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**ACI/EFMLG**  
**Working Group on Information Memorandum**

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

PRELIMINARY DRAFT 21 May 2003

[PRELIMINARY DRAFT] REPORT ON INFORMATION MEMORANDUM  
FOR SHORT TERM EUROPEAN PAPER

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## **EXECUTIVE SUMMARY**

[TO BE ADDED]

# [PRELIMINARY DRAFT] REPORT ON INFORMATION MEMORANDUM FOR SHORT TERM EUROPEAN PAPER

## 1. Introduction

### 1.1 Background and the ACI/EFMLG Working Group on Information Memorandum

In the first half of 2002, the Euribor-ACI Short Term European Paper Task Force (the “ACI Task Force”)<sup>1</sup> developed proposals on how to promote the integration of the short-term securities markets, and in particular the commercial paper markets. In September 2002, the ACI Task Force published its findings in a Consultation Report (the “ACI Report”),<sup>2</sup> 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)<sup>3</sup> and an EFMLG sub-group<sup>4</sup> prepared a separate Consultation Report on the legal aspects of short-term securities in the European Union (EU) (the “EFMLG Report”).<sup>5</sup>

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”).<sup>6</sup> The market participants in attendance considered

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<sup>1</sup> 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).

<sup>2</sup> 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.

<sup>3</sup> 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 cover 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.

<sup>4</sup> 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.

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

<sup>6</sup> 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),

and endorsed the revised set of ACI Recommendations with the aim of promoting the convergence of EU short-term securities markets. The enlarged task force also agreed on the establishment of three working groups entrusted with the tasks of identifying solutions for the implementation of some of these recommendations. These three working groups were mandated to address the following respective 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 publications of market statistics; and
- the definition of user requirements with respect to settlement systems.

The ACI/EFMLG Working Group on information memorandum for short term European paper (the “Working Group”)<sup>7</sup> was established to address the first item above. To this end, the Working Group has prepared this Report for submission to the ACI Task Force and the EFMLG.

## **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 make 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. Investors require availability of information standardised in its presentation and the information has to 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 would ensure that the information concerning the issuer is easily available in an understandable language. Such a standardised form would also enhance market

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European Investment Bank, European Repo Council, Fédération Européenne des Fonds et Sociétés d'Investissement, General Electric, IPMA ECP, International Paying Agents Association and Volkswagen.

<sup>7</sup> The composition of the Working Group who has prepared this Report on Information Memorandum is presented in Annex 5.

transparency and market participants at the enlarged task force meeting stressed that the view of the investor community on the content of the standard information memorandum is important.

The ACI Report also recommended that the ECB plays an important part in the organisation and the functioning of the market. One of the reasons that led the ACI Task Force to suggest such an enhanced role for the ECB and the EU national central banks (NCBs) was based on the successful experiences with central bank involvement in existing markets elsewhere (e.g. France and the US). The second ACI Recommendation states the following:

**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 participants at the enlarged task force meeting were in favor of having all the information easily accessible at one single central point, in standard files and forms and on a website. This would help the market to become more transparent and can be used as an information tool. On the question about the ECB being this central point, almost all market participants agreed. The market participants at the meeting were of the view that when a central bank is involved in the market, it strengthens its credibility. Furthermore, a central bank is considered as a “neutral” place for the collecting of this kind of market information. In addition, it was 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.

At the enlarged task force meeting, it was indicated that the industry might support a convention-based approach, rather than a regulatory approach. In this connection, the Working Group notes the recommendation in the EFMLG Report that there could be a uniform regulatory framework for short-term money market paper. Such a regulatory framework could define the minimum and maximum duration of the short-term money market paper; the minimum denomination of each paper; and the authorised issuers of each kind of short-term money market 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 Group 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 legislative reform 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 the existing national legislation and this dimension is considered in section 2.1 below. On the other hand, the recommendation of the EFMLG to adapt national legislation and to consider a Community legal act can be pursued in parallel. To the extent 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.<sup>8</sup> This fact strengthens the importance to clearly identify the instrument that will be the subject of the proposed information memorandum - i.e. the short-term European paper itself (in the following referred to as “STEP”). Such a definition would seem necessary before the content of the information memorandum can be specified. It will also assist in the assessment of how to best promote a pan-European market irrespective of existing national legal differences. Section 2.2 therefore contains an attempt to provide a tentative definition of the features of STEP with regard to its characteristics as commercial paper (CP), nature of issuers, currency, minimum denomination, 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 has 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, the Working Group has considered 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 on the French CP market and examples of information memoranda used for the London based euro CP (or ECP) market. The information requirements applicable to these two markets are considered in Annex 3, together with the proposed content of the standard information memorandum for STEP.

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<sup>8</sup> The present disclosure requirements in EU Member States for commercial paper are indicated in Annex 4. See also section 2.1 below and the need for the lawyers advising on a programme to consider in each specific case the compliance with local and other applicable laws.

The second ACI Recommendation proposes that the information memorandum should be available at the ECB and section 3 considers this recommendation and the need for easy access to information on the part of market participants. Section 4 contains suggestions for the implementation by the market of STEP and the use of a standard information memorandum and considers whether such an arrangement can be achieved through a market convention. In order to illustrate in practical terms the issues that might be covered by such a market convention, the Working Group has prepared a tentative draft text for a market convention on STEP (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 activities.

## **2. Standard information memorandum**

### **2.1 Disclosure requirements – Legal aspects and other regulatory issues**

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 the Community 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-month maturity fall outside of the scope of the proposed amended Prospectus Directive<sup>9</sup> and Member States therefore have the freedom to define the content of their own legislation in this respect. The purpose of exempting such securities from the Prospectus Directive is to allow an alternative suitable regime in terms of information requirements for money market short-term instruments traded on an OTC market that is essentially a wholesale market between professionals. The existing differences of approach to the respective EU domestic markets for short-term securities have already been addressed by the EFMLG Report and the descriptions concerning the national rules for CP with regard to investors and prospectuses are summarised in Annex 4.

The existing national legal 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 from the otherwise applicable prospectus

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<sup>9</sup> See in this respect Article 2(1)(a) of the common position adopted by the Council on 24 March 2003 with a view to the adoption of 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 (the Prospectus Directive).

requirements for the issuance of CP. 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,<sup>10</sup> however, the possibility of exemption from prospectus requirements is not clearly stated in the summaries contained in the EFMLG Report. In addition, the purpose of the information memorandum can be conceived in a different ways. For instance, the submission of an information memorandum to the Banque de France constitutes a legal requirement whereas, in some other countries,<sup>11</sup> this document may be seen as a marketing tool for the programme and is distributed as such to potential investors ahead of the programme launch.

In view of these existing different national rules, one possibility would be to try to find the common denominators and to devise a standard disclosure system compliant with such national rules. The proposed standard STEP information memorandum could then be established on a conventional basis (and not imposed by law) and market participant could choose 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 such a way that it could be likely to work in most Member States, without amendments of the national legal regimes. It should be clarified, 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 the compliance with local and other applicable laws.

## **2.2 Defining features of STEP**

The Working Group decided to address the issues related to the definition of STEP on the basis of the already existing instruments (rather than identifying 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 the programmes on the basis of their fulfilment of certain criteria to be defined. For example, a certain CP programme governed by the laws of one of the Member States would have to be checked against the STEP criteria to see to what extent these are fulfilled before the programme can obtain the STEP label. Only to the extent that the national requirements do not coincide with the STEP criteria would there be a need to adjust the programme for the issues to be tradable under the STEP level. Depending on the existing national rules and practices, different additional STEP criteria might require adjustments compared to the situation in a certain domestic market today. To illustrate this point, Annex 3 is intended to compare the requirements for information memoranda for French CP, ECP and the proposed criteria for STEP.

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<sup>10</sup> [To be added]

The Working Group has, in particular, focused on the type of information that should be required in the framework of a standard information memorandum in order to obtain such a STEP label,<sup>12</sup> and these information requirements form part of the defining features of STEP. However, the Working Group has also considered the more general features of STEP, which are reflected in the proposed market convention intended as a means to implement STEP<sup>13</sup> (to which the standard information memorandum is conceived as an annex). These general features include the type of issuers that can be accepted, the minimum denomination of the instruments, the domiciliation of the instruments and the types of currencies accepted.

The following general defining features of STEP are covered by the proposed market convention and could be part of the criteria for a programme to be eligible for the STEP label: [ADD the general defining features with contributions from the ACI STEP Task Force]

The following information would be required for the STEP information memorandum and must be submitted for any programme to be labelled as STEP: [ADD the mandatory information requirements according to the proposed STEP information memorandum]

In addition, the ACI working group on index and statistics has provided the following criteria to be fulfilled for a programme to be accepted as STEP: [ADD criteria on the provision of data for the STEP index and statistical requirements]

Finally, the ACI working group on securities settlement has added the following STEP criteria: [ADD settlement criteria]

Most existing CP programmes and certificates of deposit (CD) can be expected to be in a position to fulfil the STEP criteria with some adjustments. When it comes to medium term notes (MTNs), several members of the Working Group expressed the need to exclude MTNs from the scope of STEP since these programmes often follow other rules and present different characteristics to those applicable to CP and CD, respectively. The exclusion of MTNs is, however, not in itself a STEP criterion and, instead, most MTN programmes will be excluded since they do not comply with certain general STEP criteria (such as a maturity not exceeding one year). The above defining features would also cover without any distinction all kinds of issuers with regard to existing CP and CD programmes and any freely convertible currency of issue.

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<sup>11</sup> [To be added]

<sup>12</sup> See the proposed draft standard STEP information memorandum in Annex 2.

<sup>13</sup> See the proposed draft market convention in Annex 1.

### **2.3 Common format and content**

According to the ACI Report, most of the markets studied already provide for a set of standard elements for 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 the English language. The Working Group has taken ACI Recommendation No. 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, the Working Group suggests that the standard information memorandum should include the following information, as further specified in Annex 2:

- Summary of the programme;
- Presentation of the issuer and incorporation;
- Financial information on the issuer;
- Arranger and dealers (if any);
- Ceiling for the outstanding;
- Currencies;
- Denomination;
- Maturities;
- Rating;
- Governing law, place of performance and jurisdiction;
- Form of the notes;
- IPA;
- Selling restrictions (if any);
- Guarantee (if any);
- Termination events, events of default (if any);
- Name of the person(s) in charge of establishing the information memorandum and the person(s) responsible for it;
- Accounting method.

With regard to the inclusion of 'financial statements', the enlarged task force meeting stressed that even if there is a possible delay for the release of the financial statement, 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 the various countries. Nevertheless, it should be noted that the information memorandum and its content will not replace the need for credit analysis, and that it does not constitute a guarantee offered to investors about the issuer's solvency.

The Working Group has been conscious to propose a standard information memorandum for STEP that would cover without any distinction all kinds of issuers: this concerns in particular the traditional

distinction under certain jurisdictions between CD issued by credit institutions and CP issued by corporates. Other areas that have been afforded special consideration are related to the specific information requirements for asset-backed CP (ABCP) and the use of special purpose vehicles (SPVs) as issuers of CP. In view of the increasing growth of the ABCP markets, particular attention has to be paid to the peculiarities of the information memorandum for such instruments. The work currently undertaken by the CESR in respect of the proposed Prospectus Directive might serve as a basis in this context.<sup>14</sup> The Working Group is also of the view that, for securitisation transactions using an SPV as issuer, specific information will be required concerning the transaction and the SPV.

The STEP standard information memorandum should be signed by the person responsible for the submission of the information memorandum and would need to be up-dated yearly and each time a significant event occurs. This is of particular importance in view of the proposal that the STEP label would be granted to the programme as such. It was also felt essential to specify the mandatory or optional nature of the information to be provided as part of the proposed information memorandum. Some members of the Working Group also stressed that the liability of dealers should not be engaged in any circumstances in relation to the content of the information memorandum.

### **3. Availability of the information memorandum at the ECB**

#### **3.1 Easy access to information**

The public availability of the information memorandum to every issuing and paying agent, market dealer, rating agency or any other market participant, would contribute to enhance the accessibility and transparency of the market. At the outset, the Working Group would therefore like to stress the need for easy and speedy access to the information contained in the information memorandum and recommends that the information should be available to any market participant. The information recorded in the information memorandum would need to be regularly up-dated, as referred to in section 2.3 above, 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 an electronic format.

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<sup>14</sup> See in this respect the CESR's Advice on Level 2 implementing measures for the proposed Prospectus Directive, CESR/03-066b Annexes to technical advice.

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

The ECB and the ESCB are invited to play an important part in the organisation and the functioning of the European market for STEP, with the intention that such involvement will enhance the credibility of the STEP market and ensure a neutral place for the collection of this 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:

- The ACI Report identified that a key success factor for the development of the US and French markets had been the clear involvement of the Federal Reserve Bank and the Banque de France in the 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 an homogeneous organisation of the European short-term paper market.
- Short-term paper are 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 2/3 of the short term paper market is now constituted of bank issuers and banks usually act as dealer for short-term paper.
- Banque de France is already playing this role in France for the French CP market (and so are other central banks in other countries).

The recommendation that the ECB, and the other central banks of the ESCB, would receive the STEP information memoranda and ensure that they are available and regularly updated is not intended to imply any involvement of the central banks in any credit assessment of the issuers. The involvement of central banks should also not be construed so as to incur liability with regard to STEP programmes on the part of the central banks. Instead, this ACI Recommendation is limited to invite the ECB and the NCBs to play an important role in the organisation and the functioning of the market. It should also be pointed out that investors would still have the possibility 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. In its deliberations, 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 at the ECB/ESCB level. How the requested arrangements for the STEP information memoranda are organised among the central banks, on the other hand, is left for 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. 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 with an important involvement of the central bank. Whatever solution might be chosen, the Working Group would like to stress that it should be easy to submit information and there should be one access point where the STEP information memoranda are available on an (instantly) up-dated 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 possibility for this to be achieved 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 set of proposed draft terms of reference for such a STEP market convention (attached as Annex 1 to this Report). It is suggested that the standard STEP information memorandum could be annexed to this proposed market convention as an integral part of its terms of reference. Although a consensus emerged in the Working Group on the nature of the information to be provided for inclusion in the STEP information memorandum, it would also be necessary to examine which of these minimum features would need to be integrated in the framework of the convention approach. It would also be recommendable to examine further whether certain aspects of the STEP market convention and information memorandum might perhaps even require a change in some national laws for STEP to work in all Member States.

The Convention could define:

- the mandatory features of STEP;
- [ADD items];
- the obligations incumbent upon issuers in order to obtain the STEP label (in terms of information requirements, provision of statistics, settlement); and
- the procedure to be followed by issuers in order to apply for the STEP label.

On the issues covered by the other ACI working groups on statistics and settlement procedures, the market convention will need to be further elaborated on the basis of the conclusions and contributions of these two other working groups.

## **4.2 Implementation**

[To be completed with more details concerning the adoption and application of the proposed market convention and additional measures needed for the implementation of STEP]

## **5. Concluding remarks**

### **5.1 Main findings**

[ADD main findings of the working group]

### **5.2 Proposal for further action**

[ADD additional aspects concerning the market convention, the information memorandum and related obligations of the issuer and other parties. Co-ordination with the other ACI working groups will also have to be ensured in order to examine the possible impact of the requirements with regard to the collection of statistics and in terms of procedures for settlement. In addition, the proposed use of a standard information memorandum may at some point be shared with market regulators and the European Commission, as indicated at the enlarged task force meeting.]

# **ANNEX 1**

## **Report on Information Memorandum**

### **DRAFT MARKET CONVENTION**

PRELIMINARY DRAFT 21 May 2003

# **[PRELIMINARY DRAFT TERMS OF REFERENCE FOR A MARKET CONVENTION]**

[ADD INTRODUCTION WITH REFERENCE TO THE ADOPTING MARKET ASSOCIATIONS]

Considering the different classes of instruments negotiated on national money markets in the EU, the absence of Community legislative framework applicable to the issuance of money market instruments and the different rules applicable to these instruments;

Considering the heterogeneity and the structural differences and differing degrees of development of domestic money markets from one Member State to another;

Whereas money market instruments are defined under Community law as instruments normally dealt in on the money market which are liquid, and have a value which can be accurately determined at any time; whereas they include in particular commercial paper, Euro-commercial paper, certificates of deposit;

Whereas securities with less than 12-month maturity fall outside of the scope of the proposed Prospectus Directive; whereas Member States have therefore the freedom to define their own legislation in terms of disclosure requirements;

Whereas the findings of the Euribor-ACI Task Force lead to the conclusion that some concrete measures should be initiated in order to increase the integration of European short-term securities markets and to favour the development of safe and liquid markets for commercial paper in Europe;

Whereas this Convention (the STEP Convention) is intended to apply to commercial paper (including Euro-Commercial paper) and certificates of deposit issued by corporates, credit institutions and international organisations; whereas it does not intend to apply to MTNs;

Whereas the Convention applies to securities of more than one day and with less than 12-month maturity;

Whereas the Convention also covers asset-backed securities of a maturity of less than 12 months;

Whereas the minimum denominations of the securities should be [ ] and [ ];

Whereas the currencies accepted must be [ ];

Whereas the instruments referred to above and defined in the following will qualify as STEP for the purposes of this Convention;

Whereas the instruments are intended to be offered exclusively to professional investors;

Whereas the Convention does not affect the applicability of existing national rules for the issuance of domestic money market instruments;

Whereas this Convention applies without prejudice to the fulfilment by issuers of their obligations under national laws of Member States;

Whereas the eligibility as STEP does not prejudice the eligibility of these assets as collateral for the purpose of monetary policy operations;

Whereas issuers wishing to obtain the STEP label, as provided by the European Central Bank, will have to voluntarily comply with a series of requirements, as defined in the Convention;

Whereas the need for a standardised Information Memorandum for STEP is considered essential by investors and intermediaries and other market participants in order to enhance market transparency;

Whereas the submission of the Information Memorandum to the European Central Bank by issuers wishing to obtain the STEP label will constitute one of these requirements;

Whereas it will be ensured that the information concerning the programme and the issuer is easily available in a language customary in the sphere of international finance (i.e. in English);

**[statistics: to be completed depending on the conclusions of the ACI working group]**

**[settlement: to be completed depending on the conclusions of the ACI working group]**

Whereas, for the purpose of efficiency, it is envisaged to rely on the existing best practices in the different European jurisdictions;

Whereas the dematerialisation of all STEP instruments [should be favoured as a medium-term objective];

**[to be completed]**

## **1. STANDARD STEP INFORMATION MEMORANDUM**

The information that must be contained in the STEP Information Memorandum are detailed in the Annex to this STEP Convention.

**[Types of issuers:** corporates, credit institutions, SPVs, international organisations, etc: to be completed]

**[Minimum features of STEP including minimum denomination and possible restriction concerning the accepted currencies]**

A copy of the STEP Information Memorandum should be available at the ECB, in standard files and forms and on a website (conditions to be defined). This copy should be in English language. However, the Information Memorandum would only meet the STEP criteria if it is in full compliance with the information requirements contained in the Annex to this market convention. A mere translation of an existing domestic Information Memorandum valid under a given jurisdiction could not be accepted, if it does not meet the requirements for the STEP Information Memorandum. The STEP Information Memorandum should specify under which jurisdiction the CP is otherwise authorised.

A yearly review should be implemented in order to update the presentation of the issuer. In addition, the Information Memorandum should be immediately updated following a change of the ceiling of the outstanding amount, rating, identity of the guarantor or the conditions of the guarantee.

For the purpose of ensuring a high degree of transparency and of quality of the information, the STEP Information Memorandum must specify the name of the physical person in charge of the preparation of the Information Memorandum. This person must sign the Information Memorandum and state that, to the best of his knowledge, the information contained in the Information Memorandum is in fact true and do not contain any material misrepresentations.

The STEP issuer must submit a signed hard copy plus a copy in electronic format and agree that the Information Memorandum will be available at the ECB to any participant to the market, any paying agent, market dealer, rating agent or any other interested party who might request it. A secured electronic format will be available to the market since this is also an important component of this easy access.

**[Mandatory type of information/Optional: to be completed]**

## **2. OTHER OBLIGATIONS FOR STEP ISSUERS**

### *2.1. In terms of statistics reporting requirements*

[To be completed on the basis of the conclusions of ACI working groups]

### *2.2. In relation to the settlement*

[To be completed on the basis of the conclusions of ACI working groups]

## **3. PROCEDURE FOR OBTAINING THE STEP LABEL**

[To be completed]

COLLECTION OF THE INFORMATION MEMORANDUM AND REGISTRATION

**4. COLLECTION, PROCESSING AND PUBLICATION OF STATISTICS**

[To be completed]

**5. MONITORING OF THE DEVELOPMENTS OF THE STEP MARKET**

[To be completed]

*DISCLAIMERS*

No liability of the dealers

No liability of the ECB and of the ESCB

**ANNEX 1: STEP STANDARD INFORMATION MEMORANDUM**

**ANNEX 2: STATISTICS REQUIREMENTS [DEPENDING ON THE CONCLUSIONS OF THE ACI WORKING GROUP ON STATISTICS]**

**ANNEX 3: USER'S REQUIREMENTS FOR THE SETTLEMENT OF STEP [DEPENDING ON THE CONCLUSIONS OF THE ACI WORKING GROUP ON SECURITIES SETTLEMENT]**

## **ANNEX 2**

### **Report on Information Memorandum**

#### **STANDARD INFORMATION MEMORANDUM**

PRELIMINARY DRAFT 21 May 2003

# **[PRELIMINARY DRAFT] PROPOSED STANDARD INFORMATION MEMORANDUM**

This proposed standard information memorandum (STEP Information Memorandum) is intended to constitute an annex to the market convention (as described in Annex 1 of the draft ACI/EFMLG Report). Issuers wishing to get the STEP label must, among other requirements, provide the European Central Bank with an information memorandum containing as a minimum the information listed in this annex. It is composed of the five following parts.

## **FORMAT OF THE INFORMATION MEMORANDUM**

### **Cover page/General information**

Name and Corporate data of issuer;

Type of issue;

Guarantor (if any);

Arranger;

Dealer(s);

Issue and paying agent(s);

Legal Advisors (if any);

Name(s) of person(s) in charge of information about the program(s)

Name, address of auditor(s)

Address of Web site where information about the program is available

### **PART ONE: description of the issue**

#### **1.1 Programme**

- Summary of the programme
- purpose of the programme;
- multi-issuer programme; **[to be further examined]**
- ceiling of the outstanding volume;

- currency(ies) of the issue;
- characteristics of the notes;
- remuneration (methods);
- dealing and trading;
- name of the domiciliating institution;
- minimum issuance amount/minimum denominations;
- minimum amount of trade;
- maturity;
- form: materialized or not materialized [both forms would be accepted; however, the medium-term objective is to ensure that all STEP instruments are dematerialised];
- payment through [**to be checked with the ACI working group on settlement**];
- identification: ISIN [**to be checked with the ACI working group on settlement**];
- listing if any;
- location of issue;
- interest: fixed rate, floating rate, interest prepaid, ...;
- guarantee (if any); type, issuer of guarantee, mechanism (the full text of the guarantee is attached in annex n° 1 };
- Rating (see annex n°2);
- Rank/Status of the notes.

1.2 Form of notes n° 2 (i.e. when securities of a same nature are issued abroad - outside the EU: succinct presentation of the programme and of the markets where these securities are traded): the same information as for 1.1 has to be produced for each other type of notes.

**PART TWO: information concerning the issuer (and parent company if parent company is the 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 – Company’s purpose (detailed)

2.7 – Description of actual and detailed activity(ies) - current (including main activities, main categories of products/services supplied, turnover by branch and geographical area)

2.8 – Description of actual and detailed activity(ies) – forecast for near future

2.9 – Capital/Shareholding: list of main shareholders; amount of capital subscribed, number and classes of securities constituting it [the capital], unpaid part of capital, allotment of capital, information on the stock exchanges where the issuer's shares may be 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 Supervisory Board and list of members of Directory

### **PART THREE: Financial accounts and auditors reports**

3.1 – Accounts approved by the last meeting of the General Assembly

3.1.1: set of accounts

If the parent company is the issuer, the consolidated accounts have to be produced in the form approved at the last meeting of the General Assembly with production of the accounts for the previous fiscal year. If the issuer is a subsidiary: certified accounts of both the subsidiary and consolidated accounts of the parent company have to be produced

3.1.2: Directors’ report to the General Assembly

Full text of the report

3.1.3: Auditors reports

Both the general and special report has to be produced – and all any other report from the auditors presented to the shareholders at the General Assembly in accordance with the regulations of the country of the registered office. The minimum information to be produced is the auditors’ report on annual accounts.

3.2 – Accounts approved by the previous General Assembly

The same set of documents has to be produced (3.2.1 to 3.2.3)

3.3. - Accounting method used

## **PART FOUR – Other legal and regulatory aspects**

- 4.1. Selling restrictions (optional)
- 4.2. Law applicable to the issuer
- 4.3. Jurisdiction
- 4.4. Taxation
- 4.5. Recourse to derivatives
- 4.6. Involvement of other national authorities

## **PART FIVE – Certification of information**

### 5.1. Person in charge of the Information Memorandum

Declaration of the person (s) in charge of the Standard Information Memorandum

To our knowledge, the data contained in this documents is up to the actual facts and do not contain any misrepresentation which would corrupt its purview. These data will be updated according to the specifications of the STEP market convention.

Signature

Name

Title

- 5.2. Authorised signatory declaration
- 5.3. Name, address and capacity of independent auditors of the company
- 5.4. Disclaimer clauses for delayers, IPA and arranger

## **Annexes**

- Annex n° 1: copy of full text of guarantee
- Annex n° 2: copy of all ratings
- Annex n° 3: copy of the Information Memorandum of each guarantor
- Annex n° 4: financial accounts (last two years)
- Annex n° 5: Report of independent auditors

## **ANNEX 3**

### **Report on Information Memorandum**

**COMPARATIVE APPROACH: FRENCH CP, EURO-CP  
AND STEP INFORMATION MEMORANDUM**

PRELIMINARY DRAFT 21 May 2003

**INFORMATION MEMORANDA: MINIMUM MANDATORY INFORMATION REQUIREMENTS<sup>15</sup>**

	French CP		ECP Info Memorandum		STEP Draft Information Memorandum	
	Dossier de Présentation Financière (DPF)					
<b>Information requirements:</b>	<b>Information available (Yes/No)</b>	<b>Mandatory requirements (Yes/No)</b>	<b>Information available (Yes/No)</b>	<b>Mandatory requirements (Yes/No)</b>	<b>Information available (Yes/No)</b>	<b>Mandatory requirements (Yes/No)</b>  <b>Mandatory for the STEP label (Yes/No)</b>
<b>1. General information</b>						
Name and corporate data of the issuer (see also below)	Yes	Yes	Yes			
Type of issue	Yes	Yes	Yes			
Guarantor (if any)	Yes	Yes	Yes		Possible	
Arranger	Yes		Yes			
Dealer(s)	Yes	Yes	Yes			
Issue and paying agent(s)	Yes	Yes	Yes			
Legal advisors (if any)	Yes (if any)	No	Yes (if any)			

<sup>15</sup> This analysis does not take into account possible issuance of ABCP

	French CP Dossier de Présentation Financière (DPF)		ECP Info Memorandum		STEP Draft Information Memorandum	
<b>2. Description of the issue</b>						
<b>2.1. Description/Summary of the programme</b>						
Purpose of the programme	Yes	Yes				
Multi-issuer programme	No	No				
Ceiling of the outstanding volume for the fiscal year	Yes	Yes				
Currency(ies) of issue	Yes	Any currency except possible temporary suspension of the Banque de France				
Characteristics of the notes	Yes	Yes				
Remuneration (methods of)	Yes	Yes. Notification to the Banque de France when the indexation clause is not anchored to				

	French CP Dossier de Présentation Financière (DPF)		ECP Info Memorandum		STEP Draft Information Memorandum	
		an usual interbanking rate				
Dealing and trading	Yes	Yes				
Name of the "domiciliating institution"	Yes	Yes				
Minimum issuance amount/minimum denominations	Yes	Specified by the law				
Minimum amount of trade	Yes	Specified by the law				
Maturity	Yes	Between 1 day and 1 year				
Dematerialised/Materialized form	Yes	Yes				
Identification (ISIN code, Euroclear)	?	Yes				
Listing (if any)	Not applicable					
Location of issue	?	?				
Yield basis/Interest (fixed rate, floating rate, interest prepaid,...)	Yes					
Rank/Status of the notes						
Guarantee (type, issuer, certified copy)	Yes	Yes				

	French CP Dossier de Présentation Financière (DPF)		ECP Info Memorandum		STEP Draft Information Memorandum	
-see annex)/Liquidity line						
<b>2.2. Form of the notes n°2 (i.e when securities of a same nature are issued abroad): succinct presentation of the programme and of the markets where these securities are traded</b>	Yes	Yes				
<b>3. Information concerning the issuer (including legal and financial situation)<sup>16</sup></b>						
Corporate name	Yes	Yes				
Legal form/status	Yes	Yes				
Date of incorporation	Yes	Yes				
Registered office with country of	Yes	Yes				

<sup>16</sup> Further analysis will have to be undertaken to examine the type of information requested for SPV issuing ABCP. 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 Info Memorandum		STEP Draft Information Memorandum	
incorporation						
Registration number, place of registration	Yes	Yes				
Company's purpose	Yes	Yes				
Capital/Shareholding Amount of capital subscribed, number and classes of securities constituting it [the capital], unpaid part of capital, allotment of capital, information on the stock exchanges where the issuer's shares may be traded	Yes	Yes				
Fiscal year (starting on, ending on)	Yes					
List of the Members of the Board of Directors/ Supervisory Board	Yes	Yes				
Listing						
Description of activity(ies) (current) including main activities, main categories of products/services supplied, turnover by branch and	Yes	Yes. For credit institutions, specific information				

	French CP Dossier de Présentation Financière (DPF)		ECP Info Memorandum		STEP Draft Information Memorandum	
geographic area		requested				
Description of activity(ies) (forecast for near future)	Yes	Yes				
Address of the website where information about the programme is available	Possible	No				
<b>4. Financial accounts</b>						
Last annual report (including financial statements)	Yes	Yes				
Previous year	Yes	Yes				
<b>5. Other legal and regulatory aspects</b>						
Selling restrictions	Possible	No specific requirement	Possible			
Law applicable to the issuer	Yes	Yes				
Jurisdiction	Yes	Yes				
Termination /Events of default	No	No				

	French CP Dossier de Présentation Financière (DPF)		ECP Info Memorandum		STEP Draft Information Memorandum	
Taxation	Possible	No specific requirement				
Recourse to credit derivatives	No	No				
<b>6. Certification of information</b>						
Person in charge of the Information Memorandum	Yes	Yes	No			
Authorised signatory declaration	Yes	Yes	No			
Name, address and capacity of independent auditors of the company	Yes	Yes	No			
Disclaimer clauses for dealers, IPA and arranger	Possible	No	Yes			
Update	Immediate following an important change or on a regular basis	Yes, in particular following a change of the ceiling of the outstanding amount, rating,	No			

	French CP Dossier de Présentation Financière (DPF)		ECP Info Memorandum		STEP Draft Information Memorandum	
		identity of the guarantor or the conditions of the guarantee				
Obligation to deliver the updated Information Memorandum to whom may request it	Yes	Yes (établissement domiciliataire, intermediary, every person who requests it)	No			
Early redemption	Yes	Issuers must inform every week the Banque de France				
<b>7. Annexes</b>						
Guarantee (if any)						
Rating notice(s)	Yes	Yes				
Report of independent auditors	Yes	Yes				
Info memo of the guarantor	Yes	Yes				

## **ANNEX 4**

### **Report on Information Memorandum**

#### **INFORMATION REQUIREMENTS IN THE EU**

PRELIMINARY DRAFT 21 May 2003

## **Information requirements in EU Member States**

This Annex contains brief descriptions of the existing national information requirements, as reported in the EFMLG Report.<sup>17</sup> and takes into account some recent developments in France and the United Kingdom.

### Belgium

In Belgium, for each CP programme a prospectus is 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 the Banking Commission (CBF) and agreed by the same authority.

### Germany

In Germany, a prospectus is required under section 7 of the Prospectus Act (Verkaufsprospektgesetz) of 1998. In practice, exemptions apply in case of restricted subscribers, minimum tradable lots beyond DEM 80.000 or maturities below 1 year. Prospectuses have to be deposited with the Federal Financial Supervisory Agency (BAFin).

### Spain

In Spain, under the Law, Article 26(d)), before issue, a prospectus must be presented to and registered (with some exceptions) with the CNMV (Comisión Nacional del Mercado de Valores: Spanish securities supervision agency). The prospectus must contain enough information for an investor to make a judgement on the proposed investment. It must state the conclusion of the mandatory audits as per Article 27 of the Law, the obligations derived from the securities, and the procedure for placing the security on the market. The prospectus 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 would often be exempt from the requirement for prior

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<sup>17</sup> 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.

registration of a prospectus with the CNMV (applicable to issues with a maturity of less than 12 months).

## France

The issuers of TCN benefit from the derogation to submit a prospectus, but need to fulfil certain disclosure obligations concerning their economic and financial situation and their issuing programme. Accordingly, there is no prospectus requirements for French CP. However, under Article L. 213-4 of the French Financial and Monetary Code, the issuers of TCN 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 "Dossier de présentation financière" (information memorandum). This information memorandum is communicated to the Banque de France, who is thus informed of any new entrant on the market and receives the information memorandum.

A typical TCN (negotiable debt security)<sup>18</sup> issue involves three documents: an Information Memorandum (*Dossier de présentation financière* or *DPF*); a *domiciliaire* agreement;<sup>19</sup> and a dealer (or subscription) agreement.<sup>20</sup>

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 activity of the issuer, its financial situation and a general presentation of the issue programme. In particular, this document must contain:

- the programme amount envisaged for the year 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 or its issuance programme, a copy of the rating certificate(s) delivered by the rating agency(ies);

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<sup>18</sup> Titres de créances négociables (TCN) –negotiable debt securities. As mentioned, this covers under French law, billets de trésorerie (commercial paper), certificates of deposit and Medium-Term Notes. Treasury bills are subject to a different set of rules.

<sup>19</sup> A written *domiciliaire* agreement must be put in place between the issuer and the *agent domiciliaire* and detail 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 the French language.

<sup>20</sup> A dealer agreement is generally also put in place which records 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.

- the means of placement and names of initial dealers;
- the name of the *établissement domiciliataire*. Issuers of TCNs must domicile their securities under the conditions of the General Regulation of the CMF at an authorised credit institution or an investment firm managing custody accounts.

Generally, the principal dealer acts as *établissement domiciliataire*. However, each dealer increasingly acts as *établissement domiciliataire* for the TCNs that it has placed or subscribed. Finally, when the issuer is a French credit institution, it acts as its own *établissement domiciliataire*;

- 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.<sup>21</sup>

Details of the legal or natural person responsible for the Information Memorandum must be given. This person must take responsibility for the contents of the Information Memorandum and its conformity to the applicable regulations. This person must, in addition, state that to its/his knowledge, and at the date of the Information Memorandum, the information contained in the Information Memorandum is true and accurate and that there is no information the omission of which would make such information misleading. As a result of this statement, issuers generally include a “recent development section” in the Information Memorandum.

The Information Memorandum must include (directly or by reference), in relation to 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 of the managing board and of the supervisory board, and (iv) the report of the issuer’s auditors.

Applicable regulations require that the accounts to be included in the Information Memorandum are drawn up in accordance with French accounting standards but allow the COB to adapt his requirement for 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 organisational chart of management, (iii) the location of the issuer’s headquarters, (iv) the creation, purpose and registration of the issuer, (v) the activities and operations of the issuer (with specific provisions depending on whether the issuer is a commercial/industrial company or a bank), and (vi) the stock exchange on which dealings in the issuer’s securities take place.

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<sup>21</sup> The description of the information required to issue an Information Memorandum are detailed in the Guidance from Allen & Overy, Bulletin on French domestic negotiable debt securities, May 2002

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 with the status of credit institution or investment firm must prepare a half-yearly report on their activities and results and quarterly statements according to the models set out by the *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 maturity 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 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".

On 5 February 2003, the French Council of Ministers adopted the draft law on financial security which was submitted to the French Parliament in March.<sup>22</sup> This draft law contains some provisions which amend the rules applicable to TCN (negotiable debt securities) and which should be complemented in the next months of amendments to secondary legislation (Ministerial Orders and Decrees<sup>23</sup>).

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, i.e. the AMF (as a result of the merger of the COB and of the CMF) and of the Banque de France. For instance, Article L.213-4 of the Code, as amended, will provide 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 of the Code.

Under the new provisions on negotiable debt securities envisaged by the French authorities, the AMF, as for the debt securities markets, will be empowered in particular to ensure the surveillance of financial information continuously without having to deliver any visa, and the compliance of operators with business conduct rules. The AMF will only grant a visa for prospectus in the (limited) cases of "appel public à l'épargne" (public offerings) 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 surveillance of the TCN

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<sup>22</sup> See the draft law on financial security ([www.assemblee-nationale.fr](http://www.assemblee-nationale.fr))

<sup>23</sup> For more details, see the EFMLG Report of September 2002. The amendments to secondary legislation regarding TCN are not yet known.

market. The ECB indicated in the opinion that it welcomes this clarification which should ultimately benefit TCN issuers, investors and other market participants.

Under the draft law as adopted in first reading by the French Senate in March 2003, the applicable provisions contained in the Code (and in particular Articles L.213-2 and L.213-4 of the Code) will also be amended to relax the applicable language regime (including in respect of accounting standards) and to provide the possibility for issuers, under certain circumstances, to submit financial documentation in a language customary in the sphere of finance other than French.

Moreover, the current obligation imposed on TCN issuers to prove two years of existence will be repealed and all types of international organisations will be also authorised to issue TCN.

### 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, and only confirmed in writing after oral agreement. Additional safeguards would be that the agent would contact not more than five purchasers on any one day and/or would make an offer only to persons who expressed an interest in the notes and/or would not disclose the identity of the issuer to potential purchasers in the initial stages of the offering. The facility letter would also contain 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 from holding a banking licence, 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, there is no obligation to issue a prospectus. The "Istruzioni di Vigilanza" of Banca d'Italia lays down the main features that are mandatory for cambiale finanziaria and polizza di credito commerciale. The issuance of certificates with features different from those laid down by the "Istruzioni" must first be notified to Banca d'Italia following the procedure in Article 129 of the Consolidated Banking Law.

## Luxembourg

In 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

In 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

In, Austria, Article 2 of the Austrian Capital Market Act requires a prospectus when securities are offered to the public. No prospectus is needed when securities are only offered to limited number of professional investors or in case of continuous issues by credit institutions.

## Portugal

In Portugal, under Article 7 of Decree-Law No. 181/92, a prospectus describing the main features of the issuing programme and about the financial situation of the issuer must be released.

## Finland

In 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, anyone who issues securities (e.g. CP) to the public must provide enough information on any circumstances that may substantially affect the value of the securities.

## Sweden

In Sweden, the law does not distinguish between retail and professional investors as such for 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 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 UK authorities (including in particular the Treasury and the Bank of England) have launched an important on-going reform of the rules applicable to money market instruments. The purpose is mainly to modernise the settlement of these instruments mainly under the form of a dematerialisation process. This reform involves other changes, in particular in respect of the terms of issuance for these instruments as well as for the market documentation .

The reform does not only deal with Money Market Instruments (MMIs) (for instance commercial paper, certificates of deposit and bankers' acceptances) but also with other marketable negotiable debt securities, of whatever maturity, including Medium Term Notes<sup>24</sup> 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" (EDSs<sup>25</sup>). It does not, however, encompass the issue of Treasury bills or local authority instruments .

In relation to this dematerialisation process, the Bank of England has issued in November 2002 and March 2003 two consultation documents regarding the future of money market instruments on pro forma terms of issuance for EDSs.<sup>26</sup>

In its first consultation document, 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 £ 100.000 and minimum trading multiples).

The deed, together with a notice of issue, constitutes the units of an eligible debt security. It is intended that the deed be issued in conjunction with some other documents as may be customary for a particular type of money market instrument, for example an Information Memorandum for commercial paper, 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

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<sup>24</sup> It was however agreed that this round of work on the pro forma terms should not attempt to cover MTNs.

<sup>25</sup> MMIs (Money Market Instruments) 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 banker's 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 note will systematically refer to the notion of EDSs.

<sup>26</sup> 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 and.. It includes in its Annex the draft terms for EDS corresponding to CD/CP as well as the terms for EDS corresponding to banker' acceptances

reflect the issues of EDSs. It is also noted that MMIs/EDS are not generally listed or subject to prospectus requirements.<sup>27</sup>

The EDS terms are structured as a deed that is intended to be used in respect of the issue of units of a single eligible debt security or a programme of such securities which may include eligible debt securities corresponding to different types of money market instruments.<sup>28</sup> The purpose is to ensure that holders of securities issued under it acquire directly enforceable rights against the issuer.

The deed would need only be executed once and not every time new units of an EDS are issued (although in principle there could be a separate deed for each issue). The constituting 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 EDS e.g. the rate of interest, maturity date, the identity of any guarantor etc.) and their issue would take place through the CREST system. It is contemplated that the deed could be used with any type of EDS, although the proposed consultation envisages seeking views on this approach and on the alternative of having a separate deed for different types of instrument.

It should be noted, that, in the UK, the Information Memorandum sets out basic details regarding the issuer and guarantor (if any). This is used as the marketing tool for the programme by the dealers and is distributed 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 the life of the memorandum. 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 up-date annually or at least upon any material changes taking place.<sup>29 30</sup>

The Bank of England and the BBA have issued guidance notices on CDs and the CD market in the interests of orderly and efficient market in the UK. Since progress has been made on the MMI/EDS reform, it was agreed with the BBA that a Group would be set up to consider the updating of the market guidelines on commercial paper<sup>31</sup> and CDs.<sup>32</sup> This would take account of the new non-material

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<sup>27</sup> See The Bank of England and the Sterling Money markets, January 2002

<sup>28</sup> Where the deed is used for the issue of units under a programme of EDS, the issuer will not need to enter into a separate deed for each issue but simply complete a notice of issue on each occasion that it proposes to constitute EDSs under the programme.

<sup>29</sup> See London Market Guidelines on Commercial Paper, BBA, April 2000

<sup>30</sup> The draft Model Global Commercial Paper Dealer Agreement above mentioned 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*".

<sup>31</sup> See London Market Guidelines on Commercial Paper, British Bankers' Association (BBA), April 2000. They give guidance on aspects of commercial paper 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.

<sup>32</sup> As of November 1996

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 FSMA (Financial Services and Markets Act 2000) in December 2001.<sup>33</sup>

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<sup>33</sup> 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 FSMA legislation, 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.

## **ANNEX 5**

### **Report on Information Memorandum**

**ACI/EFMLG WORKING GROUP ON INFORMATION MEMORANDUM**

PRELIMINARY DRAFT 21 May 2003

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

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Mr Stéphane Kerjean	ECB, Secretary
Mr Stéphane Béraud	Banque de France, Observer
Mr Philippe Billot	Axa Investment, ACI
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Mr Franck Hebeisen	Société Générale
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The views expressed in this Report are those of the members of the ACI/EFMLG Working Group on Information Memorandum for Short Term European Paper and do not necessarily represent those of their institutions or the ECB.