 of Directive 2003/71/EC
- (4) the modalities according to which information can be incorporated by reference in a prospectus provided for in Article 11 of Directive 2003/71/EC
- (5) the publication methods of a prospectus in order to ensure that a prospectus is publicly available according to Article 14 of Directive 2003/71/EC
- (6) the methods of dissemination of advertisements referred to in Article 15 of Directive 2003/71/EC

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### Article 2 (Definitions)

For the purposes of this Regulation, the following definitions shall apply in addition to those laid down in Directive 2003/71/EC:

- (1) "Schedule" means a list of minimum information requirements adapted to the particular nature of the different types of issuers or the different securities involved.
- (2) "Building block" means a list of additional information requirements, not included in one of the main schedules, to be added to one or more schedules, as the case may be, depending on the type of instrument and/or transaction for which a prospectus or base prospectus is drawn up.
- (3) "Table of combinations" means a list of combinations of schedules and building blocks that shall be used for the purposes of drawing up prospectuses and base prospectuses and their related final terms.
- (4) "Risk factors" means a list of risks which are specific to the situation of the issuer and the securities and which are material for taking investment decisions.

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(5) "Special purpose vehicle" means an issuer whose objects and purposes are primarily the issue of securities.

(6) "Asset backed securities" means securities which:

- represent an interest in assets (including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable there under); or
- are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets;

## *CHAPTER II (Minimum information)*

### *Article 3 (Minimum information to be included in a prospectus)*

(1) A prospectus shall contain all information items required by the relevant appendices of Annex 1, which shall be used in order to draw up a prospectus, depending on the type of issuer and securities involved. Nevertheless, in order to ensure conformity with the obligation referred to in Article 5(1) of the Directive 2003/71/EC, the competent authority, in executing its tasks provided for in Article 13 of Directive 2003/71/EC, may require that the information included in each of these information items be amended and completed on a case by case basis.

A prospectus shall be drawn up by using one or combining more of the following schedules and building blocks, according to the table of combinations for various types of securities set out in Annex 2:

a) The specific disclosure requirements for the share registration document are set out in Annex 1 appendix A.  
This schedule is applicable to:

(i) shares and other transferable securities equivalent to shares

(ii) other equity securities which comply with the following conditions:

- they can be converted or exchanged into shares or other transferable securities equivalent to shares, at the issuer's or at the investor's discretion, or on the basis of the conditions established at the moment of the issue, or give, in any other way, the possibility to acquire shares or other transferable securities equivalent to shares,
- provided that the underlying shares or other transferable securities equivalent to shares can be delivered with no cash settlement or mixed settlements, are or will be issued by the issuer of the security and are not yet traded on a regulated market or an equivalent market outside the EU at the time of the approval of the prospectus covering the securities.

- b) The specific disclosure requirements for pro-forma financial information are set out in Annex 1 appendix B.
- c) The specific disclosure requirements for the share securities note are set out in Annex 1 appendix C. This schedule is applicable to shares and other transferable securities equivalent to shares.
- d) The specific disclosure requirements for the debt and derivative securities registration document (with a denomination per unit of less than EUR 50 000) and those equity securities which are not covered under point a) are set out in Annex 1 appendix D. For debt securities, this registration document schedule is applicable to corporate debt where the issuer has an obligation arising on issue to pay the investor 100% of the nominal value in addition to which there may be also an interest payment.
- e) The specific disclosure requirements for the securities note for debt securities (with a denomination per unit of less than EUR 50 000) are set out in Annex 1 appendix E. This schedule is applicable to debt where the issuer has an obligation arising on issue to pay the investor 100% of the nominal value in addition to which there may be also an interest payment.
- f) The specific disclosure requirements for guarantees are set out in Annex 1 appendix F.
- g) The specific disclosure requirements for the asset backed securities registration document are set out in Annex 1 appendix G.
- h) The specific disclosure requirements for additional information building block to the securities note for asset backed securities are set out in Annex 1 appendix H.
- i) The specific disclosure requirements for the debt and derivative securities and those equity securities which are not covered under point a) registration document (with an individual denomination per unit of at least EUR 50 000 or, where there is no individual denomination, securities that can only be acquired on issue for at least EUR 50 000 per security) are set out in Annex 1 appendix I.
- j) The specific disclosure requirements for depository receipts (without separation between securities note and registration document) issued over shares are set out in Annex 1 appendix J.
- k) The specific disclosure requirements for the banks registration document for debt and derivative securities and those equity securities which are not covered under point a) are set out in Annex 1 appendix K. This schedule is applicable to credit institutions as defined by Article 1 (1) (a) of Directive 2000/12/EC as well as to non EU banks that do not fall under this definition but have their registered office in a state member of the OECD. These entities may also use alternatively the registration document schedule for debt and derivative securities and those equity securities which are not covered under point a) provided for under point d) and i) of this paragraph.

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l) The specific disclosure requirements for the securities note for derivative securities are set out in Annex 1 appendix L. This schedule is applicable to securities which are not in the scope of application of the other securities note schedules covered by the Appendices of Annex 1.

m) The specific disclosure requirements for the securities note for debt securities with a denomination per unit of at least EUR 50 000 are set out in Annex 1 appendix M.

n) The specific disclosure requirements for the additional information on the underlying share of equity securities are set out in Annex 1 appendix N. This additional information is only applicable to those equity securities which comply with the following conditions:

- they can be converted or exchanged into shares or other transferable securities equivalent to shares, at the issuer's or at the investor's discretion, or on the basis of the conditions established at the moment of the issue or give, in any other way, the possibility to acquire shares or other transferable securities equivalent to shares, and

- provided that the underlying shares or other transferable securities equivalent to shares can be delivered with no cash settlement or mixed settlements, are or will be issued by the issuer of the security or by an entity belonging to the group of issuer and are not yet traded on a regulated market or an equivalent market outside the EU at the time of the approval of the prospectus covering the securities;

(2) The combinations of schedules and building blocks included in the table of combinations in Annex 2 are not exhaustive; however, the use of the combinations provided for in this table shall be mandatory when drawing up prospectuses for the types of securities to which those combinations correspond according to this table.

(3) The most comprehensive and stringent registration document schedule, i.e. the most demanding schedule in term of number of information items and the extent of the information included in them, may always be used to issue securities for which a less comprehensive and stringent registration document schedule is provided for, according to the following ranking of schedules:

- share registration document schedule

- debt and derivative securities (with a denomination per unit of less than EUR 50 000) registration document schedule

- debt and derivative securities (with a denomination per unit at least EUR 50 000) registration document schedule

*Article 4 (Minimum information  
to be included in a base prospectus and its related final terms)*

(1) A base prospectus shall contain all information items required by the relevant appendices of Annex 1 which shall be used in order to draw up a prospectus,

depending on the type of issuer and securities involved. Nevertheless, in order to ensure conformity with the obligation referred to in Article 5(1) of the Directive 2003/71/EC, while executing its tasks provided for in Article 13 de la Directive 2003/71/EC, the competent authority shall be allowed to require that the information included in each of these information items be amended and completed on a case by case basis.

A base prospectus shall be drawn up by using one or combining more schedules and building blocks provided for in Article 3 of this Directive according to the table of combinations of various types of securities set out in Annex 2. However, the issuer, the offeror or the person asking for admission to trading on a regulated market may omit these information items which are not known when the base prospectus is approved and which can only be determined at the time of the individual issue .

The combinations of schedules and building blocks included in the table of combinations in Annex 2 are not exhaustive; however, the use of the combinations provided for in this table shall be mandatory when drawing up base prospectuses for the types of securities to which those combinations correspond according to this table.

- (2) The final terms attached to a base prospectus shall contain those information items from the various schedules and building blocks provided for in Article 3, according to which the base prospectus is drawn up, which are not included in the base prospectus itself and its supplement(s) as the case may be.
- (3) The following disclosure requirements shall be included in a base prospectus in addition to the information items included in the schedules and building blocks referred to in Article 2:
  - indication on the information that will be included in the final terms
  - the method of publication of the final terms; if the issuer is not in a position to determine, at the time of the approval of the prospectus, the method of publication of the final terms, an indication of how the public will be informed about which method will be used for the publication of the final terms;
  - in case of issues of non-equity securities according to Article 5 (4) (a) of Directive 2003/71/EC, a general description of the programme.
- (4) When a base prospectus covers issues of various types of securities the scope of this base prospectus and its related final terms shall cover exclusively one of the following categories of securities:
  - asset backed securities;
  - warrants to which the additional information 'building block' on underlying share is applicable;
  - non-equity securities as defined under Art. 5(4)(b) of the Directive 2003/71/EC;

- all other non-equity securities including warrants in any form but other than those mentioned in the second indent above.

In drawing up a base prospectus the issuer, the offeror or the person asking for admission to trading on a regulated market shall not mix the specific information on each of the different securities included in these categories, in conformity with Article 8 par. 2 of this Regulation.

- (5) Where an event envisaged under Article 16(1) of the Directive 2003/71/EC occurs between the time that the base prospectus has been approved and the final closing of the offer of each issue of securities under the base prospectus or, as the case may be, the time that trading on a regulated market of those securities begins, the issuer, the offeror or the person asking for admission to trading on a regulated market shall publish a supplement prior to the final closing of the offer or the admission of those securities to trading.
- (6) Where the summary of a base prospectus shall also be supplemented, at the moment of an issue, in conformity with Article 16 (1) last sentence, the issuer, the offeror or the persons asking for admission to trading on a regulated market shall decide on a case-by-case basis whether to supplement the summary of the base prospectus with a summary of the material information included in the final terms or produce a new summary of both the base prospectus and the final terms. When the new information is integrated in the original summary of the base prospectus, the issuer, the offeror or the person asking for admission to trading on a regulated market shall ensure that investors can easily identify the changes, notably by way of footnotes.

*Article 5 (Adaptations to the minimum content  
of prospectuses and base prospectuses)*

- (1) By way of derogation of Articles 3 and 4, where an issuer, an offeror or a person asking for admission to trading on a regulated market applies for approval of a prospectus or a base prospectus for a security which is not the same but comparable to the various types of securities mentioned in the table of combinations included in Annex 2, the issuer, the offeror or the person asking for admission to trading on a regulated market shall add the relevant information items from another securities note schedule provided for in Article 3 to the main securities note schedule chosen. This addition shall be done in accordance with the main characteristics of the securities being offered to the public or admitted to trading on a regulated market.
- (2) By way of derogation of Articles 3 and 4, where an issuer, an offeror or a person asking for admission to trading on a regulated market applies for approval of a prospectus or a base prospectus for a new type of security, the issuer, the offeror or the person asking for admission to trading on a regulated market shall notify a draft prospectus or base prospectus to the competent authority. The competent authority shall decide, in consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market, what information shall be

included in the prospectus or base prospectus in order to comply with the obligation referred to in Article 5(1) of the Directive 2003/71/EC.

This derogation shall only apply in case of a new type of security with features completely different from the various types of securities mentioned in Annex 2, if the characteristics of this new security are such that a combination of the different information items referred to in the schedules and building blocks provided for in Article 3 is not relevant,

- (3) By way of derogation of Articles 3 and 4, in those cases where one of the information items required in one of the schedules or building blocks referred to in Article 2 of this Regulation or equivalent information is not relevant to the issuer, to the offer or to the securities to which the prospectus relates, this information can be omitted.

*Article 6 (Content of the summary  
of prospectus and base prospectus)*

The issuer, the offeror or the person asking for admission to trading on a regulated market shall determine on its own the detailed content of the summary to the prospectus or base prospectus referred to in Article 5 (2) of Directive 2003/71/EC.

*Chapter III - (Format of the prospectus, base prospectus and supplements)*

*Article 7 (Format of the prospectus)*

- (1) Where an issuer, an offeror or a person asking for the admission to trading on a regulated market chooses, according to the possibility offered in Article 5 (3) of Directive 2003/71/EC to draw up a prospectus as a single document, the prospectus shall be composed of the following parts in the following order:
- a clear and detailed table of contents,
  - the summary provided for in Article 5 (2) of directive 2003/71//EC,
  - the risk factors linked to the issuer and the type of security covered by the issue,
  - the other information items included in the schedules and building blocks according to which the prospectus is drawn up as defined in Article 3.
- (2) Where an issuer, an offeror or a person asking for the admission to trading on a regulated market chooses, according to the possibility offered in Article 5 (3) of Directive 2003/71/EC, to draw up a prospectus composed of separate documents, the securities note and the registration document shall be each composed of the following parts in the following order:
- a clear and detailed table of content,

- the risk factors linked to the issuer and the type of security covered by the issue,

- the other information items included in the schedules and building blocks according to which the prospectus is drawn up as defined in Article 3.

(3) In both cases mentioned in par. 1 and 2 of the present Article, the issuer, the offeror or the person asking for admission to trading on a regulated market shall be free in defining the order in the presentation of the required information items included in the schedules and building blocks according to which the prospectus is drawn up as defined in Article 3.

(4) Where the order of the items does not coincide with the order of the information provided for in the schedules and building blocks according to which the prospectus is drawn up as defined in Article 3, the home competent authority may ask the issuer, the offeror or the person asking for the admission to trading on a regulated market to provide a cross reference list for the purpose of checking the prospectus before its approval. Such list should identify the pages where each item can be found in the prospectus.

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(5) Where the summary of a prospectus shall be supplemented according to Article 16 (1) of directive 2003/71/EC, the issuer, the offeror or the person asking for admission to trading on a regulated market shall decide on a case-by-case basis whether to integrate the new information in the original summary by producing a new summary, or to produce a supplement to the summary. When the new information is integrated in the original summary, the issuer, the offeror or the person asking for admission to trading on a regulated market shall ensure that investors can easily identify the changes, notably by way of footnotes.

*Article 8 (Format of the base prospectus and its related final terms)*

(1) Where an issuer chooses, according to the possibility offered in Article 5 (4) of Directive 2003/71/EC to draw up a base prospectus, the base prospectus shall be composed of the following parts in the following order:

- a clear and detailed table of contents

- the summary provided for in Article 5 (2) of directive 2003/71/EC

- the risk factors linked to the issuer and the type of security or securities covered by the issue(s)

- the other information items included in the schedules and building blocks according to which the prospectus is drawn up as defined in the Appendices of Annex 1.

(2) The issuer, the offeror or the person asking for admission to trading on a regulated market shall be free in defining the order in the presentation of the required information items included in the schedules and building blocks according to which the prospectus is drawn up as defined in Article 3. The

information on the different securities contained in the base prospectus shall not be mixed up but shall be clearly segregated.

(3) Where the order of the items does not coincide with the order of the information provided the schedules and building blocks according to which the prospectus is drawn up as defined in Article 3, the home competent authority may ask the issuer, the offeror or the person asking for admission to trading on a regulated market to provide a cross reference list for the purpose of checking the prospectus before its approval. Such list should identify the pages where each item can be found in the prospectus.

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(4) In case the issuer, the offeror or the person asking for admission to trading on a regulated market has previously filed a registration document for a particular type of security and, at a later stage, chooses to draw up base prospectus in conformity with the conditions provided for in Art. 5(a) and (b), the base prospectus shall contain:

- the information contained in the previously or simultaneously filed and approved registration document which shall be incorporated by reference, following the conditions provided for in Article 10 of this Regulation; and

- the information which would otherwise be contained in the relevant securities note less the final terms where the final terms are not included in the base prospectus.

(5) The final terms attached to a base prospectus shall be presented:

- in the form of a separate document containing only the final terms; or
- by inclusion of the final terms into the base prospectus.

In case the final terms are included in a separate document containing only the final terms, they may replicate some information which has been included in the approved base prospectus according to the relevant securities note schedule that has been used for drawing up the base prospectus; in this case the final terms have to be presented in way so that can be easily identified as such. A clear and prominent statement has to be inserted in the final terms that the full information on the issuer and on the offer is only available on the basis of the combination of base prospectus and final terms and where the base prospectus is available.

(6) Where different securities are comprised in one base prospectus, the issuer, the offeror or the person asking for admission to trading on a regulated market shall include a summary in the base prospectus without drafting a separate summary for each type of securities. The information on the different securities contained in the summary shall not be mixed up but shall be clearly segregated.

(7) Where the summary shall be supplemented according to Article 4(6) of this Regulation in case the new information is integrated in the original summary of the base prospectus, the issuer, the offeror or the person asking for admission to

trading on a regulated market shall ensure that investors can easily identify the changes, notably by way of footnotes.

#### *CHAPTER IV (Information)*

##### *Article 9 (Method of publication of the document provided for in Article 10 (1) of Directive 2003/71/EC)*

- (1) The document referred to in Article 10 of the Directive 2003/71/EC shall be made available to the public, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market, through one of the means allowed in Article 14 of that Directive in the Member State(s) where the issuer has its securities admitted to trading on a regulated market.
- (2) The document shall be filed with the competent authority of the home Member State and made available to the public at the latest 15 working days after the publication of the annual financial statements in the home Member State.
- (3) The document shall include a statement indicating that some information may be out-of-date, if such is the case.

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#### *CHAPTER V (Incorporation by reference)*

##### *Article 10 (Modalities of incorporation by reference)*

- (1) Information may be incorporated by reference in a prospectus or base prospectus, notably if contained in one the documents mentioned below:
  - annual and interim financial information;
  - documents prepared in occasion of a specific transaction such as a merger or de-merger;
  - audit reports and financial statements;
  - memorandum and articles of association
  - earlier approved and published prospectuses;
  - regulated information;
  - circulars to security holders.

- (2) The documents containing information that may be incorporated by reference in a prospectus or base prospectus or in the documents composing it (registration document, securities note, supplements) shall be drawn up in the same language of the prospectus or base prospectus or of the documents composing it into which the information is incorporated by reference.
- (3) If the document that may be incorporated by reference contains information which has undergone material changes, the prospectus or base prospectus shall clearly state such a circumstance including the updated information.
- (4) The issuer, the offeror or the person asking for admission to trading on a regulated market may incorporate information in a prospectus or base prospectus by making reference only to certain parts of a document, provided that it states that the not incorporated parts are not relevant for the investor or covered elsewhere in the prospectus.
- (5) When incorporating information by reference, issuers, offerors or persons asking for admission to trading on a regulated market shall have due regard to not endanger investor protection in terms of comprehensibility and accessibility of the information.

## *CHAPTER VI (Publication)*

### *Article 11 (Publication in electronic form)*

- (1) The publication of the prospectus or base prospectus in electronic form, pursuant to Article 14 (2) (c) (d) and (e) of the Directive 2003/71/EC, or as an additional mean of availability, shall be subject to the following requirements:
  - a) the prospectus or base prospectus shall be easily accessed when entering the web-site;
  - b) the file format shall be such that the prospectus or base prospectus cannot be modified;
  - c) the prospectus or base prospectus shall not contain hyper-links, with exception of links to the electronic addresses where information incorporated in the prospectus or base prospectus by reference is available. This exception is only valid for documents incorporated by reference; those documents shall be a available with easy and immediate technical modalities;
  - d) the investors shall have the possibility of downloading and printing the prospectus or base prospectus.
- (2) If a prospectus or base prospectus for offer of securities to the public is made available on the web-sites of issuers and financial intermediaries or regulated markets, these shall take measures, such as the insertion of warnings related to the addressees of the offer, to avoid targeting residents in Members States or third countries where the offer of securities to the public does not take place.

*Article 12 (Publication in newspaper)*

- (1) The publication of a prospectus or base prospectus in a newspaper according to Article 14 (2) (a) of the Directive 2003/71/EC shall comply with the following requirements:
  - a) The newspaper shall have a national or supra-regional scope;
  - b) The newspaper shall be a general or financial information newspaper;
- (2) In case the newspaper does not comply with the requirements detailed in paragraph 1, it shall be a newspaper whose circulation is deemed appropriate for this purpose by the competent authority.

*Article 13 (Publication of the notice)*

- (1) If a Member State makes use of the option to require the publication of a notice stating how the prospectus or base prospectus has been available and where it can be obtained by the public, referred to in Article 14(3) of the Directive 2003/71/EC, this notice shall be published in a newspaper that fulfils the requirements for publication of prospectuses according to Article 12 of the present Regulation. When the notice relates to a prospectus or base prospectus published for the only purpose of admission to trading of securities on a regulated market and securities of the same class are already admitted to trading on the same regulated market, the notice may, in alternative, be inserted in the gazette of that regulated market, irrespective of whether that gazette is in paper copy or electronic form.
- (2) The notice shall be published no later than the next working day following the date of publication of the prospectus or base prospectus.
- (3) The notice shall contain the following information items:
  - a) the identification of the issuer;
  - b) the type, class and amount of the securities to be offered and/or in respect of which admission to trading is sought, provided that these elements are known at the time of the publication of the notice;
  - c) the intended time schedule of the offer /admission to trading;
  - d) a statement that a prospectus or base prospectus has been published and where it can be obtained;
  - e) if the prospectus or base prospectus has been published in a printed form, the addresses where and the period of time during which such printed forms are available to the public;
  - f) if the prospectus or base prospectus has been published in electronic form, the addresses to which investors shall refer to ask for a paper copy;
  - g) the date of the notice.

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*Article 14 (List of approved prospectuses)*

The list of the approved prospectuses and base prospectuses published on the web-site of the competent authority, in accordance with article 14(4) of the Directive 2003/71/EC, shall mention how such prospectuses have been made available and where they can be obtained.

*Article 15 (Publication of the final terms of base prospectuses)*

The publication method for final terms attached to a base prospectus does not have to be the same as the one used for the base prospectus as long as the publication method used is one of the publication methods indicated in Article 14 of the Directive 2003/71/EC.

*CHAPTER VII (Advertisements)*

*Article 16*

This Article will be completed at a later stage after the publication of CESR's technical advice. A consultation document was published by CESR on this issue.

Annex 1 (schedules and building blocks)

Annex 2 (table of combinations of schedules and building blocks)