

ACI/EFMLG
Working Group on the STEP Information Memorandum

THE INFORMATION MEMORANDUM
FOR SHORT TERM EUROPEAN PAPER
(STEP)

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[DRAFT] 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 address the definition of 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 standard information memorandum can 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 may function. Once the defining features of STEP have been indicated and the standard STEP information memorandum prepared, the Working Group also decided to give some thoughts to the practical implementation of the proposed arrangements for STEP.

The definition of STEP is addressed on the basis of existing short-term instruments (rather than the creation of an entirely new STEP instrument) and the reference to STEP is seen as a "label" which can be given to programmes on the basis of their fulfilment of 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 are fulfilled before the programme can 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 following general defining features of STEP are proposed to 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 in bearer form;
- 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 200 000 or the equivalent in other currencies;
- issuance in a freely convertible currency permitted by relevant authorities;
- publication and regular update of a standard information memorandum for STEP in the English language and submission of the information memorandum to the ECB;
- 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.

Taking the above defining features of STEP 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 and incorporation;
- Financial information about the issuer;
- Arranger and dealers (if any);
- Ceiling for the outstanding;
- Currencies;
- Minimum issuance amount;
- Maturities;
- Rating (if any) and, 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 the drawing up of the accounts and annual reports.

The Working Group supports the idea that the ECB and the ESCB are involved with regard to the implementation and functioning of the arrangements for STEP and proposes that the standard STEP information memorandum is submitted by an issuer wishing to obtain the STEP label to the ECB/ESCB. The Working Group has focused on the functionality requested by market participants for the submission and retrieval of information and 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 ECB and 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 where 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 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 the collection of statistics and in terms of procedures for settlement. Another important dimension of the follow-up would include the presentation of the proposals prepared by the market participants to the ECB and the ESCB and the presentation of the issues indicated by the Working Group where the involvement of the ECB/ESCB can be requested. In addition, the envisaged STEP arrangements and the proposed use of a standard information memorandum may at some point be shared with market regulators (in particular with CESR) and the European Commission, as indicated at the enlarged task force meeting. 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 before it can be adopted.

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

1. Introduction

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

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, and in particular the commercial paper 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

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 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.

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 of the European Financial Markets Lawyers Group, 2 September 2002.

March 2003 (the “enlarged task force meeting”).⁶ The market participants in attendance considered 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 the information memorandum for short term European paper (the “Working Group”)⁷ 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.

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.

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.

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 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 the investor community that the content and standardisation of the information memorandum are important. The Working Group wishes to clarify that the need for an English language version should be without prejudice to any local language version required by local 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 commercial paper market.

The ACI Report also recommended that the 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 participants at the enlarged task force meeting were in favour of having all the information easily accessible at one single 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 of the ECB’s 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 the market’s credibility. Furthermore, a central bank is considered as a “neutral” place for the collection 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.

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 regulatory 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 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 [now entitled the Financial Services Committee] 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 possible new initiatives following 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.⁸ 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 (hereinafter 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 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, the Working Group 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.

The second ACI Recommendation proposes that the information memoranda should be available at the ECB and section 3 considers the role of central banks in respect of the information memoranda in order to implement this recommendation and 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 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 activity.

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 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 new Prospectus Directive⁹ 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

⁸ 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 compliance with local and other applicable laws.

⁹ See Article 2(1)(a) of the 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).

between professionals. The existing differences of approach in the respective 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 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 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 in France, the submission of an information memorandum to the central bank constitutes a legal requirement.

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 participants 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 order to 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 address the issues related to the definition of STEP on the basis of the existing instruments (rather than creating 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 on the basis of their fulfilment of 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 are fulfilled before the programme can 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. To illustrate this point, Annex 3 compares the requirements for information memoranda for French CP, ECP and the proposed criteria for STEP.

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,¹⁰ 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, and these are reflected in the proposed market convention intended as a means to implement STEP¹¹ (to which the standard information memorandum should be annexed). These general features include the type of issuers, the minimum issuance amount of the instruments and the currency of issue (see the proposed market convention and standard STEP information memorandum).

As regards the type of issuers, the Working Group considered that the purpose of the STEP initiative would not be to discriminate against certain types of issuers. The possibility to obtain 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 supnationals), 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 CDs issued by credit institutions and CP issued by corporates.

As concerns 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. 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 200 000 or its equivalent in other currencies, although some flexibility could also be envisaged in this area.

In the absence of Community legislation for money market instruments (for instance, neither the Prospectus Directive, nor the proposed "transparency" Directive¹² apply to money market instruments), Member States are free to set the conditions applicable to their domestic markets and to

¹⁰ See the proposed draft standard STEP information memorandum in Annex 2.

¹¹ See the proposed draft market convention in Annex 1.

¹² 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

authorise, for instance, individual investors to acquire domestic CP/CD. The proposal currently under consideration for a revised Directive on investment services and regulated markets¹³ (the proposed revised ISD) may also be noted in this connection. The proposed revised ISD makes a distinction between professional clients (including credit institutions, investment firms, financial institutions, insurance companies, UCITS, pension funds, large undertakings and other institutional investors, national and regional governments) and clients who may be treated as professionals on request provided they fulfil certain specific criteria. This distinction enables investment firms to treat under certain conditions clients as professionals and for such clients to waive some of the protections otherwise afforded by the conduct of business rules imposed on investment firms. In the context of the short-term securities markets and in view of the existing different national legislation, however, the restriction of the offering of programmes to professional investors should not be a requirement for the STEP label. Instead, the Working Group suggests that the wholesale nature of the STEP market is achieved through the high minimum issuance amount of EUR 200 000.

The Working Group also considered whether the instruments should be dematerialised as a requirement to obtain the STEP label. On the basis of the comments received from the members of the two other ACI working groups, it was felt that dematerialisation should not be a mandatory criterion for the STEP market since 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, the Working Group agreed that all STEP instruments should be settled electronically in book-entry form even if not fully dematerialised.¹⁴

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 in bearer form;
- by different groups of issuers (including corporates, credit institutions and financial institutions, securitisation vehicles, cooperatives, public authorities, international organisations and supranationals);

¹³ 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 (ISD), Council working document, 28 August 2003.

¹⁴ 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.

- issuance with a minimum amount of EUR 200 000;
- issuance in a freely convertible currency permitted by relevant authorities;
- publication and regular update of a standard information memorandum for STEP in the English language and submission of the information memorandum to the ECB;
- 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.

In addition, the outcome of the deliberations of the ACI working group on index and volume statistics may entail a need to further specify the statistical requirements for a programme to be accepted as STEP. This will include the agreement to the publication of the statistical data according to an agreed procedure. The same caveat applies to the ACI working group on securities settlement, which may add or specify the STEP criteria concerning the settlement arrangements for STEP.

The above defining features would generally cover existing CP and CD programmes and all kinds of issuers with regard to 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 these programmes often follow other rules and present different characteristics from those applicable to CP and CD. The exclusion of MTNs would, however, not need to be formulated as a separate STEP criterion and, instead, most MTN programmes will be excluded since they do not comply with certain STEP criteria (such as a maturity not exceeding one year). The Working Group favours such a neutral approach with regard 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.

In return, the Working Group suggests that any programme will only be able to keep the STEP label if 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 the STEP criteria and obligations, 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

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;
- Nature of the issuer (e.g., corporate for CP, bank for CD, securitisation vehicle for asset-backed CP)
- Presentation of the issuer and incorporation;
- Financial information about the issuer;
- Arranger and dealers (if any);
- Ceiling for the outstanding;
- Currencies;¹⁵
- Minimum issuance amount;
- Maturities;
- Rating (if any) and, 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 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 possible 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 on-going developments regarding company law, auditing and accounting rules at the Community level and the still different practices among Member States

¹⁵ See Annex 2 for the description of currency in the standard STEP information memorandum.

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 are related 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 CESR in respect of the Prospectus Directive¹⁶ highlights that, in addition to the information usually requested in a prospectus,¹⁷ the minimum disclosure requirements for asset-backed securities would 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. Although the information should probably not be as exhaustive as in a prospectus, this kind of information could be requested also for the STEP information memorandum, although the optimal level of disclosure needs to be further examined.¹⁸

The person responsible for the submission of the information memorandum, who should be a duly authorised officer of the issuer, should be required to sign the STEP standard information memorandum. 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 and accepts to comply entirely with its provisions and its implications (for instance in case of withdrawal of the label).¹⁹ The STEP information memorandum will need to be up-dated yearly and every time a significant event occurs. This is of particular importance in view of the proposal that the STEP label will be granted to the programme as such. The Working Group has also made an attempt to specify in Annex 2 and Annex 3 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. This issue may be further considered and the proposed draft text for a market convention includes a reference to the

¹⁶ See in this respect CESR's Advice on Level 2 implementing measures for the Prospectus Directive, CESR/03-208, July 2003

¹⁷ Information related to the persons responsible for the information given, the auditors, the risk factors, the information about the issuer, business overview, administrative, management and supervisory bodies, major shareholders, financial information concerning the issuer, etc.

¹⁸ For more details, see Annex 2.

¹⁹ See Annexes 1 and 2.

possibility to add a disclaimer on the responsibility on the part of dealers for the information contained in the STEP information memorandum.²⁰

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.²¹ Such an exercise would, however, be time-consuming and should not be considered to be a priority at this point in 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 finds that, although not a necessary condition for the introduction of the STEP regime, such harmonisation and standardisation of market documentation could be beneficial and, therefore, the market associations should consider to further study the feasibility of such harmonisation and standardisation.

3. Availability of the information memorandum at the ECB

3.1 Easy access to information

The public 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.²² 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 all market participants. The information in the information memorandum should be regularly up-dated, as provided 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.

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 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 information. The following main reasons

²⁰ See at the end of Annex 1.

²¹ 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.

²² 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.

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 in 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 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 2/3 of the short term paper market is now constituted of bank issuers and 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 recommendation that the ECB, and the other central banks of the ESCB, 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 create central bank liability with regard to STEP programmes. Instead, the ACI Recommendation is limited to inviting the ECB and the NCBs to play an important 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. 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 ECB and 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 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 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.

The Working Group has made a tentative attempt to describe these features in the proposed draft market convention on STEP set out in Annex 1 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.

The market convention will however need to be further developed by the adopting market associations, including the proper incorporation of the conclusions and 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 implementation of the STEP arrangements should primarily take place through the adoption and application of the proposed market convention. It is in this respect important that the convention is adopted by as many of the relevant parties as possible and it is suggested that the convention is 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.²³

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 create some publicity prior to the launch and for the sponsoring market associations to issue a press release to the effect that they endorse STEP and summarising the STEP concept, the procedures in order 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 STEP in more detail and the procedures for obtaining the STEP label, possibly including conferences held at the ECB and the NCB's if such is agreeable to the central banks. Invitations should be targeted at the local bankers, corporate treasurers, fund manager and other related associations.

4.3 Consequences and expected benefits of the implementation of STEP

Considerable benefits should derive from the STEP system once it is 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 homogenised product. The transparency and standardisation of the instruments and information

²³ See section 1.1 above and footnote 6.

memoranda will facilitate comparison between issuers and paper. This will improve the efficiency of the market and reduce the cost of credit research and arranging programmes.

The ready availability of price indices and volume statistics will enhance the understanding of the market 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.

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 eligible asset under Article 19(1) of the UCITS investments Directive, provided it is issued by one of the four specified categories of issuers specified in the four indents in Article 19(1). This will help achieve a harmonised transposition of the UCITS investments Directive.

In the view of the Working Group, paper which meets the STEP criteria and has the STEP label should meet with favourable consideration by the European Central Bank in determining 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 additional aspects 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 additional aspects 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. Other such items are not referred to in such express terms, but should nevertheless be afforded further attention and some follow-up work by the ACI and the other interested parties before STEP is launched.

One important dimension of the follow-up would include the presentation of the proposals prepared by the market participants to the ECB and the ESCB and the presentation of the issues indicated by the Working Group where the involvement of the ECB/ESCB can be 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 interaction by 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 responsibility and liability of the central banks;
- 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 and the proposed use of a standard information memorandum may at some point be shared with market regulators (in particular with CESR) and the European Commission, as indicated at the enlarged task force meeting.

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 before it can be adopted. 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 test the legal implications of the proposed arrangements. Such a further 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 above could also be considered. Another very specific issue to consider further is the possible intellectual property aspects related to suggested use of the word “STEP” considering the use of this word by the Euro Banking Association (EBA). EBA already makes use of this word in connection with its payment system, Euro1, where STEP1 denotes an additional payment service 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). Finally, the imminent enlargement of the EU to encompass additional Member States may also merit some further reflection with regard to the functioning of STEP.