

ACI/EFMLG
Working Group on the STEP Information Memorandum

**THE INFORMATION MEMORANDUM
FOR SHORT-TERM EUROPEAN PAPER
(STEP)**

15 December 2003

REPORT ON THE INFORMATION MEMORANDUM
FOR SHORT-TERM EUROPEAN PAPER

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EXECUTIVE SUMMARY

The ACI/EFMLG Working Group on the information memorandum for short-term European paper (the “Working Group”) was established to define the minimum common features for the information memorandum for a short-term European paper (STEP) wholesale market. Before the various items to be included in the envisaged information memorandum could be defined, however, the Working Group found it necessary to identify the defining features of the STEP instrument itself and the possible manner in which the STEP market would function. Once the defining features of STEP had been identified and the standard STEP information memorandum prepared, the Working Group also decided to address the practical implementation of the proposed arrangements for STEP. This report on the information memorandum for STEP presents the findings of the Working Group and is intended to serve as a basis for further action, including consultations with public authorities and market participants and a careful review of the proposals made in the report before the launch of STEP.

The definition of STEP is based on existing short-term instruments (rather than the creation of an entirely new STEP instrument). Programmes can be given the “STEP label” if they fulfil certain criteria. For example, a CP programme governed by the laws of one of the EU Member States would have to be checked against the STEP criteria to determine to what extent these are fulfilled before it could obtain the STEP label. Depending on existing national rules and practices, different additional STEP criteria might require adjustments compared to the situation in a given domestic market today. The existing national rules, including regulatory and/or supervisory regimes, applicable to the debt instrument in question will thus continue to apply without the STEP label affecting, for instance, the competencies of the national authorities vis-à-vis the issuer of a debt instrument for which the STEP label has been obtained. The following general defining features of STEP are proposed as some of the criteria for a programme to be eligible for the STEP label:

- short-term paper programmes based on the legislation of an EU Member State with maturities of one day or more but not exceeding one year (CPs, CDs, others);
- issued by different groups of issuers (including corporates, credit institutions and financial institutions, securitisation vehicles, cooperatives, public authorities, international organisations and supranationals);
- issuance with a minimum amount of EUR 150,000 or the equivalent in other currencies;
- issuance in a freely convertible currency permitted by the relevant authorities;
- publication and regular update of a standard information memorandum for STEP in English and submission of the information memorandum to the ECB;
- free transferability and electronic settlement in book-entry form (the dematerialisation of all STEP instruments is favoured as a medium-term objective);
- the provision of statistical data on all STEP issues to the ECB and the agreement to the publication of STEP market statistics according to an agreed procedure.

The short-term maturity and minimum amount of issue (EUR 150,000) is intended to be such that the STEP instruments will not be covered by the requirements of the Prospectus Directive and, as a consequence, the intention is that there should be no consumer protection issues related to investors or

otherwise. The STEP market should thus be a wholesale market for short-term paper programmes with a maturity not exceeding one year.

One of the main objectives of the STEP initiative is the introduction of measures increasing market transparency across borders. These measures include the submission, compilation and availability of STEP information memoranda with regard to the issuance of STEP. Any issuer wishing to obtain the STEP label will need to prepare such an information memorandum in a standardised format and in the English language. Taking the above defining features into account, the Working Group has prepared a proposal for the items that can be included in the envisaged standard STEP information memorandum:

- summary of the programme;
- nature of the issuer (e.g., corporate for CP, bank for CD, securitisation vehicle for asset-backed CP);
- presentation of the issuer, including place of incorporation;
- financial information about the issuer;
- arranger and dealers (if any);
- ceiling for the outstanding amount;
- currencies;
- minimum issuance amount;
- maturities;
- rating (if any); if the programme is not rated this should be disclosed;
- governing law, place of performance and jurisdiction;
- form of the notes;
- issuing and paying agent(s) (IPA);
- selling restrictions (if any);
- guarantee (if any);
- termination events, events of default (if any);
- name of the person(s) in charge of preparing the information memorandum and the person(s) responsible for it;
- accounting method used for drawing up the accounts and annual reports.

In the two reports published for consultation in 2002, the ACI and the EFMLG proposed that central banks could be involved in organising and monitoring the market for short-term money market paper. The Working Group supports this proposed involvement of the ECB and the ESCB with regard to the implementation and functioning of the arrangements for STEP and that the information memorandum be submitted by issuers wishing to obtain the STEP label to the ECB/ESCB. Whether or not the ECB/ESCB can in the end perform these tasks as proposed, the functional requirements for the submission of information memoranda and the retrieval of information concerning STEP will include the ones referred to in this report. The Working Group has in this respect considered the market participants' request that submission and retrieval of information will be made easy, particularly as

regards entry and access points for such submission and retrieval of information. How the requested arrangements for the STEP information memoranda are organised, on the other hand, is left to the market associations and, as proposed, the central banks of the ESCB to develop. Although there may be several entry points where information memoranda and up-dated information concerning a programme can be submitted, the need for duplication of submission of information should be avoided. Moreover, there should be one access point where information about STEP programmes can be retrieved on an up-dated basis.

Finally, the Working Group considers that the different constitutive elements of the proposed standard STEP information memorandum can be implemented through the adoption by the ACI and other relevant market associations of a market convention to be followed by market participants wishing to obtain the STEP label for a programme. In order to see whether and how this could work in practice, the Working Group has prepared a tentative draft market convention on STEP. It is suggested that such a convention could include:

- the main defining features of STEP;
- the obligations applicable to issuers wishing to obtain and maintain the STEP label (e.g., in terms of information requirements and the envisaged declaration of adherence to the STEP market convention);
- the requirements relative to settlement with regard to STEP as these are intended to be set out in the users' requirements under preparation by the ACI working group on settlement;
- the provision of price and volume data for statistical purposes and the agreement to their publication according to an agreed procedure;
- the procedure to be followed by issuers in order to apply for the STEP label; and
- the clarification of the role and involvement of the ECB and the ESCB in the STEP project through an attached statement by the ECB, including the limits of the central banks' responsibility and the exclusion of liability on their part.

In a concluding section, the Working Group notes the need for further follow-up work before the arrangements for STEP are launched. Such follow-up includes the coverage in the market convention of the findings of the other ACI working groups with regard to procedures for settlement and the collection of statistics. Another important dimension of the follow-up is the presentation of the proposals prepared by the market participants to the ECB and the ESCB, including the presentation to the central banks of the items indicated by the Working Group where the involvement of the ECB/ESCB is proposed. In addition, the envisaged STEP arrangements, including the use of a standard information memorandum, should at some point be shared with market regulators, in particular with the CESR, as indicated at the enlarged task force meeting. It is also suggested that the European Commission is kept informed of developments. The adopting market associations and the other parties involved will of course also need to consider and review in some detail the terms and conditions of the proposed market convention and the standard information memorandum before adoption. It is also proposed that the market associations retain a law firm covering the relevant EU jurisdictions in order to review the legal implications of the proposed arrangements before implementation and the launch of STEP.

REPORT ON THE INFORMATION MEMORANDUM FOR SHORT-TERM EUROPEAN PAPER

1. Introduction

1.1 Background

In the first half of 2002, the Euribor-ACI Short-Term European Paper Task Force (the “ACI Task Force”)¹ developed proposals on how to promote the integration of the short-term securities markets, in particular the commercial paper (CP) markets. In September 2002, the ACI Task Force published its findings in a Consultation Report (the “ACI Report”),² including nine preliminary recommendations (the “ACI Recommendations”), for consultation of interested parties. In preparing the ACI Report, the ACI Task Force sought the assistance of the European Financial Markets Lawyers Group (EFMLG)³ and an EFMLG sub-group⁴ prepared a separate Consultation Report on the legal aspects of short-term securities in the European Union (EU) (the “EFMLG Report”).⁵

The contributions received in the consultation process were generally supportive, but indicated a need for further work. In view of the comments and questions received, the ACI Task Force adjusted some of the ACI Recommendations and invited interested parties to attend a meeting in Frankfurt on 11 March 2003 (the “enlarged task force meeting”).⁶ The attendees considered and endorsed the revised set of ACI Recommendations with the aim of promoting the convergence of the EU short-term

¹ The ACI Task Force was established under the aegis of the ACI and Euribor ACI and works in close connection with the Euribor ACI Money Market and Liquidity Working Group, keeping the ACI Committee for Professionalism informed of developments. The ACI Task Force is composed as follows: Thierry Roland, HSBC CCF, Paris, Chairman; Ralf Häuser, Dresdner Bank, Frankfurt, Secretary; Eric Chouteau, CDC Ixis, Paris; Rodolfo Dozio, Intesa BCI, Milan; Francisco Galiana, Banco Santander Central Hispano, Madrid; Mary Jose Rodriguez, Fortis Bank, Brussels; Armin Steppan, RZB, Vienna; and Geert Wijnhoven, ING Barings, Amsterdam.

² The Short-Term Paper Market in Europe – Recommendations for the Development of a Pan-European Market, Consultation Report by the Euribor-ACI Short-Term European Paper Task Force, 2 September 2002.

³ The EFMLG is chaired by the Director General of the ECB’s Legal Services and includes senior financial law experts from EU commercial banks. Although selected with a view to covering the banks represented in the panel that elaborate the Euribor and Eonia reference money market rates, the members of the EFMLG participate in the work of the Group on a strictly personal basis.

⁴ The Sub-Group of the EFMLG on short-term securities is chaired by Mikael Stenström, ECB, and consists of Nuria Alonso Jimenez, Banco Bilbao Vizcaya Argentaria; David Bloom, HSBC Holdings; Ivana Genestrone, San Paolo IMI S.p.A.; Dr Frédéric Nizard, Crédit Agricole S.A.; Dr Ulrich Parche, Hypo Vereinsbank; Frank Tillian, Bank Austria; Dirk Vloemans, Fortis Bank and Stéphane Kerjean, ECB, as secretary to the Sub-Group.

⁵ The Money Market: Legal Aspects of Short Term Securities, Consultation Report by the European Financial Markets Lawyers Group, 2 September 2002.

⁶ The enlarged task force meeting was attended by representatives from the ACI, the ECB, AIAF Market, AXA Investment, Banque de France, Capital Market Daily, Clearstream, Committee of European Securities Regulators, Deka Investment, Euroclear France, European Association of Corporate Treasurers, EFC Working Group on EU Government Bonds and Bills, EFMLG, European Central Securities Depositories Association, European Commission (as observer), European Investment Bank, European Repo Council, *Fédération Européenne des Fonds et Sociétés d’Investissement*, General Electric, IPMA, International Paying Agents Association and Volkswagen.

securities markets. They also agreed to establish three working groups entrusted with tasks concerning the implementation of some of these recommendations. These three working groups were mandated to address the following issues:

- the definition of minimum common features for the information memorandum for a short-term European paper wholesale market;
- the definition of requirements for the calculation and the release of the primary index, as well as for the publication of market statistics; and
- the definition of user requirements with respect to settlement systems.

The ACI/EFMLG Working Group on the information memorandum for short-term European paper (the “Working Group”)⁷ was established to address the first issue and has prepared this report for submission to the ACI Task Force and to the EFMLG. The report presents the findings of the Working Group and is intended to serve as a basis for further action, including consultations with public authorities and market participants and a careful review of the proposals made in the report before the launch of STEP.

1.2 Scope and assumptions

Two of the ACI Recommendations refer to information and disclosure and the Working Group has considered these with a view to making proposals for their implementation. The ACI Report noted that harmonisation and integration of the short-term securities markets, especially for credit markets, requires a high level of quality of the information available to investors. The information has to be presented in a standardised manner and be accurate and easily available. The first ACI Recommendation, as amended following the consultation, states the following:

ACI Recommendation 1: Standardised Information Memorandum

The Task Force recommends that all domestic markets use a standard format in English for the Information Memorandum of Commercial Paper or, alternatively, that an English translation be available.

The need for a standardised information memorandum is indeed important for investors (irrespective of the quality of the issuer), as this ensures that the information concerning the issuer and the programme is easily available in an understandable language. Such a standardised form would also enhance market transparency and market participants at the enlarged task force meeting stressed the view of investors that the content and standardisation of the information memorandum are important. The Working Group wishes to clarify that the need for an English version should be without prejudice

⁷ The composition of the ACI/EFMLG Working Group on the information memorandum for short-term European paper which has prepared this Report on the STEP Information Memorandum is presented in Annex 5.

to any local language version required by the relevant authorities in the issuing country. Moreover, the Working Group understands that the reference to “all domestic markets” in ACI Recommendation 1 also covers the Euro CP market.

The ACI Report also recommended that the European Central Bank (ECB) play an important part in the organisation and functioning of the market. One of the reasons that led the ACI Task Force to suggest an enhanced role for the ECB and the EU national central banks (NCBs) was the successful experience with different kinds of central bank involvement in existing markets elsewhere (e.g. France and the US). To this end, the second ACI Recommendation proposes that the STEP information memoranda be available at the ECB:

ACI Recommendation 2: Availability of the Information Memorandum at the ECB

The Task Force also recommends that the English version should be available at the ECB, and that a yearly review should be implemented in order to update the presentation of the issuer.

The enlarged task force meeting was in favour of having all the information easily accessible at one central point, in standard files and forms and on a website. This would help the market to become more transparent. Almost all market participants at the meeting agreed that the ECB should be the central point. They were of the view that when a central bank is involved in the market, it strengthens the market’s credibility. Furthermore, a central bank is considered as a “neutral” place for the collection of this kind of market information. It was also noted that the decentralised nature of the European System of Central Banks (ESCB) could prove helpful in the collection of the large amount of information needed for such a database.

The Working Group also notes the recommendation in the EFMLG Report that there could be a uniform regulatory framework for short-term money market paper. Such a framework could define the minimum and maximum maturity of short-term money market paper, the minimum issuance amount of each paper and the authorised issuers of each kind of paper:

EFMLG Recommendation No 1

The EFMLG recommends that EU Member States adapt their legislation to the extent relevant in view of the common standards recommended by the Euribor ACI in its Preliminary Report. In addition, the EU Financial Services Policy Group⁸ may consider the common regime suggested by the Euribor ACI Preliminary Report as a basis for a Community legal act in the context of the Action Plan for Financial Services.

In this regard, the Working Group would like to make a distinction between different time horizons, considering that new legislation would require a fair amount of time to be prepared, adopted and implemented. The Working Group has focused on what the market can achieve in the short term

without such legislative change, which means that the proposals made by the Working Group will have to take account of existing national legislation. This dimension is considered in Section 2.1 below. On the other hand, the EFMLG's recommendation to adapt national legislation and to consider a Community legal act can be pursued in parallel. To the extent that this will be the case, the findings of the Working Group can hopefully also promote a better understanding of the kind of legislation which may in the end be appropriate.

The Working Group assumes that it should be possible to use the proposed standard information memorandum under the various national laws of the EU Member States, which – at least in the short to medium term – will remain different.⁹ This fact strengthens the importance of clearly identifying the instrument that will be the subject of the proposed information memorandum – i.e. the short-term European paper (STEP) itself. Such a definition would seem necessary before the content of the information memorandum can be specified. It will also assist in assessing how best to promote a pan-European market irrespective of existing national legal differences. Section 2.2 therefore contains a tentative definition of the features of STEP with regard to its characteristics as CP, nature of issuers, currency, minimum issuance amount, maturity, etc, for further consideration by the ACI and other interested parties. In suggesting a definition for STEP, the Working Group has also considered the compliance with national rules that might otherwise require the preparation of a prospectus in certain Member States (which would defeat the objective of the proposed standard information memorandum).

Following this attempt to define the features of STEP, the Working Group considered the common format and content of the proposed standard information memorandum (Section 2.3) and prepared a draft template for such a memorandum (set out in Annex 2). In doing so, it took as a point of departure the existing information memoranda used in the CP markets. In particular, inspiration has been drawn from the standard information memorandum used in the French CP market and various information memoranda used for the London-based Euro CP (ECP) market. The information requirements applicable to these two markets are considered in Annex 3, and compared with the proposed content of the standard information memorandum for STEP.

The second ACI Recommendation proposes that the information memoranda should be available at the ECB. Section 3 considers this Recommendation and the role of central banks in respect of the information memoranda, including the need for easy access to information by market participants. Section 4 contains suggestions for the implementation by the market of STEP and the use of a standard information memorandum. In particular, this Section considers whether such implementation could be achieved through a market convention on STEP. In order to illustrate the issues that might be covered by such a convention, the Working Group has prepared a tentative draft text (set out in Annex 1), for further consideration by the ACI and other interested parties. Section 5, finally, contains concluding remarks and some proposals for follow-up activity.

⁸ Now entitled the Financial Services Committee. Within today's framework, the European Securities Committee may be well placed to consider the matter and any proposal for EU legislation.

⁹ The present disclosure requirements in EU Member States for CP are indicated in Annex 4. See also Section 2.1, which mentions the need for the lawyers advising on a programme to consider in each specific case compliance with local and other applicable laws.

2. Standard information memorandum

2.1 Disclosure requirements

Money market instruments are currently not subject to any specific rules at the Community level in terms of disclosure requirements. In the absence of legislative change at this level, it is not possible to require a harmonisation of the applicable rules in Member States and the domestic rules may therefore vary from country to country. Securities with less than 12-months maturity fall outside the scope of the future Prospectus Directive¹⁰ and Member States are therefore free to adopt their own legislation in this respect. The fact that the Prospectus Directive will not cover such securities therefore allows for an alternative suitable regime in terms of information requirements for money market short-term instruments traded on an over-the-counter (OTC) market, taking into account that it is essentially a wholesale market between professionals. Such securities will also not be covered by the proposed "Transparency" Directive.¹¹ The existing differences of approach in the EU domestic markets for short-term securities have already been addressed in the EFMLG Report and the descriptions of the national rules for CP with regard to investors and prospectuses are summarised in Annex 4.

The existing national rules concerning disclosure requirements are based either on specific and binding regulations or "self-regulation" (market standards, codes of conduct). In some Member States, the ordinary prospectus requirements applicable to all types of securities may in certain cases apply, but in most Member States there appear to be exemptions for the issuance of CP from the otherwise applicable prospectus requirements. These exemptions apply in cases where the group of potential investors is limited in scope, the minimum amounts of the tradable lots are high or the maturity less than 12 months. For a few countries, however, the possibility of exemption from prospectus requirements is not clearly stated in the summaries contained in the EFMLG Report. In the countries where a prospectus is not required, the issuer usually prepares an information memorandum (less detailed than a prospectus) which is distributed to potential investors ahead of the programme launch. In certain countries, such as France, the submission of an information memorandum to the central bank constitutes a legal requirement.

In view of these different national rules, one possibility would be to try to find the common denominators and to devise a standard disclosure system compliant with all such national rules. The proposed standard STEP information memorandum could then be established by the market on a voluntary basis (and not imposed by law) and market participants could choose whether to fulfil the criteria for such a memorandum in order to obtain the STEP label. Along these lines, the Working Group has made an attempt to design STEP and the proposed information memorandum in order to

¹⁰ See Article 2(1)(a) of Common Position (EC) No 25/2003 of 24 March 2003 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ C 125 E, 27.5.2003, p. 21.

¹¹ Proposal for a Directive of the European Parliament and of the Council on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (COM (2003) 138 final).

comply, without legislative amendments, with the legal requirements of most Member States. It should be noted, however, that in any event the lawyers advising on a programme will also, under the arrangements proposed for STEP, have to consider in each case compliance with local and other applicable laws.

2.2 Defining features of STEP

The Working Group decided to base the definition of STEP on that of existing instruments (rather than create an entirely new STEP instrument). There was also agreement that the reference to STEP should be seen as a "label" which could be given to programmes if they fulfil certain criteria. For example, a CP programme governed by the laws of one of the Member States would have to be checked against the STEP criteria to determine to what extent these were fulfilled before the programme could obtain the STEP label. Depending on existing national rules and practices, different additional STEP criteria might require adjustments compared with the situation in a given domestic market today. To illustrate this point, Annex 3 compares the requirements for information memoranda for French CP, ECP and STEP. The existing national rules, including regulatory and/or supervisory regimes, applicable to the debt instrument in question will thus continue to apply without the STEP label affecting, for instance, the competencies of the national authorities vis-à-vis the issuer of a debt instrument for which the STEP label has been obtained.

The Working Group has, in particular, focused on the type of information that should be required in a standard information memorandum in order to obtain such a STEP label,¹² and these requirements reflect part of the defining features of STEP. However, the Working Group has also considered the more general features of STEP, and these are reflected in the proposed market convention intended as a means to implement STEP¹³ (to which the standard information memorandum should be annexed). The proposed market convention covers permissible types of issuers, the minimum issuance amount of the instruments and the permitted currencies of issue.

As regards the type of issuers, the Working Group considered that the STEP initiative should not discriminate against certain types of issuers. The possibility of obtaining the STEP label should therefore be open to the different types of issuers acceptable in accordance with national laws (i.e. corporates, credit or financial institutions, securitisation vehicles, cooperatives, public authorities, international organisations or supranationals), provided that all the other STEP requirements are met. The Working Group has consciously proposed a standard information memorandum for STEP that would cover, without distinction, all kinds of issuers irrespective of, for instance, the traditional distinction in certain jurisdictions between certificates of deposit (CDs) issued by credit institutions and CP issued by corporates.

As regards the currency and minimum issuance amount, the Working Group suggests that there should be some flexibility regarding currencies, as this is dependent on investors' requests, and that the minimum issuance amount should be sufficiently high to reflect the wholesale nature of the market.

¹² See the proposed draft standard STEP information memorandum in Annex 2.

Notes and certificates of deposit may be denominated in such currencies as may be agreed between the issuer and the relevant dealers from time to time, subject to any applicable regulatory restrictions.

In addition, it is suggested that the minimum issuance amount should be EUR 150,000¹⁴ or its equivalent in other currencies, although some flexibility could also be envisaged in this area.

In the absence of Community legislation on money market instruments, Member States are free to set the conditions applicable to their domestic markets and to authorise, for instance, individual investors to acquire domestic CP/CD. The new Directive on investment services and regulated markets¹⁵ makes a distinction between professional clients¹⁶ and clients that may be treated as professionals upon request. This distinction enables investment firms to treat, under certain conditions, clients as professionals and for such clients to waive some of the protection otherwise afforded by the conduct of business rules imposed on investment firms. The Prospectus Directive also takes account of the different requirements for protection of the various categories of investors and their level of expertise. Disclosure provided by the prospectus is therefore not required for offers limited to qualified investors.¹⁷ In the context of the short-term securities markets and in view of the existing differences in national legislation, however, the restriction of the offering of programmes to professional (or qualified) investors should not be a requirement for the STEP label. Instead, as in the Prospectus Directive, a threshold could be determined in order to ensure the wholesale character of the STEP market. In the Prospectus Directive, the relevant threshold is set at the level of EUR 50,000¹⁸ and the Working Group suggests that for the STEP market the wholesale nature can be achieved through the high minimum issuance amount of EUR 150,000.

The Working Group also considered whether dematerialisation of the instruments should be a requirement to obtain the STEP label. On the basis of the comments received from the two other ACI working groups, it was felt that this should not be a mandatory requirement as it would de facto exclude a substantial part of the ECP market. Instead, it was acknowledged that dematerialisation of all STEP instruments should be favoured as a medium-term objective and, in the meantime, agreed that all STEP instruments should be freely transferable and settled electronically in book-entry form even if not fully dematerialised.¹⁹

¹³ See the proposed draft market convention in Annex 1.

¹⁴ See also the following paragraph and footnotes concerning the minimum issuance amount.

¹⁵ For the latest version at the time of preparation of this Report, see Annex II to the proposal for a Directive of the European Parliament and of the Council on financial instruments markets, Council working document, 28 August 2003.

¹⁶ Including credit institutions, investment firms, financial institutions, insurance companies, undertakings for collective investment in transferable securities (UCITS), pension funds, large undertakings and other institutional investors, national and regional governments.

¹⁷ As defined in Article 2(1)(e) of the Prospectus Directive.

¹⁸ Article 3(2) of the Prospectus Directive states the following: The obligation to publish a prospectus shall not apply to the following types of offer: (a) an offer of securities addressed solely to qualified investors, and/or (b) an offer of securities addressed to fewer than 100 natural or legal persons per Member State, other than qualified investors, and/or (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 50,000 per investor, for each separate offer, and/or (d) an offer of securities whose denomination per unit amounts to at least EUR 50,000, and/or (e) an offer of securities with a total consideration of less than EUR 100,000, which limit shall be calculated over a period of twelve months.

¹⁹ On 8 August 2002, JP Morgan Chase handled the first euro-denominated issue for the French issuer Réseau Ferré de France which was issued into Euroclear France. According to Euroclear, this ECP issue clearly demonstrates the market's willingness to promote the use of Euroclear France for the issuance and settlement of euro-denominated ECP. Moreover, the corporate issuer Unilever has begun to regularly issue overnight ECP into Euroclear France in April 2003, with Deutsche Bank as IPA and Deutsche Bank and Goldman Sachs as dealers.

To sum up, the following general defining features of STEP are covered by the proposed market convention (Annex 1), and could be part of the criteria for a programme to be eligible for the STEP label:

- short-term paper programmes based on the legislation of an EU Member State with maturities of one day or more but not exceeding one year (CPs, CDs, others);
- issued by different groups of issuers (including corporates, credit institutions and financial institutions, securitisation vehicles, cooperatives, public authorities, international organisations and supranationals);
- issuance with a minimum amount of EUR 150,000;
- issuance in a freely convertible currency permitted by the relevant authorities;
- publication and regular update of a standard information memorandum for STEP in English and submission of the information memorandum to the ECB;
- free transferability and electronic settlement in book-entry form (the dematerialisation of all STEP instruments is favoured as a medium-term objective);
- the provision of statistical data on all STEP issues to the ECB for publication of STEP market statistics.

The short-term maturity and minimum amount of issue (EUR 150,000) is intended to be such that the STEP instruments will not be covered by the requirements of the Prospectus Directive and, as a consequence, the intention is that there should be no consumer protection issues related to investors or otherwise. The STEP market should thus be a wholesale market for short-term paper programmes with a maturity not exceeding one year.

In addition, the outcome of the deliberations of the ACI working group on index and volume statistics may entail a need to also specify the statistical requirements for a programme to be granted the STEP label. For example, issuers may have to agree to the publication of certain specified statistical data according to an agreed procedure. The same caveat applies to the ACI working group on securities settlement, which may add criteria concerning the settlement arrangements for STEP.

The above defining features would generally cover existing CP and CD programmes and all kinds of issuers of such programmes in any freely convertible currency. On the other hand, several members of the Working Group expressed the need to exclude medium-term notes (MTNs) from the scope of STEP since MTN programmes often follow other rules and present different characteristics from those applicable to CPs and CDs. The exclusion of MTNs would, however, not need to be formulated as a separate STEP criterion. Rather, most MTN programmes will be excluded *de facto* as not complying with certain other STEP criteria (such as that maturity must not exceed one year). The Working Group favours such a neutral approach to existing instruments and programmes and therefore recommends that any programme that fulfils the STEP criteria may obtain the STEP label irrespective of its characterisation in the local market.

The Working Group would like to suggest that any programme will only be able to keep the STEP label as long as it complies with all STEP criteria and the obligations set forth in the market

convention. As soon as any programme ceases to comply with one or more of these STEP criteria, the STEP label may be withdrawn and, as consequence, the programme will no longer be allowed to use the STEP label.

2.3 Common format and content

One of the main objectives of the STEP initiative is the introduction of measures increasing market transparency across borders. These measures include the submission, compilation and availability of STEP information memoranda with regard to the issuance of STEP. Any issuer wishing to obtain the STEP label will need to prepare such an information memorandum in a standardised format and in the English language. According to the ACI Report, most of the markets studied already provide for a set of standard elements for items to be included in information memoranda, and the second ACI Recommendation therefore mostly relates to the standardised format of presentation of the information, as well as the use of English. The Working Group has taken ACI Recommendation 2 as a starting point and compared various information memoranda already in use in the CP markets (particularly the French CP market and the ECP market). As a result, it suggests that the standard information memorandum should include the following information, as further specified in Annex 2:

- summary of the programme;
- nature of the issuer (e.g. corporate for CP, bank for CD, securitisation vehicle for asset-backed CP);
- presentation of the issuer, including place of incorporation;
- financial information about the issuer;
- arranger and dealers (if any);
- ceiling for the outstanding amount;
- currencies;²⁰
- minimum issuance amount;
- maturities;
- rating (if any); if the programme is not rated this should be disclosed;
- governing law, place of performance and jurisdiction;
- form of the notes;
- issuing and paying agent(s) (IPA);
- selling restrictions (if any);
- guarantee (if any);
- termination events, events of default (if any);

²⁰ See Annex 2 for the description of currency in the standard STEP information memorandum.

- name of the person(s) in charge of preparing the information memorandum and the person(s) responsible for it;
- accounting method used for the drawing up of the accounts and annual reports.

With regard to the inclusion of financial statements, the enlarged task force meeting stressed that even if there is a risk of delay in the release of the financial statements, and even if more detailed information is available on the corporate website, this information would still be useful. In addition, balance sheets are not presented in the same way in different countries. Nevertheless, it should be made clear that the information memorandum and its content do not replace the need for credit analysis, and that it does not constitute a guarantee to investors as to the issuer's solvency. In this connection, the Working Group notes the ongoing developments regarding company law, auditing and accounting rules at the Community level and the existing different practices among Member States depending on the type of issuer. The Working Group is of the view that these specific components of the proposed STEP standard information memorandum should be further analysed together with relevant accounting and other experts in these matters.

Other areas that have been given special consideration relate to the specific information requirements for asset-backed CP (ABCP) and the use of special purpose vehicles (SPVs)/securitisation vehicles as issuers of CP. In view of the increasing growth of the ABCP market, particular attention has to be paid to the peculiarities of the information memorandum for such instruments. The work recently undertaken by the Committee of European Securities Regulators (CESR) in respect of the Prospectus Directive²¹ highlights that, in addition to the information usually requested in a prospectus,²² the minimum disclosure requirements for asset-backed securities would normally include certain additional items. For the issuers of ABCP programmes seeking to obtain the STEP label, such additional information items could include detailed information concerning the type of ABCP, the underlying assets and the structure and cash flow of the transaction. The optimal level of disclosure with regard to ABCP programmes needs to be further examined, but probably the amount of information required should not be as much as would be contained in a prospectus.²³

The person responsible for submitting the STEP information memorandum, who should be a duly authorised officer of the issuer,²⁴ should be required to sign it. It is also proposed that a declaration of adherence to the terms and conditions of the STEP market convention be signed on behalf of the issuer. Again, a duly authorised person will be requested to declare that the issuer is fully informed of the terms and conditions of the STEP market convention, agrees to comply entirely with its provisions and is aware of its implications (for instance in case of withdrawal of the label).²⁵ The STEP information memorandum will need to be updated yearly and every time a significant event occurs. This is of particular importance in view of the proposal that the STEP label be granted to the programme as such. The Working Group has also made an attempt to specify in Annexes 2 and 3

²¹ See in this respect CESR's advice on level 2 implementing measures for the Prospectus Directive, CESR/03-208, July 2003.

²² Information related to the persons responsible for the information given, the auditors, the risk factors, the issuer (including financial information), business overview, administrative, management and supervisory bodies, major shareholders, etc.

²³ For more details see Annex 2.

²⁴ The person signing the information memorandum should be entitled to act on behalf of the issuer in this regard.

²⁵ See Annexes 1 and 2.

whether the information to be provided as part of the proposed information memorandum is mandatory or optional.

Some members of the Working Group also stressed that dealers should not under any circumstances be held liable in relation to the content of the information memorandum. This issue may be further considered and the proposed draft STEP market convention includes a reference to the possibility of adding a disclaimer on the part of dealers for the information contained in the STEP information memorandum.²⁶

The Working Group also discussed the possibility of achieving a harmonised form for the notes used under various STEP programmes, as proposed in the EFMLG Report.²⁷ Such an exercise would, however, be time-consuming and should not be considered a priority at this time. It was also suggested that a common standardised approach to the issue of selling restrictions for products, such as CP, could be pursued. The Working Group considers that, although not a necessary condition for the introduction of the STEP regime, such harmonisation and standardisation of market documentation could be beneficial and that the market associations should therefore consider whether such harmonisation and standardisation is feasible.²⁸

3. Availability of the information memorandum

3.1 Easy access to information

The availability of the information memorandum to all issuing and paying agents, market dealers, rating agencies, investors and any other market participants would contribute to enhancing the accessibility and transparency of the market.²⁹ At the outset, the Working Group would therefore like to stress the need for quick and easy access to the information contained in the information memorandum and recommends that it should be available to all market participants. The information memorandum should be regularly updated, as provided in Section 2.3, and should be accessible in electronic form. The documents submitted to obtain and maintain the STEP label should therefore include not only a signed hard copy, but also a copy in electronic form.

²⁶ See the latter part of Annex 1.

²⁷ EFMLG Recommendation No 6: The EFMLG considers appropriate that the possibility to standardise market documentation is pursued and that market associations may entrust a law firm covering the relevant financial markets with the task of further analysing market documentation and proposing such uniform market standards.

²⁸ It is suggested that there could be a continuous process of market harmonisation and standardisation and that additional efforts to improve the integration of the market could continue to be undertaken once STEP is launched. For instance, the possibility to standardise the selling restrictions used could be considered further. Moreover, the area of taxation may merit further consideration (as noted in last year's EFMLG Report with regard to the different national and cross-border regimes for withholding tax). Finally, market participants may consider the development of a common interest construction calculated in accordance with a standard formula.

²⁹ An example of existing contributions to improved market accessibility and transparency is the activity of Capital Market Daily in making domestic and international information memoranda available to market participants in electronic format.

3.2 Market needs and credibility – The proposed role of the ECB and the ESCB

The ACI and the EFMLG proposed in 2002 that the ECB and the ESCB be invited to play an important part in the organisation and functioning of the European STEP market. The intention behind this proposal is that such involvement will enhance the credibility of the market and ensure a neutral place for the collection of information. The following main reasons were given in the ACI Report for the proposed role of the ECB in making the STEP information memoranda available to market participants:

- A key success factor in the development of the US and French CP markets was the clear involvement of the Federal Reserve Bank and the Banque de France in their creation and organisation of the market.
- The role of the ECB with regard to the integration of the euro area is an efficient way to ensure a homogeneous organisation of the European short-term paper market.
- Short-term paper is part of the money market and, as such, of natural interest to the ECB. The involvement of the ECB appears even more natural when it is noted that two-thirds of the short-term paper market is now constituted of bank issuers and that banks usually act as dealers for short-term paper.
- The Banque de France is already playing this role in France for the French CP market (as are central banks in other countries).

The ACI Recommendation that the ECB, and the other central banks of the ESCB, receive the STEP information memoranda and make them available is not intended to imply their involvement in any credit assessment of the issuers. The involvement of central banks should not be construed so as to imply that the central banks have any liability with regard to STEP programmes. The Working Group suggests that this point, concerning the limitation of the involvement and any liability on the part of the ECB and the NCBs, should be addressed in the STEP market convention. The ACI Recommendation is thus limited to inviting the ECB and the NCBs to play a certain specific supporting role in the organisation and functioning of the market. It should also be pointed out that investors would still be free to favour an investment policy based on a domestic market, while a cross-border approach should be facilitated.

In view of the different structures of the various existing domestic CP markets and the different degree of involvement of central banks, the Working Group has focused on the functionality requested by market participants for the submission and retrieval of information. Whether or not the ECB/ESCB can in the end perform these tasks as proposed, the functional requirements for the submission of information memoranda and the retrieval of information concerning STEP will include the ones referred to in this report. In particular, the Working Group has focused on the need for market participants, particularly issuers, to have easy entry and access points for the submission and retrieval of information. How the requested arrangements for the STEP information memoranda are organised, on the other hand, is left to the market associations and, as proposed, the central banks of the ESCB to develop. Although there may be several entry points where information memoranda and updated information concerning a programme can be submitted, the need for duplication of submission of information should be avoided. Moreover, there should be one access point where information about

STEP programmes can be retrieved. A decentralised approach within the ESCB might fulfil this functionality, relying on the existing expertise and human resources of NCBs, especially where a legal framework is already in place in a particular Member State with the significant involvement of the central bank. Whatever solution is chosen, the Working Group would like to stress that it should be easy to submit information and that there should be one access point where the STEP information memoranda are available on an (instantly) updated basis.

4. Implementation of STEP

4.1 Market convention

The Working Group has considered the different constitutive elements of the proposed standard STEP information memorandum and how its use can be implemented. One method could be through the adoption by the ACI and other relevant market associations of a market convention to be followed by market participants wishing to obtain the STEP label for a programme. In order to see whether and how this could work in practice, the Working Group has prepared a draft STEP market convention (attached as Annex 1 to this Report). One of the requirements of this convention would be the submission of a standard STEP information memorandum (in a format set out in an annex to the proposed market convention). Although a consensus emerged in the Working Group on what information should be provided in the STEP information memorandum, it would also be necessary to examine which of these minimum features would need to be integrated and repeated in the provisions of the market convention itself.

The Working Group has made a tentative attempt to describe these features in the proposed draft market convention on STEP³⁰ and suggests that these could include:

- the main defining features of STEP;
- the obligations applicable to issuers wishing to obtain and maintain the STEP label (e.g., in terms of information requirements and the envisaged declaration of adherence to the STEP market convention);
- the requirements relative to settlement with regard to STEP, as these are intended to be set out in the users' requirements under preparation by the ACI working group on settlement;
- the provision of price and volume data for statistical purposes, and the agreement to their publication according to an agreed procedure;
- the procedure to be followed by issuers in order to apply for the STEP label; and
- the clarification of the role and involvement of the ECB and the ESCB in the STEP project through an attached statement by the ECB, including the limits of the central banks' responsibility and the exclusion of liability on their part.

³⁰ See Annex 1.

The market convention will however need to be further developed by the adopting market associations, including the incorporation of the contributions of the two other ACI working groups on index and volume statistics and settlement procedures, respectively.

4.2 Implementation

The Working Group thus proposes that the STEP arrangements should primarily be implemented through the adoption and application of the proposed market convention. It is in this respect important that the convention be adopted by as many of the relevant parties as possible and it is suggested that it be adopted (or endorsed) by not only the major market associations, but also by other parties active in the short-term paper markets. For instance, several of the associations and market players which attended the enlarged task force meeting on 11 March 2003 could be invited to endorse the market convention.³¹

However, additional measures may be needed for the implementation of STEP to be fully effective, including in terms of communication to issuers and other market participants. One suggestion would be to publicise STEP prior to the launch and for the sponsoring market associations to issue a press release to the effect that they endorse STEP, which summarises the STEP concept, the procedures necessary to obtain the STEP label and the benefits of STEP. In order to assist with market take-up of STEP, the sponsoring market associations could also hold regional conferences explaining the concept in more detail and the procedures for obtaining the STEP label, possibly including conferences held at the ECB and the NCBs if they agree with this proposal. Invitations should be targeted at local bankers, corporate treasurers, fund managers and other related associations.

4.3 Consequences and expected benefits of the implementation of STEP

Considerable benefits should derive from the STEP system once in place, especially if a large number of issuers obtain the STEP label and issue significant amounts of paper which meet the criteria. Issuers and investors will have easy access to a large and standardised market with a relatively uniform product. The transparency and standardisation of the instruments and information memoranda will facilitate comparison between issuers and paper. This will improve market efficiency and reduce the cost of credit research and the arranging of programmes.

The ready availability of price indices and volume statistics will enhance the market's understanding and help all participants make pricing decisions. Investors will have the comfort of a better organised and more transparent market and should be more willing to purchase STEP paper. They will be more likely to invest across borders, thereby facilitating the integration of the different national and international money markets.

³¹ See Section 1.1 and footnote 6.

Improved and harmonised settlement procedures will make settlement easier and less expensive. Paper which meets the STEP criteria and has the STEP label should in principle qualify as an eligible asset under Article 19(1) of the UCITS Directive, provided it is issued by one of the four specified categories of issuers specified in that provision. This will help achieve a harmonised transposition of the UCITS Directive.

In the Working Group's opinion, paper which meets the STEP criteria and has the STEP label should be favourably considered by the ECB in its determination of whether it is an eligible asset for Eurosystem credit operations, provided that the established eligibility criteria are met.

5. Proposals for further action

In preparing this Report, the Working Group has considered and discussed many issues concerning the market convention, the information memorandum and the implementation of the STEP arrangements, including the obligations on the part of the issuer and other parties, which will require further consideration and follow-up. Many of these are indicated above, such as the proper coverage in the market convention of the findings of the other ACI working groups with regard to the collection and publication of statistics and in terms of procedures for settlement. There are, however, also other issues that should be given further attention and will require follow-up work by the ACI and other interested parties before STEP is launched.

One important dimension of the follow-up is the presentation of the proposals prepared by the market participants to the ECB and the ESCB, and the presentation to the central banks of the items indicated by the Working Group where the involvement of the ECB/ESCB is requested. The proposed involvement of the central banks of the ESCB and the views and decisions of the central banks on this proposal could refer to:

- the role of the ECB/ESCB and the allocation of tasks within the ESCB with regard to the STEP arrangements and the granting of the STEP label;
- the role of the ECB/ESCB with regard to the STEP market convention, including the preparation of the envisaged statement by the ECB on the limits of the central banks' responsibility and exclusion of their liability;
- any specific issues arising in relation to the "sanctioning powers" represented by the possible withdrawal of the STEP label;
- the technical and other arrangements for the receipt of STEP information memoranda and the availability of such memoranda and STEP market information at a central access point;
- the possible surveillance of the smooth functioning of the market infrastructures and market developments.

In addition, the envisaged STEP arrangements, including the use of a standard information memorandum, should at some point be shared with market regulators, in particular with the CESR, as indicated at the enlarged task force meeting. It is also suggested that the European Commission is kept informed of developments.

The adopting market associations and the other parties involved will of course also need to consider and review in some detail the terms and conditions of the proposed market convention and the standard information memorandum before adoption. One proposal raised in this connection within the Working Group is for the market associations to retain a law firm covering the relevant EU jurisdictions in order to review the legal implications of the proposed arrangements. Such a legal review may in particular address the effects of STEP considering that the national legal systems will continue to apply and form the basis upon which the STEP regime will be added. As part of such a review, the company law and accounting aspects referred to in Section 2.3 could also be considered further, as well as any competition law questions that the adoption of the market convention may entail.³² Another very specific issue to consider further is the possible intellectual property questions related to the suggested use of the word “STEP”, considering the usage of this word by the Euro Banking Association (EBA). The EBA already uses this word in connection with its payment system, Euro1, where STEP1 and STEP2 denote additional payment services available to its users.

For the future, the standardisation of the market documentation itself may be a fruitful – but separate – project that could be pursued further (as proposed in EFMLG Recommendation No 6) as part of a continuous process of market harmonisation and standardisation once STEP is launched. Finally, the imminent enlargement of the EU may also merit some further reflection with regard to the functioning of STEP.

³² In this regard, the parties involved may consider the possibility to submit the proposed market convention to the relevant competition authorities.

ANNEX 1
Report on the Information Memorandum for STEP

**DRAFT MARKET CONVENTION
ON SHORT-TERM EUROPEAN PAPER**

15 December 2003

DRAFT MARKET CONVENTION ON SHORT-TERM EUROPEAN PAPER

The below market associations and participants active in the European short-term paper markets (the Sponsors) have agreed to sponsor and support the improvement of the liquidity, safety and transparency of short-term paper transactions to the benefit of all market participants and the market as a whole. To this end, the Sponsors have agreed upon and adopted this market convention (the Market Convention) in order to provide a harmonised framework for short-term European paper (STEP) under which different types of existing programmes for short-term paper may qualify.

Different classes of instruments are currently traded on the European money markets. Different rules apply to these instruments in the various European Union (EU) Member States, and there is no Community legislative framework applicable to the issuance and trading of money market instruments. The Sponsors have therefore decided to establish and promote a market standard in this regard, taking into account the different existing types of European short-term paper programmes, and to create a label that denotes compliance with this standard (the STEP label). It is the intention of the Sponsors that the establishment of STEP and the use of the STEP label will contribute to the integration of the short-term paper markets in the EU.

During the development of the STEP framework, the Sponsors have been in contact with the European Central Bank (ECB) and the European System of Central Banks (ESCB) and have proposed that the ECB and the ESCB play a role in the implementation and promotion of this market initiative. In view of inter alia the potential benefits of the STEP initiative to the financial sector, the ECB and the ESCB have agreed to contribute to the arrangements for STEP in accordance with the specifications in the statement of the ECB concerning STEP attached to this market convention as Annex [...].

In order to obtain and maintain the STEP label for a given short-term paper programme (the Programme), the issuer of the Programme (the Issuer) will have to comply with the requirements contained in this Market Convention. In particular, the Issuer will have to submit an information memorandum to the ECB/ESCB as specified herein and in Annex [...] (the Information Memorandum). By submitting such an Information Memorandum to the ECB/ESCB, the Issuer agrees to be bound by and undertakes to follow the requirements for STEP. The Issuer is also required to ensure that the Information Memorandum is regularly updated and that any substantial changes to the Programme lead to the submission of an updated Information Memorandum to the ECB/ESCB. The features of the Programme and the notes issued under the Programme (the Notes) will also have to fully comply with the rules for STEP contained in this Market Convention and its Annexes.

[ADOPTING MARKET ASSOCIATIONS AND MARKET PARTICIPANTS]

DRAFT MARKET CONVENTION ON SHORT-TERM EUROPEAN PAPER

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1. Criteria and requirements for the STEP label

1.1 Types of Issuers

The Issuer shall be a corporate, a credit institution or a financial institution, a securitisation vehicle, a co-operative entity, a public authority, an international organisation or a supranational.

1.2 The Programme

The type of Programme eligible for the STEP label shall be a short-term paper programme based on the laws of an EU Member State. The documentation defining the Programme shall be publicly available and accessible to any interested party.

1.3 The Notes

The Programme shall include a clear description of the Notes issued under the Programme and the rights pertaining to the holder of the Notes.

1.4 Book entry form and electronic settlement

The Notes issued under the Programme shall be issued in a settlement system in book-entry form, be freely transferable and settled electronically.

1.5 Currency of issue

The Notes can be issued in any freely convertible currency permitted by the relevant authorities. The Issuer shall ensure the compliance with all applicable national rules in this respect.

1.6 Minimum issuance amount

The minimum issuance amount shall be EUR 150,000 (or its equivalent in another currency).

1.7 Maturity

All the Notes issued under the Programme shall have a maturity of at least one day and not longer than one year.

1.8 The Information Memorandum

To obtain the STEP label, an Information Memorandum shall be provided to the ECB/ESCB in conformity with the template and containing the information set out in Annex [...]. The Information Memorandum shall be submitted in both hard copy and electronic form in accordance with the procedures described under Section 2 and the statement of the ECB set out in Annex [...]. The Information Memorandum submitted in order to obtain the STEP label shall be in the English language. A copy of the Information Memorandum in another language can accompany the English version of the Information Memorandum but, for the purposes of the

STEP label, the English language version shall prevail in case of discrepancies. The Information Memorandum shall be signed by at least one authorised representative of the Issuer attesting the completeness and accuracy of the information contained in the Information Memorandum. Each update of the Information Memorandum will be considered as a new request for the STEP label. Such updates shall also be duly signed as described above.

1.9 Multi-Issuer Programmes

When the Programme has more than one Issuer (Multi-Issuer Programmes), each Issuer shall provide the information referred to in Annex [...] as part of the Information Memorandum. Each Multi-Issuer Programme must be possible to identify under a single name covering all the Issuers that may issue Notes under such a Multi-Issuer Programme.

1.10 Issuance and settlement

All the Notes under a Programme shall be issued in a settlement system complying with the users' requirements set out in Annex [...].

1.11 Statistics - STEP trade and market data

The STEP market developments will be monitored and statistics on the STEP market will be published by the ECB/ESCB. For these purposes, the Issuer shall allow the settlement systems and/or the issuing and paying agents (IPAs)¹ to communicate any information regarding the trades transacted under a Programme to the ECB/ESCB or any other party duly authorised to collect and process such information on their behalf.

¹ To be decided on the basis of the findings of the ACI working group on index and volume statistics.

2. Procedure for obtaining the STEP label

2.1 Application to obtain the STEP label

In order to apply for the STEP label for a Programme, the Issuer submits the Information Memorandum to the ECB/ESCB in accordance with the statement of the ECB set out in Annex [...]. The ECB/ESCB informs the Issuer whether, on the basis of the Information Memorandum, the Programme qualifies for obtaining the STEP label. The Issuer agrees that by applying for the STEP label it accepts without any conditions the obligations and other terms of this Market Convention, including any consequences for itself and its Programme(s), and agrees to run the Programme(s) accordingly.

2.2 Duration of the STEP label for a Programme

The STEP label is granted for an indefinite period of time as long as the Programme complies with the Market Convention. The STEP label can however be withdrawn as further explained in Section 2.5 below and in the statement of the ECB set out in Annex [...].

2.3 Updates of Information Memorandum

2.3.1 Yearly update

The Information Memorandum has to be updated and resubmitted to the ECB/ESCB every year within 60 days after the validation of the accounts of the current year of the Issuer by the Board of the Issuer (or its equivalent).

2.3.2 Other updates

The Information Memorandum has to be updated immediately every time a significant event occurs which changes the substance of the Programme or the nature or the quality of the credit risk carried by the Notes issued under the Programme. The following events require the updating of the Information Memorandum:

1. Change of the Programme's ceiling.
2. Change of one of the Programme's rating (if any).
3. Change of the Programme's guarantee (if any).
4. Change of the Programme's guarantor (if any).
5. Addition or change of Issuing Agent.
6. In the case of a Multiple-Issuer Programme, addition or withdrawal of an Issuer within the Programme.

2.4 Availability of Information Memorandum at the ECB/ESCB

All the Information Memoranda that have been granted the STEP label will be made publicly available at a single access point (a website) as specified in the statement of the ECB set out in Annex [...]. This website will also display an updated list of all the Programmes that have been granted the STEP label.

2.5 Withdrawal of the STEP label

The STEP label granted to a Programme can be withdrawn by the ECB/ESCB at the Issuer's request or in the case of non-compliance with the Market Convention and other STEP requirements as further explained in the statement of the ECB set out in Annex [...]. If the STEP label is withdrawn for a certain Programme, the consequence will be an immediate removal of that Programme from the list of Programmes granted the STEP label. In cases of withdrawal of the STEP label at the request of an Issuer, it will be specified that such a request has been made. A breach by an Issuer of its obligations under this Market Convention with regard to a specific Programme can lead to the withdrawal of the STEP label for that Programme and, in addition, such a breach can also lead to the withdrawal of other STEP Programmes of the same Issuer. Issuers wishing to benefit from the STEP label are aware of and accept the possibility and consequences of the withdrawal of the STEP label in the event of non-compliance with this Market Convention and its Annexes.

DISCLAIMERS

[ADD text: No liability of dealers for acts and omissions of issuers]

[ADD text: No liability of the ECB and the members of the ESCB. The involvement of central banks should not be construed so as to create any central bank liability with regard to STEP programmes. In particular, the involvement of the ECB and any other central bank of the ESCB in receiving the STEP Information Memorandum and/or the granting of the STEP label should not imply the involvement of the central banks in any credit assessment of the issuers. The STEP label does not refer to the financial soundness or creditworthiness of the issuer, nor does the label carry any meaning with respect to the liquidity of the assets or the accuracy, the completeness or the truthfulness of the information provided in the Information Memorandum. The STEP label should also not imply any judgement on the merit and/or appropriateness of a certain investment.]

ANNEX 1: STEP STANDARD INFORMATION MEMORANDUM

ANNEX 2: STATISTICAL REQUIREMENTS [TO BE PROVIDED BY THE ACI WORKING GROUP ON STATISTICS]

ANNEX 3: USERS' REQUIREMENTS FOR THE SETTLEMENT OF STEP [TO BE PROVIDED BY THE ACI WORKING GROUP ON SECURITIES SETTLEMENT]

ANNEX 4: STATEMENT OF THE ECB CONCERNING THE INVOLVEMENT OF THE ECB AND THE ESCB [To be provided by the ECB]

ANNEX 2
Report on the Information Memorandum for STEP

PROPOSED STANDARD INFORMATION MEMORANDUM

15 December 2003

PROPOSED STANDARD INFORMATION MEMORANDUM

This proposed standard information memorandum is intended to constitute an annex to the Market Convention defining STEP and the procedures to obtain the STEP label.

Issuers wishing to obtain the short-term European paper (STEP) label must, among other requirements, provide the European Central Bank (ECB) with an information memorandum in accordance with the statement of the ECB concerning STEP attached as Annex [...] to the Market Convention defining STEP. The information memorandum shall be in the format set out in the following and shall contain, as a minimum, the information listed as mandatory below. The issuer must also sign a “Declaration of adherence to the STEP Market Convention” the text of which is also set out in this standard information memorandum.

The mandatory information items that must be included for a Programme to be eligible for the STEP label are set out in bold type set. Examples of additional non-mandatory information items which issuers may include in a STEP Information Memorandum are set out in normal type set (not bold).

FORMAT OF THE STEP INFORMATION MEMORANDUM The mandatory information items appear in bold. Additional information may also be provided.	
Category of (mandatory) information to be provided	Comments/examples
Short-term European paper (STEP) Single issuer programme	
Name of the issuer	XYZ S.A.
Type of short-term paper	e.g. French CD
Type of programme	e.g. French CP, ECP
Type of issuer:	e.g. credit or financial institution, corporate, special purpose/securitisation vehicle
- Credit institution/financial institution	
- Corporate	
- Securitisation vehicle	In addition to the information usually requested in a prospectus, ² the minimum disclosure requirements for ABCP should include detailed information on the ABCP to be issued, the underlying assets and the structure and cash flow of the transaction. The optimal level of disclosure needs to be further examined
- Public authority	
- Other type of issuer (supranational, etc.)	
Ceiling of the programme (EUR)	e.g. EUR 5 million (5,000,000)

² Information related to the persons responsible for the information given, the auditors, the risk factors, the issuer (including financial information), business overview, administrative, management and supervisory bodies, major shareholders, etc.

Guarantor(s)	None
Rating(s) of the programme	(if any) if no rating, mention “not rated”
Date of submission of the information memorandum	
Date of the last update of the information memorandum	
Issuing and paying agent(s)	
Arranger(s)	(if any)
Dealer(s)	(if any)
Legal advisors	(if any)

DECLARATION OF ADHERENCE TO THE STEP MARKET CONVENTION
<p>The issuer hereby declares that it has been fully informed of the terms and conditions of the STEP market convention and accepts and undertakes to fully comply with its provisions and implications. In particular, the issuer accepts the consequences of the procedures provided for in the STEP market convention, especially in terms of the effect on its name in terms of reputation within the financial markets industry if the STEP label is withdrawn.</p>

PART ONE: Description of the programme	
1.1 Programme	
Type of programme	e.g. French CP
Purpose of the programme	
Multi issuer programme	Yes or no If yes: name of the programme
Ceiling of the programme's outstanding volume (in euro)	e.g. EUR 5,000,000
Main currency(ies) of issue	EUR USD GBP JPY
Rating(s) of the programme	Yes or no (If yes: to be filled out)
Characteristics of the notes	e.g., French CP, ECP
Main remuneration (methods) envisaged	Fixed rate, floating rate, interest prepaid (standard or complex)
Name of the issuing and paying institution(s)	
Minimum issuance amount	> or equal to EUR 150,000
Minimum denomination	
Maturities	1 day to 1 year
Type of form: materialised or dematerialised	[Both forms would be accepted; however, the medium-term objective is to ensure that all STEP instruments are dematerialised]
Settlement system	[In conformity with the market convention] [Information to be provided by the ACI working group on settlement]
[Statistical reporting]	[Information to be provided by the ACI working group on index and volume statistics. To cover all issuers in case of multi-issuer programmes.]
Possibility of listing	Yes or no (if any)
Place of listing	(If any)

Rank/status of the notes	
Arranger(s)	(If any)
Dealer(s)	(If any)
Legal advisors	(If any)
1.2 Form of notes (i.e. when notes of the same nature are issued abroad - outside the EU)	Succinct presentation of the programme and of the markets where these notes are traded: the same information as in Section 1.1 must be included for each other type of note

PART TWO: Information concerning the issuer(s) (and guarantor(s), if any).	
This information can be obtained from the English version of the annual reports of the issuer(s)/guarantor(s) or other statutory documents, which should be attached.	
Issuer	
2.1 Corporate name	The information to be provided below is to be adjusted according to the nature of the issuer
2.2 Legal form/status	
2.3 Date of incorporation/establishment	Previous name if any (history of incorporation)
2.4 Registered office with country of incorporation/establishment – telephone, telex, fax numbers	
2.5 Registration number, place of registration	
2.6 Company's purpose	In detail
2.7 Detailed description of current activities	Including main activities, main categories of products/services supplied and turnover
2.8 Capital/shareholding or equivalent	List of main shareholders; amount of capital subscribed; number and classes of securities constituting the capital; unpaid part of capital; allotment of capital; information about the stock exchanges where the issuer's shares are traded
2.9 Fiscal year	Starting on [...], ending on [...]
2.10 List of the members of the Board of Directors, or list of members of the Supervisory Board and of the Directory	
Issuer 2 (if any)	

Guarantor	
2.1 Corporate name	
2.2 Legal form/status	
2.3 Date of incorporation	Previous name if any (history of incorporation)
2.4 Registered office with country of incorporation – telephone, telex, fax numbers	
2.5 Registration number, place of registration	
2.6 Country of incorporation	
2.7 Company's purpose	In detail
2.8 Detailed description of current activities	Including main activities, main categories of products/services supplied and turnover
2.9 Capital/shareholding or equivalent	List of main shareholders; amount of capital subscribed; number and classes of securities constituting the capital; unpaid part of capital; allotment of capital; information about the stock exchanges where the issuer's shares are traded
2.10 Fiscal year	Starting on [...], ending on [...]
2.11 List of the members of the Board of Directors, or list of members of the Supervisory Board and of the Directory	

PART THREE: Financial accounts and auditors' reports (for the last two years)	
(Issuer and guarantor)	
3.1 Accounts approved by the last Annual General Meeting or equivalent	
3.1.1 Set of accounts	If the issuer is the parent company, the consolidated accounts must be produced in the form approved at the last Annual General Meeting. The accounts for the previous fiscal year must also be produced. If the issuer is a subsidiary, certified accounts of the subsidiary and consolidated accounts of the parent company must be produced
3.1.2 Directors' report to the Annual Meeting	
3.1.3 Auditors' reports	Both the general and special report must be produced – and any other report from the auditors presented to the shareholders at the Annual Meeting in accordance with the regulations of the country of the registered office of the issuer. The minimum information to be produced is the auditors' report on the annual accounts.
3.2 Accounts approved by the previous Annual General Meeting	
3.3 Accounting method used	[To be considered further]

PART FOUR: Other legal and regulatory aspects	
4.1 Governing law for issues under the programme [and the law applicable to the issuer]	
4.2 Jurisdiction	
4.3 Taxation	
4.4 Involvement of other national authorities	
4.5 Selling restrictions	

PART FIVE: Certification of information	
5.1 Person responsible for the information memorandum	
Declaration of the person(s) responsible for the information memorandum:	
<p><i>[To our knowledge, the information contained in this document is true and does not contain any misrepresentation which would make it misleading. This information will be updated in accordance with the requirements of the STEP market convention.]</i></p>	
Signature	
Name	
Title	
5.2 Authorised signatory's declaration	
5.3 Name and address of independent auditors of the company	
5.4 Disclaimer clauses for dealer(s), IPA(s) and arranger(s)	

- ANNEX 1: COPY OF FULL TEXT OF GUARANTEE (IF ANY)**
- ANNEX 2: COPY OF ALL RATINGS (IF ANY)**
- ANNEX 3: SOCIAL (IF ANY) AND CONSOLIDATED ANNUAL REPORT + FINANCIAL ACCOUNTS; OR EQUIVALENT DOCUMENTS, FOR YEARS N AND N-1**
- ANNEX 4: REPORT OF INDEPENDENT AUDITORS (OR REFER TO ANNEX 3 IF INCLUDED IN ONE OF THE DOCUMENTS)**

ANNEX 3
Report on the Information Memorandum for STEP

**COMPARATIVE APPROACH: FRENCH CP, EURO CP
AND STEP INFORMATION MEMORANDA**

15 December 2003

INFORMATION MEMORANDA:
MANDATORY INFORMATION REQUIREMENTS AND INFORMATION USUALLY AVAILABLE:
COMPARATIVE APPROACH

	French CP Dossier de présentation financière (DPF)		ECP information memorandum	STEP information memorandum
Information requirements:	Mandatory legal requirements	Information usually available	Information usually available	Mandatory requirements under the STEP information memorandum
1. General information			For ECP, there is no single regime whereby certain information items must be included, although some items are included by way of convention ³	
Name and corporate data of the issuer (see also below)	Yes	Yes	Yes	Yes
Type of issue	Yes	Yes	Yes	Yes
Guarantor (if any)	Yes	Yes	Yes	Yes
Arranger	No	Yes (if any)	Yes	No
Dealer(s)	No	Yes	Yes	No
Issue and paying agent(s)	Yes	Yes	Yes	Yes
Legal advisors (if any)	No	Yes (if any)	Yes (if any)	No
2. Description of the issue				

³ Each time a new programme is established the information memorandum will contain information intended to allow the programme to achieve its objectives. For example, where a programme has been designed for the sale of notes to specific domestic investors, it will contain the relevant selling restrictions and whatever information such domestic investors may require.

	French CP Dossier de présentation financière (DPF)		ECP information memorandum	STEP information memorandum
Information requirements:	Mandatory legal requirements	Information usually available	Information usually available	Mandatory requirements under the STEP information memorandum
2.1 Description/summary of the programme				
Purpose of the programme	No	Yes	Sometimes included, but not always	Yes
Multi-issuer programme	No	No	Yes, possible	Yes
Ceiling of the outstanding amount	Yes	Yes	An 'all time' ceiling in respect of the outstanding volume at any time is typically included	Yes
Currency(ies) of issue	Any currency except possible temporary [suspension of the Banque de France?]	Yes	Yes	Yes
Characteristics of the notes	Yes	Yes	Yes [Notes are typically included and reproduced verbatim]	Yes
Remuneration methods	Not expressly specified	Any kind of usual remuneration method is accepted (notification to the Banque de France when the indexing clause is not	Yes	[To be considered further]

	French CP Dossier de présentation financière (DPF)		ECP information memorandum	STEP information memorandum
Information requirements:	Mandatory legal requirements	Information usually available	Information usually available	Mandatory requirements under the STEP information memorandum
		anchored to a usual interbank rate)		
Dealing and trading	No	Yes	Yes	No (otherwise the file would have to be updated whenever there was a change in dealership which would be too cumbersome)
Name of the IPA/domiciliating institution	Yes	Yes	/No	Yes (if any)
Minimum issuance amount	Specified by the law	Yes	Yes	EUR 150,000 or its equivalent in other currencies (as specified in the STEP market convention)
Minimum denomination	Specified by the law	Yes	[Yes]	No
Maturity	Between 1 day and 1 year	Yes	Yes	As specified in the STEP market convention
Form of the notes (dematerialised/materialised)	Yes	Yes	Yes	Yes
Identification (ISIN code, Euroclear)	Yes (in the confirmation) since legally deemed issued in bearer dematerialised form	Yes (in the confirmation), not in the DPF	Yes	Yes
Listing (if any)		Not applicable	Possible	Yes
Yield basis/interest (fixed rate, floating rate, interest prepaid)	See regulation	Yes	Yes	[To be considered further]
Rank/status of the notes	No	Yes	Yes	No
Guarantee (type, issuer, certified copy –	Yes, when there is a	Yes, when there is a	Yes	Yes, when there is a guarantee(s)

	French CP Dossier de présentation financière (DPF)		ECP information memorandum	STEP information memorandum
Information requirements:	Mandatory legal requirements	Information usually available	Information usually available	Mandatory requirements under the STEP information memorandum
see annex)	guarantee(s)	guarantee(s)		
Liquidity line	No	Optional		No
2.2. Form of the notes No 2 (i.e when securities of the same nature are issued abroad): succinct presentation of the programme and of the markets where these securities are traded	Yes	Yes	Yes [Notes are typically included and reproduced verbatim]	
2.3 Information concerning the issuer (including legal and financial situation) ⁴				
Corporate name	Yes	Yes	Yes	Yes
Legal form/status	Yes	Yes	Yes	Yes
Date of incorporation	Yes	Yes	No, but included in the legal opinion	Yes
Registered office with country of incorporation	Yes	Yes	No, but included in the legal opinion	Yes
Registration number, place of registration	Yes	Yes	No, but included in the legal opinion	Yes
Company's purpose	Yes	Yes	No, but included in the legal opinion	Yes
Capital/shareholding	Yes	Yes	No, except if a subsidiary	Yes

⁴ Further analysis will have to be undertaken to examine the type of information requested for SPVs issuing ABCPs. The work currently undertaken by the CESR in respect of the proposed Prospectus Directive might serve as a basis in this context.

	French CP Dossier de présentation financière (DPF)		ECP information memorandum	STEP information memorandum
Information requirements:	Mandatory legal requirements	Information usually available	Information usually available	Mandatory requirements under the STEP information memorandum
Amount of capital subscribed, number and classes of securities constituting it, unpaid part of capital, allotment of capital, information on the stock exchanges where the issuer's shares may be traded			of group of companies	
Fiscal year (starting on, ending on)	No	No	As part of the financial statements	Yes
List of the members of the Board of Directors/Supervisory Board	Yes	Yes	As part of the financial statements	Yes
Description of activity(ies) (current) including main activities, main categories of products/services supplied, turnover by branch and geographical area	Yes	Yes	As part of the financial statements	Yes
Description of activity(ies) (forecast for near future)	Yes, for non-rated programmes	Yes, for non-rated programmes only		No
Address of the website where information about the programme is available	No	Possible	Increasingly yes	No
3. Financial accounts				
Last annual report (including financial statements)	Yes	Yes	Yes	Yes
Previous year	Yes	Yes	Yes	Yes
4. Other legal and regulatory				

	French CP Dossier de présentation financière (DPF)		ECP information memorandum	STEP information memorandum
Information requirements:	Mandatory legal requirements	Information usually available	Information usually available	Mandatory requirements under the STEP information memorandum
aspects				
Selling restrictions	No specific requirement	Possible	Yes	No specific requirement
Law applicable to the issuer	Yes	Yes	Yes	Yes
Jurisdiction	Yes	Yes	Yes	Yes
Termination/events of default	No	No	No	No
Taxation	No specific requirement	Possible	Typically included	No specific requirement
Recourse to credit derivatives	No	No	No	No [[Possible recourse to credit derivatives should be considered further]]
5. Certification of information				
Person in charge of the information memorandum	Yes	Yes	No	Yes
Authorised signatory declaration	Yes	Yes	No	Yes
Name, address and [capacity?] of independent auditors of the company	Yes	Yes	As part of the financial statements	Yes
Update	Yes, in particular following a change of the ceiling of the outstanding amount, rating, identity of the guarantor or the conditions of the	Immediate following an important change or on a regular basis	Yes	Yes, in particular following a change of the ceiling of the outstanding amount, rating, identity of the guarantor or the conditions of the guarantee

	French CP Dossier de présentation financière (DPF)		ECP information memorandum	STEP information memorandum
Information requirements:	Mandatory legal requirements	Information usually available	Information usually available	Mandatory requirements under the STEP information memorandum
	guarantee			
Early redemption	Issuers must inform the Banque de France every week	Yes	No	Yes
7. Annexes				
Guarantee (if any)	Yes	Yes	Yes	Yes
Rating notice(s)	Yes	Yes	No	Yes
Independent auditors' report	Yes	Yes	No	Yes
Guarantor's information memorandum	Yes	Yes	No	Yes

ANNEX 4
Report on the Information Memorandum for STEP

INFORMATION REQUIREMENTS IN THE EU

15 December 2003

Information requirements in EU Member States

This Annex contains brief descriptions of the existing national information requirements, as described in the EFMLG Report,⁵ and takes into account some recent developments in France and the United Kingdom.

Belgium

For each CP programme a prospectus has to be made available in accordance with Article 5 of the Law on Commercial Paper and Certificates of Deposit of 22 July 1991 and Part 2 of the Royal Decree on Commercial Paper and Certificates of Deposit of 14 October 1991. The prospectus must be lodged with and agreed by the Banking Commission.

Germany

A prospectus is required under Section 7 of the Prospectus Act (*Verkaufsprospektgesetz*) of 1998. In practice, exemptions apply in the case of restricted subscribers, minimum tradable lots greater than DEM 80,000 or maturities below one year. Prospectuses have to be deposited with the Federal Financial Supervisory Agency.

Greece

Presidential Decree 348/1985 (on the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are to be listed in the Athens Stock Exchange), as amended and in force, has implemented in Greece the Council Directive 80/390/EEC, as amended by Directive 94/18/EC. Art. 4 of the Presidential Decree stipulates that the publication of a prospectus is a sine qua non condition for the listing of transferable securities in the Athens Stock Exchange. The prospectus has to be approved by the Capital Market Commission and contains all information elements required by the above Directives. However, according to Art. 2, the above Presidential Decree does not apply to units issued by collective investment undertakings other than of the closed-end type and to transferable securities issued by a State or by one of a State's local authorities. As far as the listing in the Athens Stock Exchange of bonds issued by the Greek State, public entities, local authorities, other States or public international bodies is concerned, Presidential Decree 350/1985 (on the conditions of listing of transferable securities – shares, bonds- in the Athens Stock Exchange, as well as the obligations of the issuers of transferable securities issued in this Stock Exchange) as amended and in force, foresees that the issuer of such

⁵ Annex II to the EFMLG Report on legal aspects of short-term securities concerning commercial paper, item 5 on investors and prospectuses, 2 September 2002. One Member State, Denmark, was not covered in Annex II to the EFMLG Report and is therefore not included.

securities has to provide substantial information to the Capital Market Commission. In both above-mentioned Presidential Decrees, there is no distinction between short-term securities and other securities. When transferable securities are offered to the public, then the Presidential Decree 52/1994, which has implemented Directive 89/298/EEC, applies and the publication of a prospectus is mandatory. This is done either by publication in the press or in the form of a leaflet, which is distributed to the public at no cost. Exceptions apply in the case of restricted subscribers, professional investors, where the selling price of all the securities offered does not exceed 40,000 EUR etc. (these exceptions reflect those of the Directive).

Spain

Before the issue a prospectus must be presented to and registered (with some exceptions) with the Spanish Securities Supervision Agency (*Comisión Nacional del Mercado de Valores*) (CNMV). The prospectus must contain enough information for an investor to make a judgement on the proposed investment. It must state the result of the mandatory audits as required under Article 27 of the Law, the obligations derived from the securities, and the procedure for placing the securities on the market. It must follow the models approved by the CNMV (see CNMV Circular 2/1999) and fulfil a series of minimum formal requirements. Correction of mistakes or relevant ex post information must be included in a supplement (Decree, Article 15-23). The public offer must take place within a month of registering the prospectus with the CNMV (Decree, Article 25). In the case of international offers (i.e. including non-Spanish residents) the prospectus must include all information provided to foreign investors, even if not required by Spanish legislation.

All information must be translated into Spanish (Decree, Article 26). In the case of issuers not resident in Spain, the required audit must comply with the legislation of the place of residence of the issuer. If this is outside the EU, the CNMV may require additional clarification with regard to the applicable norms. As CP tends to have a short maturity, its issue is often exempt from the requirement for prior registration of a prospectus with the CNMV (applicable to issues with a maturity of less than 12 months).

France

The issuers of negotiable debt securities (*titres de créances négociables*) (TCNs) do not have to submit a prospectus, but need to fulfil certain disclosure obligations concerning their economic and financial situation and their issuing programme. Accordingly, there are no prospectus requirements for French CP. However, under Article L. 213-4 of the Financial and Monetary Code (the “Code”), the issuers of TCNs are under an obligation to give certain information about their economic and financial situation and their issuing programme. A decree specifies the content of these obligations and the conditions of publicity. The COB is responsible for ensuring that these obligations are fulfilled (especially when issuers do not provide any rating and must apply for a visa of the COB). The information document to be presented by issuers is called a “*dossier de présentation financière*” (information memorandum). This document is communicated to the Banque de France, to inform it of any new entrant on the market.

A typical TCN⁶ issue involves three documents: an information memorandum (*Dossier de présentation financière* or *DPF*); a *domiciliaire* agreement;⁷ and a dealer (or subscription) agreement.⁸

According to Article L.213-4 of the Financial and Monetary Code, TCN issuers are requested to draw up an information memorandum, which must include the items detailed below. The same information must be provided in relation to the guarantor (if any).

The information memorandum must include information on the issuer's activities and its financial situation, and a general presentation of the issue programme. In particular, this document must contain:

- the maximum outstanding amount envisaged for the programme and, if appropriate, the currencies in which the issuer intends to issue;
- characteristics of the securities that the issuer intends to issue, detailing any minimum/maximum maturity and any proposed interest basis;
- in the event that an issuer has made public a rating of its issuance programme, a copy of the rating certificate(s) delivered by the rating agency(ies);
- the means of placement and names of initial dealers;
- the name of the *établissement domiciliaire*. Issuers of TCNs must domicile their securities under the conditions laid down in the General Regulation of the Conseil des Marchés Financiers (CMF) with an authorised credit institution or an investment firm managing custody accounts. Generally, the principal dealer acts as the *établissement domiciliaire*. However, each dealer increasingly acts as the *établissement domiciliaire* for the TCNs that it has placed or subscribed. Also, when the issuer is a French credit institution, it acts as its own *établissement domiciliaire*;
- where the issuer issues securities of the same type abroad, a brief summary of the terms and conditions of these programmes (ECP, EMTNs, US programs), indicating on which markets such securities are negotiated.⁹

⁶ TCNs cover *billets de trésorerie* (commercial paper), certificates of deposit and medium-term notes. Treasury bills are subject to a different set of rules.

⁷ There must be a written *domiciliaire* agreement between the issuer and the *agent domiciliaire* which details the issuing, paying and information reporting agency functions in relation to the TCNs that must be carried out by the *agent domiciliaire*. There may be more than one *agent domiciliaire*. As the *domiciliaire* agreement is a private agreement not submitted to the regulatory authorities or the investors, it need not necessarily be drafted in French.

⁸ There is generally also a dealer agreement which details the basis on which the issuer will issue and the dealers will place or subscribe the relevant TCNs. Like the *domiciliaire* agreement, the dealer agreement is a private agreement not submitted to the regulatory authorities or the investors and therefore may be drafted in a foreign language.

⁹ A description of the information required to issue an information memorandum is detailed in the Guidance from Allen & Overy, Bulletin on French domestic negotiable debt securities, May 2002

Details of the person responsible for the information memorandum must be given. This person is responsible for its contents and conformity to the applicable regulations. This person must, in addition, state that to his knowledge, and as at the date of the information memorandum, the information contained in it is true and accurate and that nothing has been omitted would make it misleading. As a result of this requirement, issuers generally include a “recent developments” section in the information memorandum.

The information memorandum must include (directly or by reference), for each of the preceding two financial years, (i) the annual non-consolidated audited accounts of the issuer; (ii) the consolidated audited accounts of the issuer and its subsidiaries (if any); (iii) the report of the Board of Directors or the Managing Board, and of the Supervisory Board; and (iv) the report of the issuer’s auditors.

Regulations require that the accounts to be included in the information memorandum be drawn up in accordance with French accounting standards but allow the COB to adapt its requirement to foreign issuers. Information must also be given on (i) the issuer’s share capital and its breakdown, indicating any shareholder owning at least five per cent of the capital; (ii) the composition of the issuer’s Board of Directors and management; (iii) the location of the issuer’s headquarters; (iv) the date of creation, purpose and registration of the issuer; (v) the activities and operations of the issuer (with specific provisions depending on whether it is a commercial/industrial company or a bank); and (vi) the stock exchange on which dealings in the issuer’s securities take place.

If the programme is not rated, the information memorandum must also include the issuer’s latest quarterly short-term cash flow statement and, if the information memorandum is filed more than four months after the end of the first half-year, a half-yearly report on its activities and results.

Issuers which are credit institutions or investment firms must prepare a half-yearly report on their activities and results and quarterly statements according to the models set out by the Committee on Banking and Financial Regulation (*Comité de la Réglementation Bancaire et Financière*) (CRBF). Other issuers must draw up a half-yearly report and quarterly short-term cash flow statement (which shall mention, in particular, assets and liabilities with maturities of no longer than one year).

TCN issuers must update their information memorandum every year within 45 days following the shareholders’ Annual General Meeting [being held in respect of the latest financial year. The annual update in fact consists of preparing and distributing a new information memorandum.

Immediate update of the information memorandum is required following any change relating to the guarantee, the maximum amount of the outstanding TCNs, and the rating of the programme, as well as any fact “that may have a significant effect on the TCNs issued or on the conclusion of the issue programme”.

Law 2003-706 on Financial Security adopted on 1 August 2003 contains some provisions which amend the rules applicable to TCNs and which will be complemented in the next months of amendments to secondary legislation (ministerial orders and decrees¹⁰).

As regards the rules on the organisation and supervision of the TCN market, the French authorities intend to clarify within the Code the respective roles and functions of the new market authority, the AMF, (as a result of the merger of the COB and the CMF) and of the Banque de France. For instance, Article L.213-4 of the Code, as amended, provides that the financial documentation is to be submitted prior to the first issuance of such securities to the Banque de France which is in charge of ensuring that issuers comply with the conditions of issuance provided for in Article L.213-3.

Under the new provisions on TCNs envisaged by the French authorities, the AMF, as for the debt securities markets, is empowered in particular to ensure the continuous supervision of financial information without having to deliver any visa, and the compliance of operators with business conduct rules. The AMF will only grant a visa for a prospectus in the (limited) cases of public offers, since the TCN market is essentially between professionals. Moreover, a protocol might be concluded between the AMF and the Banque de France regarding the respective powers of the two authorities in respect of the supervision of the TCN market. The ECB indicated in its opinion on the draft law on financial security that it welcomes this clarification which should ultimately benefit TCN issuers, investors and other market participants.

Under the new law, the applicable provisions contained in the Code (in particular Articles L.213-2 and L.213-4) are amended to relax the applicable language regime (including in respect of accounting standards) and to enable issuers, under certain circumstances, to submit financial documentation in a language customary in the sphere of finance other than French.

Finally, the obligation imposed on TCN issuers to prove that they have been in existence for two years was repealed, and all types of international organisations are now also authorised to issue TCNs.

Ireland

In Ireland, and taking a CP to be a negotiable instrument, it is a debt security subject to the general rules on the issuance of debt securities under Irish law. The prospectus requirements of the Companies Act 1963 apply to notes offered and placed publicly. In the absence of clear statutory or common law guidance on the scope of the private placement exemption, market participants have taken steps to ensure that a prospectus is not needed when issuing CP. One approach has been for the issuer and the bank acting as the issuer's agent in offering the notes to agree on a maximum list of 20 potential purchasers. All invitations and offers are made orally,

¹⁰ For more details, see the EFMLG Report of September 2002. The amendments to secondary legislation regarding TCN are not yet known.

and only confirmed in writing after oral agreement. An additional safeguard is that the agent contacts no more than five purchasers on any one day and/or makes an offer only to persons who have expressed an interest in the notes and/or does not disclose the issuer's identity to potential purchasers in the initial stages of the offering. The facility letter also contains additional safeguards designed to avoid a secondary market in the issuer's notes. See Johnston, *Banking and Security Law in Ireland* pp. 219-21. Under the Central Bank of Ireland's Notice (BSD CP 1/98) exempting issuers of CP from the requirement to hold a licence to carry on a banking business, all CP issued under the exemption must carry the title 'Commercial Paper' and must identify the issuer by name. It must be stated explicitly on the face of the CP that it is issued in accordance with this exemption, that the investment does not have the status of a bank deposit, and is not outside the scope of the Central Bank of Ireland's deposit protection scheme; and that issuers are not regulated by the Central Bank of Ireland in matters arising from the issue of CP. Any issue of CP which is guaranteed must state this and identify the guarantor by name.

Italy

In Italy, the general legal framework for public offerings of financial instruments is provided by articles from 94 to 101 of the Legislative Decree n. 58 of 24 February 1998 ("T.U.F.", short for: Testo Unico degli Intermediari Finanziari - Unified Body of Laws in matter of Financial Intermediaries). Pursuant to art. 94 T.U.F., any subject who intend to make a public offering of financial instruments must give an advance notice thereof to CONSOB (Italian Companies and Stock Exchange Authority) and it must publish a prospectus. In accordance with Directive 1989/298/CEE, the subsequent article 100 T.U.F. provides, however, that the obligation to issue a prospectus shall not apply to public offerings:

- aimed exclusively at professional investors;
- having as their object financial instruments issued or guaranteed by the Italian government or an EU member state or issued by international organisations of a public nature of which one or more EU member states are part;
- having as their object financial instruments issued by the European Central Bank or the national central banks of the EU member states;
- having as their object financial instruments issued by banks, other than shares or financial instruments that permit the purchase or subscription of shares, or insurance products issued by insurance enterprises.

As far as short-term debt instruments issued by banks are concerned, in accordance with article 12 and 117 of the Legislative Decree n. 385 of 1st September 1993 ("T.U.B.", Testo Unico bancario - Consolidated banking Act), the "Istruzioni di Vigilanza" (Supervisory Directions) of Bank of Italy provide special legal requirements, laying down the main features that are mandatory for "certificati di deposito" and "buoni fruttiferi" (banking deposit receipts). The issuance of certificates with features different from those laid down by the "Istruzioni" must be notified to Bank of Italy. This kind of instruments is also governed by the Bank of Italy

regulations on banking transparency, which provide additional duties of disclosure on terms and conditions of the instruments, to be included in the so-called “fogli informativi analitici” (detailed information papers) and made available to any customer.

With reference to the non-bank issuers, articles 95 and 100 T.U.F. entitle CONSOB to issue a regulation with implementing provisions of T.U.F. and confer on the Authority the power to provide further cases for which the general obligation to publish a prospectus shall not apply.

Consob has adopted on the 14th of May 1999 the Regulation 11971, whose article 33 provides a further series of situations where the obligation to issue a prospectus doesn't apply. Among these cases a special relevance assumes the derogation for public offerings: a) addressed to a number of persons not exceeding 200; b) involving financial products whose total amount does not exceed 40,000 euro; c) where the minimum individual investment is not less than 250,000 euro. The above mentioned regulation will be revised on the basis of the transposition of the new Prospectus Directive.

In addition, the issue of commercial papers and investments certificates by non bank companies is governed by articles 11 and 117 T.U.B. which entrust banking regulators (CICR – Interministerial Committee for Credit and Savings and Bank of Italy) with special powers of characterisation. The “Istruzioni di Vigilanza” deals especially with terms and conditions required for any collecting savings instrument called “cambiale finanziaria” (finance bill) and “certificati d'investimento” (investment certificates).

Luxembourg

A prospectus is only required if the instruments are offered to the public in Luxembourg or listed on the Luxembourg Stock Exchange. If the instruments are issued under a public programme and listed then an annual update of the prospectus is required. An update is also required if major events occur that could affect the issuer's creditworthiness.

The Netherlands

The Act on the Supervision of Securities Trade 1995 (and further rules and regulations) stipulates the requirements for the prospectus, which must be published unless securities are offered only to professionals, to a select group or only outside the Netherlands.

Austria

Article 2 of the Austrian Capital Market Act 1991 (Kapitalmarktgesetz 1991 i.d.g.F.) requires for an initial public offering a prospectus that has been drawn up and audited in conformity with the provisions of the Capital Market Act and is published at least one working day in advance. A list of exemptions from the obligation to publish a prospectus is provided by Article 3 of the Austrian Capital Market Act. In the context of short-term securities there is one exemption of

particular relevance, according to which debt securities whose maturities are shorter than one year are not subject to prospectus obligations. Furthermore, exemptions are established, e.g.:

- for securities or investments which are offered in denominations (shares) of a minimum of EUR 40,000 or its equivalent value in euro in a foreign currency or units of account, or securities or investments that cannot be acquired for less than this amount by any individual investor;
- for securities or investments of which the nominal value of the entire issue or the selling price of the entire issue, or the total investment capital is not more than EUR 40,000 or its equivalent value in euro in a foreign currency or in units of account;
- securities offered to a limited group of persons within the scope of their trade of business.

The Oesterreichische Kontrollbank (OeKB) is responsible for the examination and safekeeping of prospectuses received.

Portugal

Pursuant to Article 7 of Decree-Law No. 181/92 of 22nd August (as amended) and Notice n. 11/92 of Banco de Portugal (as amended), a prospectus (the “Informative Note”) must be prepared and provided to the investors by the issuer.

Requirements of the Informative Note are the same whether or not the issuer is a Portuguese issuer. They include, *inter alia*, details of the issue, the issuer and its financial situation, applicable guarantees and rating.

The Informative Note must be available to the public, at no costs, at the issuer’s head office and at the dealers’s offices, at least eight days prior to the first issue date. The places where the Informative Note is available for inspection shall be announced within the same deadline in two newspapers of wide circulation. In case the notes are offered to the public, the Informative Note must be published.

Finland

All issuers of financial instruments, except shares in companies that fall within the scope of the Securities Markets Act, are subject to the information requirements in Chapter 2, Section 2 of the Act. Under this provision, any body which issues securities (e.g. CP) to the public must provide sufficient information on any circumstances that may substantially affect the value of the securities.

Sweden

The law does not distinguish between retail and professional investors as such for the purposes of restricting sales. It states that debt instruments may only be offered to a non-closed group (in

Swedish *öppen krets*) if a prospectus fulfilling Swedish requirements has been published, unless the volume of the issue is at least SEK 300,000. On the grounds of this exception, no formal prospectuses are published for CP programmes, only brief sales material describing the securities.

United Kingdom

The relevant authorities (including in particular the Treasury and the Bank of England) have launched a major reform of the rules applicable to money market instruments (MMIs). The purpose is mainly to modernise the settlement of these instruments mainly under the form of a dematerialisation process. This reform also involves other changes, in particular in respect of the terms of issuance for these instruments and the market documentation.

The reform does not only deal with Money Market Instruments (MMIs) (for instance CP, CD and bankers' acceptances), but also with other marketable negotiable debt securities, of whatever maturity, including Medium Term Notes¹¹, and other securities with an original maturity of one year or more.

The collective term used for the non-material equivalent debt securities concerned is "eligible debt securities" (EDSs¹²). It does not, however, encompass the issue of Treasury bills or local authority instruments.

In relation to this dematerialisation process, the Bank of England issued in November 2002 and March 2003 a series of consultation documents regarding the future of MMIs on pro forma terms of issuance for EDSs.¹³

The Bank of England consulted in particular on whether one set of terms (under which any type of relevant units can be issued) would suffice or whether it would be preferable if separate terms were produced for different types of units (bankers' acceptances, CP, CD); the treatment of dematerialised MTNs; the use of a deed; the content of the draft pro forma terms (role of issuing and paying agents, early redemption, etc); and the notice of issue and minimum trading amount (e.g GBP 100,000 and minimum trading multiples).

The deed, together with a notice of issue, constitutes the units of an EDS. It is intended that the deed be issued in conjunction with other documents, as may be customary for a particular type of

¹¹ It was however agreed that this round of work on the pro forma terms should not attempt to cover MTNs.

¹² MMIs are generally defined by the Bank of England as "*financial instruments used to meet the short-term funding needs of financial and other institutions, as well as to assist banks and investment firms manage their liquidity by holding suitable short-term assets. Besides repo and derivative instruments, they principally comprise CDs (certificates of deposit issued only by banks and building societies), Treasury bills (issued by HM Treasury), commercial paper (issued by non-financial firms and banks) and bankers' acceptances (bills of exchange, accepted by banks and financing non-financial firms and banks). They are all forms of debt security, and generally have an original maturity of under one year*" (see "The Bank of England and the Sterling Money Markets", January 2002). At present, they are generally paper, negotiable instruments. To help make a distinction between MMIs and their dematerialised equivalents, the present summary systematically refers to EDSs.

¹³ See Bank of England, November 2002 and March 2003, "The future of money market instruments", First and second consultations on pro forma terms of issuance for eligible debt securities. It includes in its Annex the draft terms for EDS corresponding to CD/CP as well as the terms for EDS corresponding to bankers' acceptances.

MMI, for example an information memorandum for CP, an issuing and paying agency agreement, and a dealers' agreement. It is anticipated that existing standard programme documentation could be used, albeit with certain consequential amendments to reflect the issues of EDSs. It is also noted that MMIs/EDS are not generally listed or subject to prospectus requirements.¹⁴

The EDS terms are structured as a deed that is intended to be used in respect of the issue of units of a single EDS or a programme of such securities which may include eligible debt securities corresponding to different types of MMI.¹⁵ The purpose is to ensure that holders of securities issued under it acquire directly enforceable rights against the issuer.

The deed would only need to be executed once and not every time new units of an EDS were issued (although in principle there could be a separate deed for each issue). The constitution of the units of a particular EDS would involve the completion and signing of a "notice of issue" (a one-page schedule to the deed containing the principal commercial terms of the EDSs, e.g. the interest rate, maturity date, identity of any guarantor, etc.) and their issue would take place through the CREST system.

Work is now in progress to enable MMIs to be issued in non-material, that is electronic, form and to be settled in the CREST settlement system with title evidenced by names on an electronic register. According to the Bank of England, the aim is for EDSs to be issued from mid-September 2003. The Bank of England published on its website in June 2003 the pro forma terms for the issuance of EDSs corresponding to CP/CD and bankers' acceptances as well as some explanatory notes. CRESTCo has also published a practical guide for all prospective issuers of EDSs.

It should be noted that in the UK the information memorandum sets out basic details regarding the issuer and guarantor (if any). The dealers use this as a marketing tool for the programme and distribute it to potential investors ahead of the programme launch. It typically includes a brief summary of the programme terms and conditions, forms of note and selling restrictions. It is common practice for the information memorandum to incorporate by reference the annual report or other publicly available information, such as SEC filings. This avoids the need to include financial information in the information memorandum itself and extends its life. Market practice as to updating the information memorandum varies, with some issuers updating on an annual basis, some never. Any update should reflect the latest selling restrictions. Best practice would be to update annually or at least on the occurrence of any material change.^{16 17}

¹⁴ See "The Bank of England and the Sterling Money Markets", January 2002

¹⁵ Where the deed is used for the issue of units under an EDS programme, the issuer does not need to enter provide a separate deed for each issue but simply completes a notice of issue on each occasion that it proposes to constitute EDSs under the programme.

¹⁶ See London Market Guidelines on Commercial Paper, BBA, April 2000.

¹⁷ The draft Model Global Commercial Paper Dealer Agreement mentioned above defines the information memorandum as "*the most recent information memorandum, as the same may be amended or supplemented from time to time (...), containing information about the Issuer, and the Programme, the text of which has been prepared by or on behalf of the Issuer for use by the Dealers in connection with the transactions contemplated by this Agreement*".

The Bank of England and the British Bankers' Association (BBA) have issued guidance notices on CDs and the CD market in the interest of order and efficiency. Since progress has been made on the EDS reform, the BBA indicated its intention to update the market guidelines on CP¹⁸ and CDs. These guidelines are in the process of being reviewed and will be reissued in updated form in the last quarter of 2003.¹⁹ This would take account of the new non-material instruments as well as changes in regulation, settlement and other developments in market practice. For instance, some references to regulation will need to be updated following the coming into force of the Financial Services and Markets Act 2000 (FSMA) in December 2001.²⁰ In addition, in August 2003 the BBA made public an interim guide and compendium of documents entitled "Preparing for the dematerialisation of Money Market Instruments" which supplements the two guidelines.²¹ It should be noted that this reform does not affect the issuance of (mostly non-dematerialised) euro-denominated ECP.

¹⁸ See London Market Guidelines on Commercial Paper, BBA, April 2000. They give guidance on aspects of CP issuance and regulatory, accounting and tax issues. Some references to regulation will need to be updated following the coming into force of the FSMA in December 2001 and other more recent legislative developments.

¹⁹ As of November 1996.

²⁰ It is noted that the issuance of debt securities, other than bankers' acceptances, may entail accepting deposits (a form of regulated activity) as defined under the FSMA, although broadly the proceeds of such issuance would not be a deposit as defined if the minimum redemption value of the instrument is £100 000 or more (or the currency equivalent) and if they are sold to professionals; and most, but not all, MMIs have a minimum redemption value of £100 000 or more. Any person accepting deposits by way of business would generally have to be authorised for the purposes of the FSMA.

²¹ The Compendium contains in particular the following documents: fact sheets for issuers, drawers and acceptors of EDSs, migrating MMIs from CMO into Crest, explanatory notes on deeds relating to eligible debt, terms for EDSs corresponding to certificates of deposit or commercial paper, terms for EDSs corresponding to banker's acceptances, frequently asked questions, Bank of England CD notice, minimum transfer amounts and units of transfer, and rematerialisation of CDs.

ANNEX 5
Report on the Information Memorandum for STEP

ACI/EFMLG WORKING GROUP
ON
THE STEP INFORMATION MEMORANDUM

15 December 2003

ACI/EFMLG WORKING GROUP ON THE INFORMATION MEMORANDUM FOR SHORT-TERM EUROPEAN PAPER

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The views expressed in this report are those of the members of the ACI/EFMLG Working Group on the information memorandum for short-term European paper and do not necessarily represent those of their institutions or the ECB.