Chapter II – International regulation and cooperation

The Commission des Opérations de Bourse (COB) and the Conseil des Marchés Financiers (CMF) pursued their international activities against the backdrop of stabilising financial markets and intensive efforts to implement the European Commission's Financial Services Action Plan. Under the Greek and Italian presidencies of the European Union (EU), regulators played an active part, ***inter alia***, in the overhaul of the Investment Services Directive and the Transparency Directive. Both the COB and the CMF made significant contributions to the preparation of Level 2 measures under the auspices of the Committee of European Securities Regulators (CESR). The first set of measures was adopted this year, giving real substance to the Lamfalussy Process.

In France, the role of the Autorité des marchés financiers (AMF) in regulating European and international financial markets was enshrined as a fundamental task in the Financial Security Act.

Also in 2003, the International Organization of Securities Commissions (IOSCO) held its eighteenth annual conference. The highlights of this event included the adoption of the methodology for assessing implementation of IOSCO's principles, the publication of the first list of signatories of the Multilateral Memorandum of Understanding on effective cooperation between IOSCO member-regulators, and the adoption by the Technical Committee of standards for securities analysts and credit rating agencies.

I – European integration: the Financial Services Action Plan

A – MARKET INTEGRITY AND INVESTOR PROTECTION

1 - Directive on insider dealing and market manipulation (Market Abuse Directive)

Directive 2003/6/EC of the European Parliament and Council of 28 January 2003, commonly known as the Market Abuse Directive, provides for the adoption of implementing measures by the European Commission. To that end, the Commission seeks technical advice from CESR.

Based on an initial CESR opinion issued in December 2002, the Commission published four pieces of legislation:

- Commission Directive 2003/124/EC of 22 December 2003 regarding the definition and public disclosure of inside information and the definition of market manipulation

- Directive 2003/125/EC of 22 December 2003 regarding the fair presentation of investment recommendations and the disclosure of conflicts of interest

- Commission Directive 2004/72/EC of 29 April 2004 regarding accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions

- Commission Regulation No 2273/2003 of 22 December 2003 regarding exemptions for buyback programmes and stabilisation of financial instruments

Directive 2003/124/EC expands on the definition of inside information, referring both to its "precise nature" and to the "significant effect" it is likely to have on financial instrument prices. The directive also sets out disclosure methods and deadlines in order to ensure that the public has timely access to inside information and is informed about any changes that might affect that information once it has been published.

There is an indicative list of legitimate interests for delaying the disclosure of inside information, as set forth in Article 6.2 of Directive 2003/6/EC on professional secrecy.

The text also gives a non-exhaustive list of signals which, while not manipulative behaviours in themselves, are taken into consideration by the competent authorities and market participants when examining transactions or orders.

Directive 2003/125/EC requires persons producing and disseminating investment recommendations to present them fairly and to mention any conflicts of interest.

It should be noted that although these provisions cover the research activities of both investment service providers and independent firms, they do not apply to credit rating agencies (CRAs). That said, one of the recitals recommends that CRAs should adopt internal policies and procedures to ensure the fair presentation and disclosure of the conflicts of interest listed in the directive.

In general, recital 22 of Directive 2003/6/EC stresses that "Member States should be able to choose the most appropriate way to regulate persons producing or disseminating research concerning financial instruments or issuers of financial instruments or persons producing or disseminating other information recommending or suggesting investment strategy, including appropriate mechanisms for self-regulation, which should be notified to the Commission". The aim is to preserve the special characteristics of certain professionals, and notably journalists, who are referred to in recital 11, which states that Directive 2003/125/EC does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media.

Regulation 2273/2003 sets out the conditions in which issuers can benefit from the system of exemptions applicable to buybacks of shares and stabilisation transactions in the primary market. Transactions effected by issuers meeting these conditions are irrebutably presumed to be legitimate, having regard to the prohibition on inside information and market manipulation. By contrast, practices such as front-running (where an intermediary sells ahead of its client to benefit from subsequent price changes), disclosure of inside information to third parties, or dissemination of false information are, in principle, not covered by this regime.

The new rules will expand on the existing regime, established in COB Regulation 90-04 on price setting, amended where appropriate, and will apply solely to buybacks carried out with a view to cancelling shares or remitting shares to employees or to convertible-bond holders. This will enhance the transparency of buybacks effected under the new framework.

The Market Abuse Directive must be transposed in its entirety by 12 October 2004 at the latest.

2 – Prospectus Directive

The directive on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive) was adopted by the European Parliament on its second reading on 2 July 2003 and published in the Official Journal of the European Union (OJEU) on 31 December 2003. Pursuant to Article 29, Member States have eighteen months from the date of publication in which to transpose the directive, that is, by July 2005 at the latest.

The new directive should enable the AMF to consolidate recent developments in the field of prospectuses, notably incorporation by reference of documents previously filed with the regulator and the system of post-filing monitoring of registration documents.

Compared with Directives 2001/34 and 89/298, this text contains substantive innovations, which the AMF will have to take into account in order to meet the goal of maximum harmonisation.

The European Commission has prepared a draft "detailed rules" regulation based on technical advice from CESR. Under the Lamfalussy Process, CESR is responsible for drawing up implementing measures for the directive.

Pursuant to the principle of the European passport, any prospectus approved by the issuer's home member state will be valid for a public offering or an admission to listing in any number of host member states, without the need for those states' competent authorities to initiate administrative procedures in respect of the prospectus. With this arrangement, the home member state will no longer be the issuer's country of listing but the country in which it has its registered office[1].

The directive contains the following provisions designed to expedite the introduction of the European passport:

- The home competent authority may delegate approval of the prospectus to the host authority, with the latter's approval.

- Issuers are permitted to draw up their prospectus solely in a language that is "usually accepted in the sphere of finance". The host competent authority is entitled to require only that a summary be translated into its official language, except in cases where the issue or listing is taking place in the home member state, in which case the prospectus must be drafted, as a minimum requirement, in a language acceptable to competent authority of that state. The text also sets forth even more flexible procedures for the admission of non-equity securities whose denomination per unit amounts of at least EUR 50,000[2].

- Member states are required to designate a central administrative authority charged with approving prospectuses. Where their national law so requires, they can designate several

[1] However, for some categories of securities, the directive leaves the issuer free to choose the home country. The aim is to preserve the eurobond market, which is already integrated at European level. The categories in question are:
- non-equity securities with a denomination per unit of at least EUR 1000 or a "denomination nearly equivalent" [to EUR 000] in a currency other than the euro;
- warrants or convertibles on the securities of a third party, with no rules on maximum or minimum amounts;
- all the securities of issuers whose registered office is in a third country.

[2] For these issues, the prospectus is prepared either in a language acceptable to the competent authorities of the home and host member states, or in a language that is usually accepted in the sphere of international finance (including where the issue is to take place in the home member state). Furthermore, issuers will not be required to publish a summary if this is not a legal requirement in the member states where admission has been requested.

independent administrative authorities, which themselves can delegate to other entities, organised in such a way as to avoid conflicts of interest.

To harmonise informational requirements, CESR has used the comitology procedure to determine prospectus formats that vary according to the securities being issued and, to a lesser extent, on the type of issuer. Because the directive is a maximum harmonisation directive, member states are not permitted to set more stringent disclosure requirements than those laid down for these formats.

a) The directive is consistent with some aspects of current French practice in the sphere of prospectuses

The directive endorses the system whereby documents previously filed with, or accepted by, a competent authority are incorporated by reference.

Furthermore, it takes into account the system of post-filing inspection of registration documents, insofar as issuers are entitled to incorporate by reference any document that has simply been filed with the regulator in accordance with the directive. In addition, the directive provides expressly that issuers filing a registration document that has not previously been inspected must obtain approval for its entire documentation – securities note, summary and registration document – from the competent authority.

The directive also seems to be compatible with the optional system of publishing a ***document de reference*** (equivalent to a registration document) currently in force in the French market. These documents are valid for twelve months and must be updated annually.

b) New provisions to be transposed in French law and regulations

The scope of the directive will entail changes to the definition of public offers

The scope of directive has been extended to cover the units issued by closed-end collective investment undertakings, but it does not apply to offers of securities where the total consideration is less than EUR 2.5 million. Member states are free to legislate beyond the provisions of the directive, so it will be up to the AMF to decide whether to oversee such issues or to amend the definition of public offers of securities in order to exclude them from its jurisdiction.

The directive also introduces a harmonised definition of qualified investors and small and medium-sized enterprises (SMEs). This will have to tie in with the definition of public offers, insofar as transactions aimed at such investors do not come within the scope of public offers.

According to the directive, the term "qualified investors" applies to all legal persons that are not SMEs, defined as enterprises meeting at least two of the following three criteria: an average workforce of fewer than 250 during the financial year, total assets not exceeding EUR 43 million, and annual net sales not exceeding EUR 50 million.

However, member states can authorise SMEs and/or natural persons who so request to be classified as qualified investors. Countries that adopt this provision must bear in mind that SMEs and natural persons wishing to be classified as qualified investors can decide at any time to opt out of this classification. This opt in/opt out system means that the competent authorities of the member states concerned will have to keep an updated register of individuals and SMEs considered as qualified investors, and to make it available to all issuers.

Broader scope for prospectus exemptions

Because the directive is based on maximum harmonisation, the prospectus exemptions it provides for are mandatory, in contrast to the previous text, where they were optional. In view of this particular feature, the AMF will be obliged to broaden the scope of its prospectus exemption procedure in three cases:

- regarding public offers, a prospectus will not be required for transactions involving former or current directors or employees, on two conditions: the securities in question must already be admitted to trading on a regulated market, and a document containing details of the offer must be made available to the interested parties;

- regarding admission to trading, bonus issues of shares to existing shareholders are also exempt from the prospectus requirement, provided that a document containing information about the number and type of shares, as well as the reasons for and details of the issue are made available to interested parties;

- shares representing less than 10% of the number of shares in the same category already admitted to trading on the same regulated market over a period of 12 months are exempted from the prospectus requirements, regardless of the number of beneficiaries involved, and the issuer is not required to have satisfied its disclosure requirements.

Amendments to ongoing disclosure requirements for listed companies

Issuers admitted to trading on regulated markets will be required to publish an annual list of information disclosed or made available to the public over the previous twelve months. This updating requirement will apply to all markets, but issuers of non-equity securities with a denomination per unit amounting to at least EUR 50,000 will be exempt. Complying with this requirement will not be equivalent to publishing a full ***document de référence***, as defined in the AMF regulations.

Cutting the review period

Competent authorities are now required to announce their decision on a public offering within ten working days of the submission of the draft prospectus (Article 13-2-1). The time period is extended to twenty working days if the offering involves the securities of an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public (Article 13-3). Supplements to a prospectus, if any, must be approved within seven working days at most.

If documents are incomplete, the competent authority must inform the issuer within ten working days of the submission of the application (Article 13-4-1a).

A more flexible procedure for issuers that are already admitted to trading on a regulated market and that frequently make public offers

For non-equity securities issued under an offering programme, as well as for mortgage bonds issued continuously or repeatedly by credit institutions, issuers can opt to publish a so-called base prospectus. This document contains relevant information about the issuer and the securities offered to the public or to be admitted to trading on a regulated market, with the exception of the final terms of the offer. The final terms may be specified at a later stage, either in a supplement filed with the competent authority or in a communiqué filed with that authority each time an issue is offered to the public.

Option to publish a prospectus in electronic form only

Publication requirements have been relaxed and issuers are now permitted to disseminate prospectuses in electronic form only. The website on which the document is posted can be operated by the issuer, the financial intermediaries responsible for placing or trading the securities in question (in certain cases), the regulated market to which the issuer is seeking admission, or the competent authority of the home member state, if that authority has opted to offer this service.

Alternatively, the issuer can choose a conventional method of dissemination, e.g. publishing the prospectus in one or more national newspapers (or papers with extensive circulation in the member states where the securities are to be offered to the public or admitted to trading) or making it available in hardcopy form at its registered office, free of charge.

In each case, a member state can require the issuer to issue a statement stating where and in what form its prospectus has been published.

Furthermore, for the purpose of centralising information, the home competent authority must publish the full text of all prospectuses approved over a twelve-month period, or at least a list thereof, on its website.

Withdrawal of investors' orders

Pursuant to Article 16, investors are entitled to withdraw their orders during a period of two working days following the publication of a supplement containing any "significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins". To date, no such entitlement has been provided for in French rules.

Draft implementing regulation

In December 2003 a CESR working group submitted its technical advice on the implementing measures for the directive to the European Commission, pursuant to its mandate. Based on this input, and following a market-wide consultation at European level, the Commission published on 15 January 2004 a draft regulation on the implementing measures for the Prospectus Directive, due to be adopted before 1 July 2004.

The draft regulation sets out the procedures for incorporating documents by reference and making prospectuses available to the public; it also stipulates both the minimum information to be supplied in a prospectus and its content.

Prospectus content depends on the type of product being offered and, to a lesser extent, the nature of the issuer (only credit institutions will be allowed to use a specific format in the case of an issue or admission to listing of non-equity securities). As a minimum requirement, a prospectus will comprise a registration-document schedule and a securities-note schedule, and, in some cases, modules containing additional information ("building blocks"). A special, single-document schedule will be used for depository receipts.

The text identifies eight schedules for registration document: equity securities, non-equity securities with a denomination per unit greater than or equal to EUR 50,000, securitised products, non-equity securities issued by credit institutions, closed-end funds, securities issued by sovereign states or their local or territorial authorities, and securities issued by international bodies.

These can be used in conjunction with four securities-note schedules: equities, non-equity securities with a denomination per unit less than EUR 50,000, non-equity securities with a denomination per unit greater than or equal to EUR 50,000, derivative securities.

The following building blocks may also be added:
- guarantors
- securitisation
- underlying share
- pro forma financial information (only if the prospectus includes an "equities" registration document)

As a rule, the registration document provides information about the issuer, while the securities describes the product being issued.

However, in the case of convertible products or products granting access to other securities, the securities note supplies information about the product carrying the exchange right and about the conversion procedures. For these products, it is generally necessary to add the "underlying share" building block in order to supply information about the attached security.

3 – Proposal for a directive on disclosure requirements for issuers whose securities are admitted to trading on a regulated market (Transparency Directive)

The European Commission presented on 26 March 2003 an official proposal for a directive on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market. The text provides for an overhaul of the rules currently contained in three directives, which date from 1979 (Annual Accounts), 1982 (Interim Accounts) and 1988 (Major Holdings), as well as some of the provisions of Directive 2001/34/EC on ongoing and periodic disclosures.

The draft Transparency Directive sets requirements for periodic disclosure (and some for ongoing disclosure) binding on an issuer (or a person who has applied for an admission to trading on a regulated market without the issuer's consent) whose equity or debt securities are admitted to trading on an EU regulated market. (The original requirement applied only to companies on a market's official list.) Accordingly, the directive will not apply to disclosure requirements arising from public offers of unlisted securities.

The disclosure requirements that the directive seeks to harmonise are, ***inter alia***, those relating to the publication of annual and half-yearly financial statements (and the related management report), quarterly data, major holdings, and specific information such as new debt issues or changes to shareholders' rights.

In contrast to the Prospectus Directive, the proposed Transparency Directive is not a maximum harmonisation directive. Issuers may therefore be subjected to stricter rules by their competent authority, which is defined according to the same procedure as in the Prospectus Directive.

Although the draft Transparency Directive deals mainly with periodic disclosures, it is based on a broader definition of "regulated" information, which includes not only the information provided for in the directive but also "sensitive" information, as defined by the Market Abuse Directive.

Accordingly, the provisions governing the language regime and disclosure methods will apply both to periodic information and to sensitive information.

The draft directive was discussed for several months in the Council, which presented a joint position on 26 November 2003. It was adopted at first reading by the European Parliament on 30 March 2004 and approved by the Council in early April 2004.

B - REGULATION OF MARKET PARTICIPANTS

1 – Review of the Investment Services Directive

In 2003, on the basis of a draft presented in November 2002 by the European Commission, the Council and the European Parliament worked together under the co-decision procedure to adopt a directive "on financial instruments markets". The new text was intended to replace the directive of 10 May 1993 on investment services in the securities field (ISD).

On 25 September 2003, Parliament adopted on first reading a text that had been edited down from the Commission's initial draft and from the text drawn up by the Council. On 8 December 2003 the Council announced a joint position on the basis of a political agreement reached on 7 October. The draft directive was adopted by the European Parliament in late March 2004 and published in the OJEU on 30 April 2004.

a) Aims of the review

The 1993 ISD harmonised two key concepts at European level, namely the provision of investment services and the regulated market. The main aim of the new directive is two-fold: to tailor European legislation to the increasingly diverse order-execution methods that have sprung up in recent years, and, in particular, to address the emergence and development of multilateral trading facilities (MTFs) and order internalisation systems. The draft text has therefore sought to build an overarching regulatory framework for order execution that would allow different trading platforms to coexist and compete with each other in Europe. In doing so, the new directive has called into question the market architecture established by the original ISD. One of the keystones of that architecture was the concept of regulated markets. It is hardly surprising, therefore, that the issue of how order internalising systems will be permitted to operate – notably the rules on pre-trade transparency – sparked heated debate.

b) Position of the French regulatory authorities

The line followed by the COB and the CMF throughout the drafting process was consistent with the general terms of the French position, framed and defended by the Ministry of the Economy, Finance and Industry. France's overriding concerns were to protect investors (and thus win their confidence) and to facilitate the construction of an efficient and integrated European market in a context of fair competition among different types of participant. These concerns prompted the French authorities to pursue the following objectives during the preparation of the directive:

- establish a regulatory classification of trading systems that meets the twin goals of ensuring fair competition, efficiency and integrity, and, ultimately, of providing the guarantees essential both to investors and to issuers seeking to raise capital, while respecting the multiplicity of European market structures, most of which operate with order books and are demonstrably efficient;

- enhance the operational nature of the passport for investment service providers (ISPs) by extensively harmonising conduct of business rules and implementing suitable investor protection measures (e.g. a system of professional investors and eligible counterparties, supervision of tied agents, oversight of the execution-only service, clear division of responsibilities between home and host authorities);

- ensure market integrity and stability, firstly by strengthening the provisions relating to supervision and inter-authority cooperation in order to reflect the impact of market fragmentation on regulator's supervisory activities, and secondly by establishing a suitable framework for post-trade activities.

c) Highlights of the directive

Market architecture

- Except for specific requirements on admission to listing and trading, regulated markets and MTFs are subject to the same rules, thereby fostering healthy competition.

- The pre-trade transparency rules governing internal systems were the subject of discussions in early 2004 that focused chiefly on the scope of these rules, the size of transactions subject to the mandatory quote disclosure rule, and price improvement (the possibility for ISPs to offer better prices on a selective basis).

Rules on investment firms and the provision of investment services

- Compared with the original ISD, the list of entities not subject to the directive has been broadened. Particularly noteworthy is the fact that, in principle, some categories of own-account trading firms will no longer require authorisation.

- Under the new directive, intermediaries providing order reception and transmission and/or execution for third parties may now, under certain conditions, offer this service on an execution-only basis, i.e. without first having to obtain information about the customer's knowledge and investing experience – information that makes it possible to determine whether the envisaged investment service or product is suitable for that customer.

- The best-execution rule, which, following the elimination of the concentration rule, is a key component of the directive, will be based on a mechanism that restricts its scope to the places where orders are executed. The investment firm chooses such places and informs its customer accordingly, and that choice is regulated by the text (i.e. it must include systems that effectively deliver best execution to the customer).

- The directive takes into consideration the work done by CESR on the classification of professional and non-professional customers and on the eligible counterparty regime.

Provisions relating to supervision and cooperation between competent authorities

These provisions have been strengthened to allow regulators to conduct integrated supervision in a market environment that may prove to be more fragmented than at present. One key stipulation is that an authority responsible for market supervision will be able to question a remote member of that market located in another member state.

d) Comitology

Without waiting for the Commission to issue final mandates[3], CESR set up three expert groups in March 2003. This preparatory move made it possible to prioritise issues and identify those needing the most work, and to take stock of national regulations in each country.

Organisation of CESR's expert groups
The activities of CESR's three expert groups are coordinated by the ISD Steering Group, composed of the chairs of those groups and headed by the chair of CESR, Arthur Docters Van Leeuwen. The expert groups are headed by:

- the chairman of the AMF, for issues relating to supervision and cooperation
- the chairman of the UK Financial Services Authority, for intermediaries' issues
- a commissioner of Autoriteit-FM of the Netherlands, for market issues

The remit of the ISD Steering Group is to coordinate the regulatory approaches of the three groups and their concerted action on overlapping issues. The expert groups can call on the consultative Working Group of Market Participants (CWGMP), to which they can float their ideas and proposals. The CWGMP met for the first time with each expert group on 28 and 29 January 2004.

Mandates
The mandates given to the three groups cover the following issues:

Markets Group
- pre-trade and post-trade transparency for regulated markets and MTFs, and post-trade transparency for investment firms[4] (Articles 28, 29, 30, 44 and 45 of the draft directive): principles, exceptions relating to transaction size and market model
- admission of financial instruments to trading on regulated markets (Article 40 of the draft directive): rules for admitting instruments, verification by regulated markets of issuers' disclosure requirements, and market members' access to disclosures

Intermediaries Group
This group focuses on the following comitology measures:
- organisation rules (Art. 13)
- conflicts of interest (Art. 18 and 13.3)
- conduct of business rules (Art. 19)
- best-execution rule (Art. 21)
- rules for processing customer orders (Art. 22)

Back in 2002, CESR laid down conduct of business rules to enforce Article 11 of the present directive[5]. The expert group therefore took steps to use those of the rules coming within the scope of the mandates issued for the revised ISD, tailoring them according to the amended portions of the directive. It also identified Level 2 standards on which CESR had not yet worked.

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[3] The Commission published the first provisional mandates (pending the adoption of the directive) on 20 January 2004.
[4] Note that the mandate corresponding to Article 27 on pre-trade transparency of internalising systems has been put on hold owing to the highly controversial nature of the article.
[5] CESR/01-014d: "A European regime of investor protection – the harmonization of conduct of business rules", together with CSR/02-098b: "A European regime of investor protection – the professional and the counterparty regimes".

Market Supervision and Cooperation Group
This group is addressing the following comitology provisions:

- transaction reporting to the competent authorities (Article 25): methods and procedures for reporting financial transactions, form and content of transaction reports, and criteria for a relevant market in terms of liquidity;
- cooperation between authorities responsible for market supervision operating on a cross-border basis (Article 56): operating criteria for regulated markets operating in a home member state, where those criteria could be considered "as of substantial importance" for the functioning of securities markets and investor protection in such state;
- exchange of information among competent authorities (Article 58): information exchanges and related procedures.

2 – The Takeover Directive

In December 2003 the European Parliament adopted a proposal for a directive on takeover bids. Subject to final approval by the Council of the European Union, the directive should come into force during the first half of 2004; member states must then transpose it into national law within two years.

Broadly, the directive draws on the fundamental principles established in a joint position of the Council of the European Union adopted in June 2000:[6]

- a takeover bid is mandatory in the event of a change of control in a company subject to the laws of a member state, whose voting securities are traded on a regulated market within the meaning of the ISD;

- an information document must be published, together with a mutual recognition agreement in the case where the securities of the target company are listed on multiple exchanges and the document has received prior approval from the supervisory with territorial jurisdiction;

- the choice of competent supervisory authority and the law applicable to cross-border bids depends on where the target company's securities are listed;[7]

- the decision as to whether the target company should implement defensive measures must be taken by a general meeting of shareholders held specially for that purpose during the offer period.

The directive also meets the requirements laid down by the European Parliament in July 2001[8] insofar as it takes into account the recommendations made by the High Level Group of Company Law Experts, chaired by Jaap Winter, in January 2002[9].

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[6]COB 2000 Annual Report, page 137.
[7] The authority responsible for supervising the bid is the authority of the member state in which the target company has its registered office if that company's securities are admitted to trading on a regulated market in that member state. By contrast, if the target company's securities are not admitted to trading in a market of the state in which it has its registered office, the directive provides that the competent authority is that of the member state on whose market the securities are traded. In this case, the directive states that responsibility for control will be shared between the authority in the country of incorporation and the authority responsible for the market.
[8] COB 2002 Annual Report, pages 178 and 179.
[9]COB 2002 Annual Report, pages 240 and 241.

Accordingly, the text defines the concept of "equitable price", sets the rules to foster a level playing field within the EU, and establishes procedures for squeeze-outs and sell-out rights.[10]

One distinctive aspect of the directive is that member states are now free to decide whether to enforce the provisions on defensive measures referred to in Articles 9 and 11.

This stems from a compromise which, in view of the different company-law mechanisms and structures within the EU, is deemed the best possible arrangement by the majority of member states.

More precisely, the directive does not oblige member states to introduce the following fundamental principles into their takeover legislation:

- the general meeting of shareholders held during the offer period has sole authority to authorise the taking of defensive measures to frustrate a takeover bid (Article 9)
- restrictions on the transfer of securities and voting rights, along with multiple voting rights,[11] are suspended during the offer period or following the close of the bid (Article 11)

Nevertheless, companies carrying on a business on the territory of a member state are entitled to apply the principles set out in Articles 9 and/or 11, while providing for a reciprocal arrangement in case the bidder does not apply those same principles.

3 - Proposal for a directive on cross-border mergers of companies with share capital

An initial attempt in 1984 to introduce a directive on cross-border mergers fell through, and the proposal was withdrawn altogether in 2001. In November 2003 the European Commission submitted a brand-new draft directive on this subject

The proposal, which covers all joint-stock companies, aims to facilitate mergers between firms in different member states by eliminating the obstacles arising from the coexistence of different national laws. At the same time, it seeks to protect employee shareholding schemes in companies involved in a merger.

It is intended to apply in particular to SMEs that want to operate in several member states, but not on a Europe-wide basis, and are therefore unlikely to incorporate as a European company.

In accordance with the codecision procedure, the draft directive will be submitted for adoption to the Council of the European Union and the European Parliament.

C – FASP: THE NEXT STAGE

As the Financial Services Action Plan (FASP) reached completion, the European Commission initiated a debate on areas that had not been covered. It sought the opinions of groups of industry professionals specialised in the fields of market regulation, securities issuance and asset management.

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[10] COB 2002 Annual Report, pages 241 and 242.

[11] As per Article 2 of the directive, multiple voting securities are defined as securities in a separate category and carrying more than one vote

The Commission has already identified two focal points of attention. The first is the regulation of post-trade activities, which gave rise to the publication on 28 April 2004 of a communication based on the conclusions of the Giovannini reports; [12] the second is corporate governance, which was the subject of a consultation exercise in 2003.

Furthermore, the European Parliament's deliberations on the subject of credit rating agencies are providing input for the discussions under way in several international forums.

1 - Corporate governance

On 21 May 2003 the European Commission organised a public consultation on its plan of action to modernise company law and enhance corporate governance in the European Union.

The COB took a keen interest in the plan's proposals, which are reflected in draft directives and recommendations, some of which apply to the near future. The French securities regulator noted that, in general, the corporate governance principles set forth in the European Commission communication addressed its own concerns in the field of investor protection. It further noted that the principles and standards envisaged by the Commission are consistent with standards that already exist in France. In the short term, the Commission is planning a directive to:

- require companies to issue an annual corporate governance report; a similar obligation was introduced in France by the Financial Security Act, which requires chairmen to report annually on the functioning of the board of directors and on the company's internal control procedures;

- affirm the joint liability of board members for the company's financial statements and its main non-financial documents (joint liability is a long-established tenet of French company law);

- make it easier for shareholders to exert their rights, firstly by permitting and overseeing the use of electronic media to express their views to issuers and to vote, and secondly by solving the specific problems involved in cross-border voting. France's Commercial Code already recognises and supervises the procedures whereby shareholders can table draft resolutions and vote online; it takes account of the status and specific characteristics of non-resident shareholders, helping them to vote in general shareholder meetings on French companies.

Also in the short term, the Commission is considering issuing a recommendation to clarify and strengthen the status of independent company directors and to provide for full disclosure of remuneration policies for senior executives and board members. France's regulatory framework already contains standards or recommendations in both of these areas. For example, the Commercial Code includes provisions on mandatory annual disclosure of payments to executive officers, as well as on multiple directorships and mandatory disclosure of other functions held by corporate officers. Similarly, the Principles of Corporate Governance prepared jointly by the employers' federation (MEDEF) and the national association of private companies (AFEP) contain recommendations on the profile, number and role of independent directors. In addition, COB regulations stipulate that information about compliance (or non-compliance) with these recommendations must be included in prospectuses and registration documents.

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[12] See below, section on CESR/ESCB, p 17.

Responding to a public consultation organised by the Commission on online voting, the COB argued that electronic voting should not become the sole method for shareholders to exercise their rights since not all of them had access to such facilities. The French securities regulator also stressed the need to define the categories of institutional investor concerned by voting transparency requirements.

2 –The European Parliament and credit rating agencies

The European Parliament on 10 February 2004 adopted a resolution, based on a report by Giorgis Katiforis, concerning the role and methods of credit rating agencies (CRAs). MEPs stated in a non-binding resolution that issuers who decide to have their debt obligations evaluated should supply the CRA with all relevant information on an ongoing basis and should respond to specific requests from the agency. Furthermore, all CRAs should be subject to similar transparency requirements in respect of their methods and models, as well as the nature of their relationship – which is fee-based – with the issuers they rate. It is also important to ensure that CRAs enjoy independence from regulatory authorities as regards the substance of their opinions.

Another important aspect of the resolution is that it calls on the Commission "to undertake all necessary steps, including in particular a cost-benefit analysis of the effects on European capital markets, to assess the establishment of a competent European Registration Scheme under the auspices of CESR for the registration of rating agencies in Europe, conducted on the basis of well-specified, publicly advertised criteria involving credibility with market participants, objectivity, independence, expertise of staff, adequate funding, the existence of proper procedures for identifying and dealing with conflicts of interest and transparency of operations". Parliament asked the Commission to report to it on relevant developments in this area by 31 July 2005 and, thereafter, on a periodic basis.

Parliament also called on the competent authorities of the European Union to examine "the state of concentration prevailing in the ratings industry and to consider if any evidence of oligopoly has arisen as a result".

The resolution also enjoins the Commission and CESR to maintain close contact with the US authorities on the conduct and outcome of their investigation and to inform Parliament of any regulatory developments decided upon in the United States.

The European Commission is due to present an initial document outlining the initiatives it intends to take on the subject of CRAs by the end of 2004.

II – The role of the CMF and the COB as part of CESR

A – INVOLVEMENT OF THE CMF AND THE COB IN CESR

The Committee of European Securities Regulators (CESR) has played a highly active role in implementing the Financial Services Action Plan (FASP). CESR has devoted much of its energies to preparing opinions for the European Commission. Personnel from the COB and the CMF sat on all the groups charged with preliminary work for Level 2. In view of the degree of detail in Level 2 measures, both authorities placed special emphasis on the wording of these opinions. The chairman of the AMF now heads one of the three working groups responsible for drafting Level 2 opinions on the Financial Instruments Markets Directives. As such, he is also a member of the steering group, headed by the chair of CESR, that coordinates the work of these groups. Details of that work have been presented in the sections dealing with each directive.

COB and CMF staff also made an active contribution to CESR's operational groups, composed of the heads of the enforcement and accounting divisions of member-regulators. In addition, the COB attended preparatory meetings for the formation of a working group on asset management. The Commission wants to extend CESR's jurisdiction to the field of collective investment management and intends to initiate deliberations on this topic in 2004.

1 – Working seminar on volatility

Assisted by the general secretary of the CMF, the chairman of the COB led a working seminar on market volatility. The seminar's conclusions yielded several ideas and proposals, in particular the need to:

- provide the market with more information about certain types of transaction;
- place greater emphasis on price formation processes and their link with market structure. Questions were raised about the shift by market participants, especially fund managers, from active to passive management (index-related funds, exchange traded and unlisted index funds, and benchmarked funds), about the reliance on hedge funds rather than conventional tools, and about risk management through new products.

Another issue touched upon was the risk that some financial activities might relocate to areas with less stringent regulatory frameworks. The seminar's conclusions were submitted to the Technical Committee of the International Organization of Securities Commissions and to the Financial Stability Forum.

2 – Issued addressed by CESR/ESCB

In October 2001 CESR and the European System of Central Banks (ESCB) set up a joint working group to investigate securities clearing and settlement systems in Europe. The aim was to define common standards to improve the security, quality and efficiency of post-trade activities. Intended for EU member-states, the standards seek to clarify and build on the recommendations of the CPSS IOSCO report, "Recommendations for Securities Settlement Systems", published in November 2001.

The working group initially opted for a purely functional approach whereby all entities exercising similar functions, regardless of their status, should be subject to the same regulations. It was taken for granted that central securities depositories (CSDs), such as Euroclear France, international central securities depositories (ICSDs), such as Euroclear and Clearstream, and custodians (agent banks /custody account keepers) all perform broadly similar functions.

An initial document based on this work was submitted for consultation during summer 2003. In addition to an introduction outlining the purpose of the project and placing it within the broader context of initiatives under way at European level, the CESR/ESCB document contains 19 standards.

Standard 6 ("Central Securities Depositories") and Standard 9 ("Risk controls in systemically important systems") prompted a wide variety of reactions, insofar as they epitomise the two sides of a debate on regulatory approaches. On one side is the functional approach that consists in regulating all participants on the basis solely of their functions, irrespective of their status, in order to place them all on an equal footing and foster competition. On the other side is the approach that emphasises specific institutional characteristics, notably the fact that CSDs provide what is tantamount to a public service.

The responses to the consultation showed that the banking community was strongly opposed to treating custodians as ICSDs[13] for the purposes of risk management and control, whereas Euroclear and Clearstream consider this to be a coherent approach. Opinions were also divided on the possible scope of CSDs' activities, with one side arguing that these institutions play an essential infrastructure role that must be kept separate from banking activities, which are risk-exposed, and the other side holding the view that (I)CSDs should be permitted to extend credit or stand as counterparties to securities lending transactions in order to facilitate final settlement.

During the consultation, the Banking Supervision Committee stressed that Basel II, and especially Pillar II of that accord, gave prudential supervisors the means to take any measures that might prove necessary to cope with risks inherent in the activity of the largest custodians, the failure of which could create a systemic risk for the entire settlement process.

The working group expects to complete its deliberations in 2004, against the backdrop of the European Commission communication of 28 April 2004 on post-trade activities, which proposes a directive based on the main findings of the CESR/ESCB project.

3 - Contributions to the Lamfalussy Report

At the structural level, the AMF endeavoured to promote the role played by CESR and foster closer integration among European regulators. It paid special attention to the report of the inter-institutional group charged with monitoring the Lamfalussy Process, and endorsed that group's conclusions. The AMF insisted in particular that Level 2 (i.e. comitology measures) should result in the highest possible degree of harmonisation in member states' regulations, the purpose of Level 3 being to stipulate how those rules are to be implemented with a view to applying Level 1 and Level 2 legislation at national level.

The completion of the FASP should also make it possible to shape the debate on this issue, with special emphasis on coordinating the transposition of directives and bringing practices closer into line. Discussions of a more strategic nature were set in train at the meeting in Dublin in

[13] This refers to the two international settlement systems, Euroclear and Clearstream.

December. A president's seminar was held in early 2004 and a task force was set up to report on the development of CESR.

In view of its obvious merits, the Lamfalussy Process has been extended to the fields of banking and insurance.

B – PERMANENT GROUPS: REVIEW PANEL, CESR-Pol AND CESR-Fin

1 - Review Panel

The Review Panel is a permanent group set up to ensure harmonised transposition of CESR standards and, more generally, Level 2 measures. It is headed by the vice-chair of CESR, Kaarlo Jännäri, director general of the Finnish financial regulator.

Staff from the COB and the CMF were involved in CESR's earliest projects, which dealt with the transposition of standards on conduct of business rules and alternative trading systems. These activities foreshadowed the key role that CESR would play in harmonising national regulations and regulatory practices in order to achieve a single market in financial services. As a result of those initial projects, each CESR member has specified the extent to which national regulations should comply with CESR standards. Published at the beginning of March 2004, this work is little more than a self-assessment exercise. Be that as it may, CESR plans to develop a fully fledged process for assessing the transposition of national rules.

2 - CESR-Pol

CESR-Pol is a working group formed in 1999 under the auspices of the Forum of European Securities Commissions (FESCO) following the signature of a multilateral memorandum of understanding (MOU) on cooperation and information exchange. It comprises the heads of the enforcement and market surveillance divisions of CESR's 17 member-commissions. The erstwhile head of the COB's enforcement department, now director of enforcement and market surveillance at the AMF, has contributed to the work of CESR-Pol from the outset.

In January 2003 CESR-Pol admitted representatives of the securities commissions of eight EU candidate countries as observers, with a view to their forthcoming accession.

CESR-Pol meets at least three times annually. Its main aims are to facilitate information-sharing among its members in order to enhance surveillance of the securities markets over which they have jurisdiction, to allow the authorities to collate the data needed for their investigations, and to coordinate their efforts during international investigations.

The group also identifies fundamental issues in its sphere of action and reports back to CESR with a view to submitting concrete proposals to the European Commission.

In 2003 CESR-Pol developed and finalised a standard procedure to expedite the exchange of information among members in connection with CESR's MOU. It will shortly put the finishing touches to a draft recommendation, titled "Best Practice Guidelines", on the organisation of joint hearings and statement-taking for cross-border investigations.

On the issue of Internet surveillance, members that had already developed their own systems shared their experiences with their peers, and CESR-Pol suggested setting up a network of Internet surveillance managers and giving it an operational remit.

The group also pursued its efforts to proved a collective response to the problems of international cooperation and information-sharing encountered by its members in their dealings with third countries.

The plan for 2004 is for CESR-Pol to pay special attention to the implementation of the Market Abuse Directive. In particular, it will establish and propose Level 3 measures as part of the Lamfalussy Process.

3 - CESR-Fin

Formed in 2001, CESR-Fin operates in the sphere of financial reporting and disclosure. Its main task is to coordinate the activities of two bodies, the Subcommittee on International Standards Endorsement (SISE), charged with approving accounting standards, and the Sub Committee on Enforcement (SCE), which ensures that those standards are properly applied.

a) SISE

SISE's main role is to play an active part in discussions on the adoption of standards published by the International Accounting Standards Board (IASB).[14.] This consists in monitoring, at European level, preliminary discussions on the preparation and approval of standards by several committees, namely the Accounting Regulatory Committee (ARC[15]), the European Financial Reporting Advisory Group (EFRAG)[16,] the International Financial Reporting Interpretation Committee (IFRIC)[17] and the Standards Advisory Council (SAC).[18] To do this, it relies on its status as observer on each committee. The European framework for adopting international accounting standards can be summarised in a flow chart.

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[14] i.e. International Accounting Standards (IAS), renamed International Financial Reporting Standards (IFRS), and the interpretations of the Standing Interpretations Committee (SIC), now known as the International Financial Reporting Interpretation Committee (IFRIC).

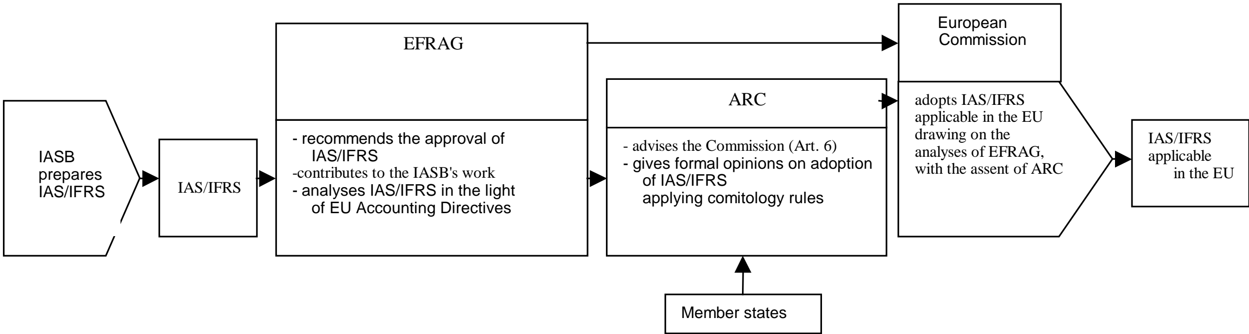
[15] ARC deals with the political aspects of EU adoption of international accounting standards.

[16] EFRAG deals with the technical aspects of EU adoption of international accounting standards.

[17] IFRIC is responsible for interpreting IASB standards.

[18] The SAC is a forum for broad-based participation in the preparation of IAS/IFRS.

Framework for approving IAS/IFRS

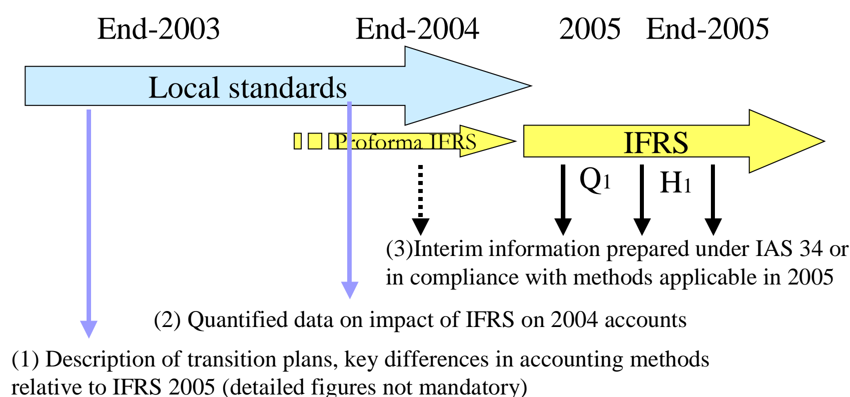


SISE was able to closely monitor the work done through the European Commission – in particular the so-called IAS Regulation[19], the modernisation of directives[20] and the proposal for a Transparency Directive – since a representative of the Commission sits alongside the regulators as an observer.

In 2003 SISE devoted special attention to preparations for the transitional phase marking the changeover from national to international accounting standards, with particular emphasis on strict and rigorous enactment. However, it adopted a pragmatic attitude in view of the fact that the body of IAS/IFRS applicable in 2005 (end-2003 and end of first-quarter 2004), i.e. by 2004 for comparison purposes, were not stabilised until late in the day. In October 2003, after more than a year of preparation, SISE published a draft set of recommendations, followed on 30 December 2003 by the finalised version[21]. CESR members can adopt the approach they feel most appropriate to disseminate these recommendations – summarised in the following chart – in their home countries.

[19] Regulation 1606/2002.
[20] The directive modernising the Accounting Directives was adopted on 6 May 2003 (see below).
[21] The full text of the recommendations on the transition to IFRS is available on CESR's website at http://www.europefesco.org/v2/default.asp

Additional information recommended by CESR-Fin



In 2004 SISE will turn its attention to the finalisation and approval of IAS 32 and IAS 39 on financial instruments, as well as to other forthcoming standards, such as those on business combinations and insurance contracts. It will also examine significant and recently approved standards such as IFRS 1 (first-time application of IFRS) and IFRS 2 (share-based payments), and a series of improvements to IAS.

SISE will also work on the application of IFRS by investment firms and unlisted enterprises intending to seek a listing for their securities on a regulated market.

It also plans to examine practical issues related to the presentation of historical financial data in prospectuses.

b) SCE

SCE issued its first standard[22] in April 2003 to contribute to the development and implementation of a common approach to enforcing financial information standards in Europe. The document sets out 21 general principles for establishing a harmonised framework and high quality standards that will guide European regulators when reviewing financial statements prepared under IFRS[23]. It should be noted that the working methods used by the AMF's departments already comply to a great extent with SCE's proposals.

Drawing on its initial work, SCE published on 7 October 2003 a second draft standard on the subject of financial information. The new document sets out mechanisms designed to establish efficient coordination of enforcement practices in Europe. Its main proposals are:

- regulatory decisions will be discussed with non-regulator third parties in a specially created committee of European national enforcers[24]

[22] "Financial Information: Enforcement of Standards on Financial Information in Europe"
[23] The document is available on CESR's website at http://www.europefesco.org/v2/default.asp
[24] European Enforcers Coordination Sessions

- regulatory decisions must take account of decisions taken previously at national level by European national enforcers
- enforcement decisions should be collated in a data base, which will support the decision-making process

SCE's priority for 2004 is to finalise the mechanisms for coordinating decisions on the enforcement of standards on financial information.

Furthermore, the SCE intends to prepare other texts on the enforcement of investigative powers and requests for corrective action, relying in particular on the Prospectus Directive and the draft Transparency Directive.

c) Other activities of CESR-Fin in 2003

CESR-Fin also addresses issues that come within its jurisdiction but that have not been assigned to SICE or SCE. In particular, it has been charged with formulating observations on plans to reorganise EFRAG[25] and the International Accounting Standards Committee Foundation (IASCF)[26]. It is vitally important that the restructuring of these two bodies be closely monitored in order to ensure that Europe's accounting standards are properly designed and effectively endorsed.

Furthermore, CESR-Fin takes a close interest in EU-level developments in the sphere of auditing, notably those relating to standards on auditor independence, qualify assurance systems, and the like. These issues will receive special attention in 2004 with the upgrading of the Eighth Directive, currently being undertaken by the European Commission[27].

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[25] EFRAG's governing body issued a call for comments at end-2003 under the title "Proposals for the Enhancement of the Role and Working Process of EFRAG."

[26] The IASCF is the parent- foundation of the IASB. It issued a call for comments, "Identifying issues for the IASC Foundation constitution review" in November 2003.

[27] see page 28.

III – Harmonisation of European and international accounting standards

Significant progress was made in the field of European accounting harmonisation in 2003, with the adoption of the European regulation on IAS/IFRS and the upgrading of the Accounting Directives. In view of the high level of interaction between the regulation, the directives (which must be consistent with IAS/IFRS) and member states' accounting laws, the European Commission was obliged to furnish additional explanations. The Commission also established ten priorities for auditing, with a view to improving oversight and protecting investors. The aim of these efforts is to produce a body of rules that can be applied throughout the European Union. Also in the course of the year, the International Accounting Standards Board (IASB) published new IAS/IFRS and initiated work on future standards.

A - HARMONISATION OF INTERNATIONAL ACCOUNTING AND AUDITING RULES: PRACTICAL ACHIEVEMENTS

1 - European regulation on the application of international accounting standards

The Accounting Regulatory Committee (ARC) on 16 July 2003 unanimously approved the proposal for a European Commission regulation on the adoption, for mandatory application as of 1 January 2005, of all the International Accounting Standards/International Financial Reporting Standards (IAS/IFRS) in existence at 14 September 2002, with the exception of IAS 32 and IAS 39 on financial instruments, along with the corresponding interpretations (SIC 5, 16 and 17)[28].

ARC's decision follows on from the conclusions reached by EU finance ministers at a summit in Brussels on 15 July. In addition to confirming Europe's strategy of endorsing the application of international accounting standards, the ECOFIN conclusions call on the European Commission to:

- consider ways to enhance the role and working processes of EFRAG in order to ensure that European concerns are taken into proper consideration

- urge the IASB to review its present institutional structure to ensure that all parties concerned are given the full opportunity to participate in the elaboration of standards, including their economic impact

The ARC decision was published in the Official Journal of the European Union as Regulation (EC)1725/2003 of the European Commission adopting certain international accounting standards. The list and full text of those standards and the associated interpretations, translated into all EU languages, are included in the annexes to the regulation.

[28] COB monthly bulletin, issue 383, October 2003, p. 176.

2 – Upgrade of Accounting Directives

The European Commission on 6 May 2003 adopted the directive amending the EU's Accounting Directives[29].

The regulation on the application of certain international accounting standards provides that all European companies listed on a regulated market will be required to prepare their consolidated accounts under adopted IAS as from 2005[30]. Member states have the option to extend this requirement to unlisted companies and to individual annual accounts. Where IAS/IFRS are not applied, the detailed provisions of the fourth and seventh Accounting Directives, as amended by the new modernisation directive, will continue to underpin EU accounting requirements.

The changes to the Accounting Directives will eliminate inconsistencies with international accounting standards. In particular, they will allow for the appropriate accounting treatment for the consolidation of special purpose entities (SPEs) by deleting the requirement that the consolidating entity must have a participating interest in an SPE. This will make it more difficult for a company to conceal commitments by creating artificial entities that are actually controlled but that, on the basis of their ownership structure alone, appear to have practically no link with the parent.

In view of the close ties that exist in some member states between annual financial statements and taxation law, each state should move towards IAS/IFRS at its own pace. For that reason, most of the amendments to the Accounting Directives are couched in the form of options made available to Member States to allow them to align their accounting rules with IAS/IFRS at a gradual rate.

In addition to modernising accounting requirements, the proposed amendments clearly state that the analysis of the risks and uncertainties to which a company is exposed, as presented in its annual report, must not be confined to purely financial matters. The aim is encourage companies, where appropriate, to address social and environmental concerns.

The amendments also lean towards greater harmonisation in the presentation of statutory auditors' reports. They spell out the mandatory content of these reports, which aim to provide assurance as to the reliability of financial statements. The new requirements are consistent with international auditing standards[31].

3 - European Commission communication, November 2003

Some of the links between IAS, the EU Accounting Directives and national accounting laws are not immediately obvious. For this reason, member states called on the European Commission to comment on issues that needed clarification. These issues were chosen in the light of discussions under way in ARC and the Contact Committee[32], and the Commission published its positions in November 2003 in a document titled "Comments concerning certain Articles of the Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards and the Fourth Council Directive

[29] The full text of the amended Accounting Directives is available at http://europa.eu.int/comm/internal_market/accounting/officialdocs_en.htm

[30] The full text is quoted in the COB monthly bulletin, issue 383, October 2003, pages 190 *et seq*.

[31] International Standards on Auditing, published by the International Auditing and Assurance Standards Board

[32] The Contact Committee was set up in accordance with Article 52 of the fourth Conseil directive and is responsible in particular for examining the EU's Accounting Directives.

78/660/EEC[33] of 25 July 1978 and the Seventh Council Directive 83/349/EEC[34] of 13 June 1983 on accounting"[35].

The main issues addressed in that communication are reviewed below.

a) IASs not yet endorsed and IASs rejected by the European Union

Where it applies, the IAS Regulation requires that accounts be prepared in accordance with endorsed IASs i.e. IASs adopted by the EU further to the IAS Regulation. Accordingly, if a standard is not endorsed, it does not have to be – and, in some instances, may not be – applied by a company preparing its accounts further to the IAS Regulation.

To the extent that a standard that has not yet been endorsed by the EU is not inconsistent with endorsed standards, it may be used as guidance.

However, if a rejected standard conflicts with a standard that has been endorsed – for example where an endorsed standard is amended – the rejected standard may not be applied. The company must continue to apply fully the standard endorsed by the EU.

b) Statement in the accounting policies

The legal requirement in the IAS Regulation is for the accounts to be prepared in accordance with adopted IASs i.e. those standards endorsed by the EU. Companies should therefore make this clear in their statements on accounting policies.

Following the change of name from "International Accounting Standards" to "International Financial Reporting Standards" following the reorganisation of the IASB in 2001, this statement should refer to the fact that the accounts have been prepared "in accordance with all International Financial Reporting Standards adopted for use in the European Union". However, if no standards have been rejected and all standards issued by the IASB have been endorsed, it would not be necessary to state "adopted for use in the European Union", but simply "in accordance with all International Financial Reporting Standards".

c) Status of the IASB Framework, the Appendices to IASs and the Implementation Guidance to IASs

IAS 1[36] states that the application of International Accounting Standards and the corresponding interpretations, with additional disclosure where necessary, is presumed to result in financial statements that achieve a fair presentation. IAS 1 also states that financial statements shall not be described as complying with IASs unless they comply with all the requirements of each applicable standard and interpretation.

IASs set out recognition, measurement, presentation and disclosure requirements for material transactions and events. These standards are based on the "Framework for the Preparation and Presentation of Financial Statements" ("the Framework"), which addresses the concepts

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[33] Directive on the annual accounts of certain types of companies

[34] Directive on the consolidated annual accounts of certain types of companies

[35] Document available at:
http://europa.eu.int/comm/internal_market/accounting/docs/ias/200311-comments/ias-200311-comments_en.pdf

[36] IAS1 dates from 1997 and deals with the presentation of financial statements. It was revised in December 2003 as part of the improvement programme following on from the European Commission communication, but the underlying philosophy of this part of the standards remains basically the same.

underlying the information presented in financial statements. The objective of the Framework is to facilitate the consistent and logical formulation of IAS/IFRS.

However, the Framework itself is not an IAS or interpretation and therefore does not need to be adopted into Community law. Nevertheless, it does provide a basis for assessment in cases where there is no particular standard or interpretation applicable specifically to an item in the financial statements. In such situations, IASs require the company to use its judgement in developing and applying an accounting policy that results in information that is relevant and reliable. In making such judgements, IASs require the company to consider, among other things, the definitions, recognition criteria and measurement concepts set out in the Framework.

Similarly, when an IAS/IFRS or interpretation does apply to an item in the financial statements, the company is required to select the accounting policy to be applied to that item by considering also any appendices to the standard, even if that standard is not actually an IAS/IFRS and has not been published in the OJEU, such as the "Implementation Guidance for IAS" or the "Basis for Conclusions of IASB members".

In view of its potential importance, the IASB Framework was appended to the communication.

d) Definition of "consolidated accounts"

Since the IAS Regulation only applies to "consolidated accounts", it takes effect solely where such consolidated accounts are actually required. The question of whether a company is obliged to prepare consolidated accounts will continue to be decided by reference to national law transposed from the Seventh Council Directive.

General requirement

Subject to certain exemptions (see below), the Seventh Directive sets out the circumstances when a company is required to prepare consolidated accounts. Where these circumstances, as transposed into national law, demand the preparation of consolidated accounts, the requirements of the IAS Regulation apply to those accounts.

Exemptions from the preparation of consolidated accounts

Exemptions from the general requirement to prepare consolidated accounts are set out in the Seventh Directive, including exemptions on the grounds of size alone. Where a company is not required to prepare consolidated accounts as a result of an exemption contained in national law derived from the Accounting Directives, the requirements of the IAS Regulation in respect of consolidated accounts do not apply, insofar as there are no "consolidated accounts" to which to those requirements could apply.

Exclusions from consolidation

The Seventh Directive provides for certain exclusions from the scope of consolidation. As previously mentioned, the question of whether a company is required to prepare consolidated statements is decided on the basis of national law derived from the Accounting Directives. If such is the case, however, it is the requirements of endorsed IASs that will dictate the scope of consolidation and, hence, which entities should appear in those consolidated accounts and how they should be included. Accordingly, the exclusions from the scope of the consolidation derived from the Accounting Directives are irrelevant if the consolidated accounts are prepared in accordance with endorsed IAS/IFRS.

e) Member state requirements of additional disclosures above IAS/IFRS

The maximum benefits of the application of a single financial reporting framework, as envisaged in the IAS Regulation, whereby all relevant accounts are directly comparable, will be achieved where Member States do not seek disclosure, in the annual or consolidated accounts prepared in accordance with adopted IAS/IFRS further to the IAS Regulation, of qualitative or quantitative disclosures that are not relevant to such general purpose financial statements or of information that would more appropriately be reported separately.

Additional disclosure requirements included in national law, whether transposed from the Accounting Directives or at the initiative of member states themselves, may continue to apply where they are relevant to such general purpose financial statements and are outside the scope of endorsed IASs.

Supervisory authorities or securities regulators, ***inter alia***, may still require additional disclosures. These must be:

- given outside the annual (or consolidated) accounts to which the IAS Regulation applies, e.g. in the annual report or in a separate schedule annexed to the accounts; or

- given within the notes to the annual (or consolidated) accounts to which the IAS Regulation applies when the subject matter is perceived as highly relevant to those general purpose accounts (e.g. certain corporate-governance related disclosures such as management remuneration per individual) but falls outside the scope of IASs as it is not necessary for the presentation of a true and fair view in accordance with those standards.

4 – Statutory audit

The European Commission on 21 May 2003 issued a paper setting out ten priorities relating to the statutory auditing of financial statements throughout the European Union[37]. The aims are to ensure that investors can rely fully on the accuracy of audited accounts, to prevent conflicts of interest for auditors, and to increase the EU's protection against Enron-type scandals.

The Commission's action plan announces proposals for new EU regulations that will radically overhaul and extend existing legislation. Once adopted, these proposals will, for the first time, provide a comprehensive set of EU rules on how audits should be conducted and on the audit infrastructure needed to safeguard audit quality.

The action plan establishes priorities for the short and medium term.

a) Summary of short-term priorities

Modernising the 8th Company Law Directive
The Commission will propose to modernise the 8th Company Law Directive with a view to ensuring a comprehensive, principles-based text applicable to all statutory audits in the EU. The modernised Directive would include principles on public oversight, external quality assurance, auditor independence, codes of ethics, auditing standards, disciplinary sanctions and the appointment and dismissal of statutory auditors.

[37] "Audit of company accounts: Commission sets out ten priorities to improve quality and protect investors", available at http://europa.eu.int/comm/internal_market/fr/company/audit/index.htm

Reinforcing the EU's regulatory infrastructure
The proposals for a modernised 8th Directive will also include the creation of an Audit Regulatory Committee**.** In accordance with comitology procedures, the Commission will adopt the implementing measures for the principles set out in the modernised 8th Directive. The present EU Committee on Auditing, renamed the Audit Advisory Committee, composed of representatives of member states and the audit profession, will continue its work as an advisory committee.

Strengthening public oversight of the audit profession
The European Commission and the Audit Advisory Committee will analyse existing systems of public oversight and develop minimum requirements therefor. The Commission will define a coordination mechanism at EU level to link up national systems of public oversight into an efficient EU-wide network.

Requiring International Standards on Auditing (ISAs) for all EU statutory audits
The European Commission and the Audit Advisory Committee will prepare the implementation of ISAs from 2005. The work will include an analysis of EU and member-state audit requirements not covered by ISAs, the development of an endorsement procedure, a common audit report, and high-quality translations. The Commission will work towards further improvements to the IFAC/IAASB audit standard setting process, notably by ensuring that public interest is taken fully into account. Assuming satisfactory progress, the Commission will propose a binding legal instrument requiring the use of ISAs from 2005.

b) Summary of medium-term priorities

Improving disciplinary sanctions
The European Commission and the Audit Advisory Committee will assess national systems of disciplinary sanctions to determine common approaches and will introduce a requirement for member states to cooperate in cross border cases.

Making audit firms and their networks more transparent
The European Commission and the Audit Advisory Committee will develop disclosure requirements for audit firms, covering among other things their relationships with international networks.

Corporate governance: strengthening audit committees and internal control
The European Commission and the Audit Advisory Committee will work on the appointment, dismissal and remuneration of statutory auditors, and on communication between the statutory auditor and the company being audited. The Commission and the Committee will also examine statutory auditors' involvement in assessing and reporting on internal control systems.

Reinforcing auditor independence and code of ethics
The European Commission will study the impact of a more restrictive approach on additional services provided to audit clients. The Commission will continue the regulatory dialogue between the EU and the USA on auditor independence, with the aim of obtaining US recognition of the equivalence of the EU approach. The Commission and the Committee will analyse existing national codes of ethics and the IFAC code of ethics and consider further appropriate action.

Deepening the Internal Market for audit services
The European Commission will work on facilitating the establishment of audit firms by proposing to remove restrictions in the present 8th Directive on ownership and management. The Commission will exempt the provision of audit services from its proposal on the recognition of professional qualifications by amending the 8th Directive to include the principle for mutual recognition subject to an aptitude test. The European Commission will carry out a study on the EU audit market structure and on access to the EU audit market.

Examining auditor liability
The European Commission will also study the economic impact of auditor liability regimes.

B – NEW IAS/IFRS PUBLISHED BY IASB AND FORTHCOMING PROJECTS

The international standard-setter, the IASB, published a large number of definitive standards in 2003 and early 2004.

IFRS 1 on first-time adoption of IAS/IFRS
On 19 June 2003 the IASB published IFRS 1 on "First-time Adoption of International Financial Reporting Standards" to address the accounting impact of the adoption of the new standards. IFRS 1 is critically important for European companies because it explains how the changeover will take place.

The text sets out the timeline: companies adopting the standards with effect from 1 January 2005, are required to publish at least one year's comparative data in IAS/IFRS format. Furthermore, for companies presenting three years' data, the first year does not have to be restated to IAS/IFRS but the company must clearly specify that the information is presented according to other GAAP. In practice, therefore, the transition date is set at 1 January 2004 at the latest, by which time companies must have drawn up an "opening balance sheet" restated to IAS/IFRS.

IAS 32 and IAS 39 on financial instruments
The IASB published on 17 December 2003 two vitally important standards on the presentation, recognition and measurement of financial instruments. The texts have led to heated arguments, notably among credit institutions and insurance companies in Europe.

Improvements to existing standards
Thirteen existing IAS were amended marginally and published on 18 December 2003.

IFRS 2 on share-based payment
In mid-February 2004 the IASB published IFRS 2 on share-based payment transactions. This standard, the Board's second, requires an entity to reflect in its profit and loss and financial position the effects of share-based payment transactions. For equity-settled payment transactions with employees, the measurement of the transaction amount is based on the fair value of the equity instruments granted.

Forthcoming work
In first-quarter 2004 the IASB published other standards that are due to come into effect on 1 January 2005 (see table).

[38].

All these standards must go through the various stages of the adoption process before they can be applied in Europe. EFRAG must give its opinion on purely technical aspects, while ARC takes decisions at a political level.

Key developments are also expected after first-quarter 2004 (see below).

	At 31/3/04	After 31/3/2004
Macro-hedging – limited amendment to IAS 39	Standard published	
Financial risk and other amendments		Exposure draft
Business combinations, phase I	Standard published	
Business combinations, phase II		Exposure draft
Exploration for and evaluation of mineral resources		Standard published
Insurance contracts, phase I	Standard published	
Insurance contracts, phase II		Exposure draft
Concepts – revenues, liability and equity		Exposure draft
Consolidation (including special purpose entities)		Exposure draft
Convergence: - with FASB[39] o Asset derecognition	Standard published	
o IAS 37 on provisions		Exposure draft
- replacement of IAS 20 on subsidies		Exposure draft

[39] Financial Accounting Standards Board, the US standards-setter

IV – International cooperation

A - INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO)

1 - IOSCO annual conference

IOSCO held its annual conference in Seoul from 14 to 17 October 2003. In addition to unveiling the list of signatories to the multilateral Memorandum of Understanding (MOU), the Presidents Committee adopted standards on auditor oversight. These had been adopted by the Technical Committee in 2002 in response to issues raised by the Enron affair. These principles have thus become IOSCO Principles and must be applied by all member commissions. The Presidents Committee also adopted a methodology for the enforcement of the thirty IOSCO principles prepared by a working group of the Executive Committee.

The following commissions were admitted as ordinary at the annual conference:
- Brunei International Financial Center
- National Bank and Securities Commission of Honduras
- Stocks and Commodities Authority of the United Arab Emirates
- Reserve Bank of Malawi
- Securities and Exchange Commission of Mongolia

Labuan Offshore Financial Services Authority was admitted as an associated member.

Seven new affiliated members were also admitted:
- Cayman Islands Stock Exchange
- Channel Island Stock Exchange
- Bahamas International Securities Exchange
- Association of Capital Markets Intermediary Institutions of Turkey
- Amman Stock Exchange
- Malta Stock Exchange
- Securities Depository Center of Jordan

The total number of IOSCO members now stands at 180.

a) Transposition of IOSCO principles

<u>Adoption of "Objectives and Principles of Securities Regulation"</u>
At its 1998 annual conference in Nairobi, IOSCO adopted a document titled "Objectives and Principles of Securities Regulation", a set of thirty key principles for establishing and maintaining stringent quality requirements in the sphere of securities regulation.

These principles have three objectives: to protect investors; to ensure that markets are fair, efficient and transparent; and to reduce systemic risks.

The 30 principles are divided into seven main categories:

- principles relating to the regulator and to self-regulation (nos. 1 to 7)
- principles for the enforcement of and cooperation on securities regulation (nos. 8 to 13)
- principles for issuers (nos. 14 to 16)
- principles for collective investment schemes (nos. 17 to 20)
- principles for market intermediaries (nos. 21 to 24)
- principles for the secondary market (nos. 25 to 29)
- principle for clearing and settlement (no. 30)

IOSCO's member regulators undertook a thorough assessment of the extent to which the 1998 principles had been implemented in their jurisdictions. Three questionnaires were sent out to regulators: a "high-level" questionnaire intended to achieve an overview of the global level of implementation of the 30 principles, a questionnaire on the Principles Relating to the Regulator, and a questionnaire on Principles Relating to the Issuer, which deals with issues applicable directly to public companies.

The IOSCO Implementation Committee was formed in 1998 to measure the effective incorporation of the 30 principles into domestic regulations. The Committee comprises twenty-five regulators representing the main developed markets and emerging markets. It has produced a common methodology for supervising member self-assessment and ensuring that national regulations are consistent with IOSCO principles. The methodology has also been used to establish a peer review process, where the self-assessment completed by national jurisdictions is reviewed by fellow regulators organised into regional committees.

The Implementation Committee continues to supervise the incorporation of the IOSCO principles and is also organising a review of minimum requirements for assessing the actual degree of implementation of the principles.

b) Assessment of transposition of the IOSCO principles into national law

The Implementation Committee, of which AMF is a member, finalised the preparation of the "Methodology for Assessing Implementation of the IOSCO Objectives and Principles". The document was adopted the IOSCO Presidents Committee at the annual conference in Seoul.

The International Monetary Fund and the World Bank were closely involved in this work and were able to take advantage of the committee's expertise to harmonise the briefing notes used by its experts working on the Financial Sector Assessment Programs (FSAPs).

b) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MOU)

The Commission des Opérations de Bourse (COB) was a founder member of the group responsible for vetting securities commissions that apply to sign up to the IOSCO MOU. It has been succeeded by the Autorité des marchés financiers (AMF).

The final text of the agreement was adopted at IOSCO's 2002 annual conference in Istanbul.

This group, known as the Screening Group, comprises 24 commissions, six of which from so-called emerging countries.

Before submitting an application, commissions wishing to become signatories of the IOSCO MOU must fill in a questionnaire aimed at assessing their legal capacity to meet the Memorandum's requirements on obtaining information and exchanging it with their foreign counterparts.

The remit of the Screening Group consists primarily in examining the applicant's response to these questionnaires; asking for more details about particular issues, if required; and, on this basis, making a recommendation on the acceptability of the applicant to the three IOSCO officers with decision-making authority, namely the chairmen of the Technical Committee, the Executive Committee and the Emerging Countries Committee (subject to an appeal to the Executive Committee in the event of a negative decision).

The COB underwent this screening process and was admitted as one of the very first signatories of the IOSCO MOU in October 2002.

To date, 25 commissions have been admitted, and applications from several applicants are currently being examined.

Together, the signatories form a special group known as the Monitoring Group, which has a dual function. It addresses issues of a general nature concerning the implementation of the accord; and it submits recommendations to the three Presidents on the initiatives to be taken in respect of signatories that fail to meet their obligations under the IOSCO MOU.

Naturally, the AMF is a member of the Monitoring Group.

2 – Issues addressed by the Technical Committee

The Technical Committee spent much of 2003 completing the post-Enron projects set in train in 2002. It adopted standards on conflicts of interest with securities analysts working for investment services providers and laid down an initial set of principles on credit rating agencies.

Statement of principles regarding securities analysts
These principles deal mainly with sell-side analysts, but they can be extended to the entire profession.

The text comes in response to a study by a permanent IOSCO working group on the practices used by Technical Committee members.

It consists of eight principles. For implementation purposes, the IOSCO report sets out a series of core measures. It notes that, notwithstanding differences in member states' approaches and levels of market development, these essential measures should be written into the legal and regulatory frameworks of each member.

The main measures are accompanied by a set of implementing measures that can be used to expedite execution of the principles.

The principles can be summarised as follows:

The first principle states that mechanisms should exist so that analysts' trading activities or financial interests do not prejudice the independence of their research and recommendations. In

particular, analysts authorised to trade for own account should be prohibited from executing orders in a manner contrary to their recommendations and, furthermore, from trading ahead of publishing research. Analysts would also be required to disclose any personal links they or persons related to or associated with them may have with the issuer they are covering, as well as any financial interests in such issuers. (This requirement also applies to positions in derivatives.) Regarding financial interests, it should be noted that no thresholds for mandatory disclosure have been set.

The second principle concerns analysts' independence vis-à-vis the interests of the intermediary that employs them. This principle should be embodied in the following measures:

- requiring intermediaries to make a public disclosure if it makes a market in a security covered by its analysts;

- prohibiting an intermediary from knowingly trading in the financial instruments of an issuer before research on that issuer has been published externally;

- introducing Chinese walls;

- prohibiting analysts from taking part in road shows with the issuer and the intermediary.

The third principle concerns the independence of analysts as regards their compensation arrangements within their employer-firms. In particular, analysts are prohibited from reporting to the persons in charge of the investment banking function and from asking them to pre-approve research. Moreover, an analyst's compensation may not be linked to a specific investment banking transaction.

The fourth principle involves establishing a system of written procedures to identify, eliminate, manage or disclose conflicts of interest.

The fifth principle aims to protect analysts from outside pressures, notably from issuers that they cover. It prohibits issuers from selectively disclosing material information to certain analysts.

The sixth principle deals with the presentation of research and, in particular, with the inclusion of warnings about conflicts of interest.

The seventh principle reiterates a topic on which there is broad-based agreement, namely the integrity and competence of analysts.

The eighth and final principle recalls the importance of investor education.

The Technical Committee's principles are due to be approved by the entire organisation and thus to become IOSCO Principles. Note that French regulations already meet a great number of these objectives and will therefore require only minor amendments.

These principles should make a valuable contribution to the debate under way in the European Union, which has a common base for these issues: its key members, in terms of financial markets – the United Kingdom, Germany, Italy, the Netherlands, Spain and France – all sit on the Technical Committee.

Meanwhile, the European Commission adopted directive 2003/125/EC, implementing the Market Abuse Directive. Based on a CESR technical opinion, directive 2003/125/EC sets out the requirements for presenting investment research (clarity of data and conclusions, methodology, etc.) and stipulates obligations for the disclosure of possible conflicts of interest. On this point, it gives a number of core measures to be implemented by EU member states, notably ensuring that investment analysts are independent of their employers and issuers, and that intermediaries are independent of issuers (principles 2, 5 and 6).

The IOSCO Principles complement the directive because they go further than simply combating market abuse in the strict sense of the term. They set out a number of organisational and ethical rules that can be taken into consideration when preparing the implementing regulations for the "Intermediaries" section of the future Investment Services Directive.

Another noteworthy development at European level is the publication of the Forum Group report on conflicts of interest and securities analysts. Prepared at the behest of the European Commission by a group of professionals, with input from the CMF and Italy's CONSOB, the report identifies five key principles that serve as a basis for 31 recommendations. It is intended as a contribution to the European debate on this issue. The Executive Summary stresses that it is up to the Commission to take legislative measures at EU level. In this respect, the Forum Group report provides Europe's regulators with valuable insights for the adoption of IOSCO standards.

By and large, the report echoes the principles adopted by IOSCO member-regulators. That said, the Forum Group does not reiterate IOSCO's provisions with the same level of precision: its objective is to express the contribution of the finance industry to Community-level discussions, to make a fine-grained analysis of the mechanisms of investment analysis, and to address the related issues in detail.

However, neither report – IOSCO or the Forum Group – goes so far as to provide concrete answers to the problems faced by firms carrying on a cross-border activity. It is up to the European Commission and CESR to investigate ways of achieving high-level harmonisation on this issue within the EU.

Credit rating agencies

The debate on credit rating agencies (CRAs) arose because regulators wanted to hold joint discussions regarding key financial market players. It was also a response to a request made by the Financial Stability Forum following the G7/G8 summit in Evian under France's EU presidency. It should also be noted that the US Securities and Exchange Commission, which plays a major role in this area, is also reviewing the way it regulates CRAs and has issued a Concept Release on the subject.

The IOSCO project consisted firstly in itemising the approaches of Technical Committee members and secondly in drawing up a general doctrine entitled "Statement of Principles Regarding the Activities of Credit Rating Agencies". This two-phase mission was carried out in close cooperation with CRAs, which were invited to meet with IOSCO experts. The project is interesting for two reasons: it raises the profile of IOSCO and it engages a dialogue at international level with industry participants who are, in effect, international players. The detailed findings are presented in a report.

The principles applicable to CRAs, unlike those for securities analysts, have not led IOSCO to lay down mandatory measures that its members must incorporate into their legal arsenals. Technical

Committee members are free to opt either for self-regulation or for regulatory action. There are several reasons for this choice:

- many countries, including France (at least, until the passage of the Financial Security Act), have no specific regulations or controls for CRAs;
- deliberations on the subject are under way in the United States;
- the Basel Committee has drawn up a set of recognition criteria that prudential regulators can use to select agencies whose ratings may serve as a basis for bank capital adequacy requirements.

The introduction to the document states that regulators will review the methods used to implement the principles, as well as their consistency with other international projects, within 18 months.

The Statement of Principles is divided into four main sections: quality and integrity of the rating process, independence and conflicts of interest, transparency and timeliness of rating disclosure, and confidential information.

Quality and integrity of the rating process

The principles in this section stress the importance of procedures to ensure that ratings are based on a thorough analysis of available information; the obligation to update ratings in the presence of new information that may prompt a revision of a rating; and the quality of the CRA's organisation and the competence and integrity of its staff.

Transparency and timeliness of rating disclosure

The key point in this section, in addition to the importance of timely disclosure, is the requirement for CRAs to disclose their ratings to the public at large, and not solely to subscribers, if those ratings are based wholly or partly on non-public information. IOSCO's aim is to reduce informational asymmetry while allowing CRAs – and particularly new ones – to use a business model based on charging subscribers for unsolicited ratings.

However, the same requirement does not apply to the report that accompanies a rating.

Independence and conflicts of interest

As widely expected, this chapter recalls the need for CRAs to adopt internal procedures to prevent conflicts of interest, to avoid entering into business relationships that might lead to conflicts of interest, and to adopt compensation policies that encourage analysts' independence.

Confidential information

This section deals with the most sensitive areas, namely CRAs' access to non-public information and the use they may make of those data. IOSCO regulators acknowledge that CRAs may receive confidential information, but the report lays down no particular measures for dealing with information deemed to be sensitive or privileged ("inside information"). Non-public information should be communicated under the terms of a confidentiality agreement that protects it. Such information can be used in the rating process. Regulators are fully aware that the quality of a CRA's work depends on wide-ranging exchanges of data with an issuer and that such exchanges are not limited to public information.

However, this section does not directly tackle the key issue of disseminating sensitive non-public information. Pursuant to the Statement of Principles, and given that the report refers to the IOSCO Principles, the issuer alone is responsible for disseminating this information. In contrast, there is no guidance on what a CRA should do if an issuer does not wish to publicly disclose an

item of sensitive information that it has nevertheless communicated to the agency. Another question that is not addressed is how agencies should reconcile the dual obligation to update a rating if necessary and at the same time to comply with its confidentiality agreement with the issuer.

IOSCO is due to continue its work on CRAs in 2004 by establishing principles for conduct of business rules.

The two Statements Of Principles adopted by IOSCO – especially those on securities analysts – show clearly that regulators are determined to take an unequivocal stance on unacceptable practices as well as on best practice. The AMF will endeavour to promote these principles in its discussions with the EU.

Other issues addressed by IOSCO

The Organisation also published reports on risk assessment, the responsibilities of collective investment schemes as shareholders, and the activities of the Internet task force; as well as a summary of answers to the questionnaire on fees and commissions in the asset management sector.

Reform of IFAC

In early 2003 the International Federation of Accountants (IFAC) initiated a review aimed at modernising its organisational structure, governance and working methods. The Financial Stability Forum, meeting in March, encouraged IFAC to proceed with the reforms, stressing the need for an independent and representative committee that serves the public interest by supervising the activities of the IASB. The reforms are being conducted in collaboration with a monitoring group composed of IOSCO, the Basel Committee, the International Association of Insurance Supervisors (IAIS), the World Bank and the European Commission.

The highlight of the reform initiatives is the formation of the Public Interest Oversight Board (PIOB). The PIOB will supervise all IFAC committees dealing with audit-related issues. It will approve their terms of reference and will have the power to call for the resignation of their chairmen. At a more fundamental level, the PIOB will oversee IFAC's standard-setting procedures.

The PIOB will have ten members appointed by various regulatory bodies: four by IOSCO (including the chairman), two by the European Commission, one each by the World Bank, the Basel Committee and the IAIS, and one member put forward by IFAC to represent auditors. The COB's chairman was chosen by IOSCO to conduct the process of selecting the Organisation's members. That duty was taken over by the chairman of the AMF.

3 - COB and CMF participation in IOSCO bodies

The COB and the CMF always played an active part in the work of IOSCO's Technical Committee. For many years, the COB chaired Standing Committee 4, comprising the heads of enforcement departments and, in this capacity, put in place the process used to screen would-be signatories to the IOSCO MOU. The AMF now chairs Standing Committee 5, which deals with investment management. The chairman of the COB was a member of the special group of presidents responsible for drafting the principles on securities analysts and CRAs. Members of the AMF's personnel belong to all standing committees.

B - THE JOINT FORUM

The Joint Forum is composed of three international regulatory organisations, the Basel Committee, IOSCO and the International Association of Insurance Supervisors. It published two reports in 2003. The first, "Trends in Risk Integration and Aggregation", examines how financial firms operating across several sectors try to adopt a more closely integrated approach to all the risks inherent in each sector. The trickiest issue – and one on which the report remains open-minded – is the way these exposures can be aggregated to define an economic capital requirement at group level.

The second reports, "Operational Risk Transfer Across Sectors", deals mainly with the manner in which financial intermediaries can reduce the capital charge for operational risk by means of insurance policies. The report examines the types of risk that can effectively be transferred and the consequences of doing so.

Furthermore, at the request of the Financial Stability Forum (FSF), the Joint Forum initiated a project on the transfer of credit risk. A preliminary report was presented at the FSF's March 2004 meeting.

C - FINANCIAL STABILITY FORM

The Financial Stability Form (FSF) met twice in 2003, once in Berlin and once in Paris (France presided the G8 last year). In addition to its regular assessment of the vulnerability of the international financial system, the FSF conducted a series of projects dealing with financial markets:

Credit risk transfer

Faced with widespread concern about credit risk transfer (CRT), especially the lack of information for evaluating this trend and its consequences, it was agreed that the Bank for International Settlements would address the issue in its half-yearly report on OTC derivatives. Furthermore, the FSF asked the Joint Forum, composed of three regulatory bodies spanning the banking, securities and insurance sectors, to research the subject. An interim report was submitted in March 2004. In particular, the FSF asked the Joint Forum to examine whether transfer is full or partial, to assess the extent to which participants understand the risks involved, and to look into the possibility of undue risk concentration inside and outside the regulated sphere of financial markets.

Non-cooperative jurisdictions

Building on its earlier efforts that resulted in a list of non-cooperative jurisdictions, the FSF asked the International Monetary Fund (IMF) to assess the progress made so far in terms of regulation and supervision. FSF members acknowledged that some improvements had been made as a result of pressure from the international community, but that, overall, not enough had been done to prompt the Forum to alter its position. Members encouraged those jurisdictions that had not been audited by the IMF to request an examination of their regulations and to publish the findings. The initial conclusions reached by IOSCO on the Parmalat affair, and the ensuing discussions with the FSF's chairman, seem to suggest that the policy of "naming and shaming" cannot be abandoned until more tangible results have been achieved.

The FSF also lent its support to several initiatives aimed at enhancing the stability and proper regulation of financial markets. This is consistent with the role sketched out for the FSF by the G8 in the conclusions of the Evian summit, whereby the Forum is seen as a linchpin institution responsible for coordinating initiatives and ensuring that they are implemented. The FSF paid particular attention to IOSCO's work on credit rating agencies and securities analysts. It took measures to evaluate the enforcement of standards adopted in the aftermath of the Enron affair and to assess independence and oversight of the audit industry. And it endorsed the reform of IFAC, in particular the remarks made by Sir Howard Davies, former chairman of the UK Financial Services Authority, concerning the formation of the Public Interest Oversight Board.

D - THE FRENCH-SPEAKING COMMUNITY: INSTITUT FRANCOPHONE DE LA REGULATION FINANCIÈRE (IFREFI)

The first meeting of the principal securities regulators of French-speaking countries, held in 2000 at the behest of the COB, paved the way for the gradual introduction of a flexible framework for cooperation and dialogue through which the participants could share their experiences.

Institut Francophone de la Regulation Financière (IFREFI) allows members to take full advantage of the privileged links that unite them through the shared use of French. It also encourages them to share their views and enables them to organise joint training programmes for their staff.

Since 2002[40] IFREFI has met once a year, organising two consecutive assemblies. The Chairmen's Meeting provides the opportunity for a high-level exchange of views on recent developments in financial regulation and allows the participants to address one topic in depth every year. This is followed by a training seminar for the regulators' staff.

The process of creating IFREFI comprised three separate but interlocking components.

The third training seminar, on financial market surveillance and investigative methods, took place in Montreal on 5 and 6 June 2003. The first day was devoted to ways of detecting anomalies in market data that might prompt a regulator to launch an investigation (IT systems, data analysis, detection of abnormal situations, preparation of preliminary reports). On the second day, the trainees examined the laws and regulations governing the investigative and monitoring activities of French-speaking regulators and looked at practical methods of investigation.

E – FINANCIAL ACTION TASK FORCE (FATF)

In 2003 the COB continued to participate in the work of the Financial Action Task Force on Money Laundering (FATF) as part of the French delegation, which includes ministries and other commissions. It was thus able to contribute to work on matters within its areas of competency. The main emphasis in 2003 was on finalising the new version of the FATF's "40 Recommendations", which form the international standard for the prevention of money laundering and which were adopted at the Plenary meeting in Berlin in June 2003. In addition to the work on money laundering, the FATF has drawn up "Eight Special Recommendations" on terrorist financing. The aim of the principles and recommendations is to build a set of measures

[40] see COB 2002 Annual Report, page 261.

for combating these twin menaces. The FATF calls on countries worldwide to adopt the measures needed to bring their laws into compliance with these rules.

V –Bilateral cooperation

A – SUPPORTING THE INTERNATIONAL DEVELOPMENT OF THE FRENCH MARKETS

The COB signed a bilateral agreement in 2003 with the Bailiwick of Guernsey on bilateral cooperation and exchange of information. The aim of such agreements is to organise and implement mutual assistance procedures with the COB's foreign counterparts. The Guernsey accord bring to 35 the number of bilateral agreements signed by the COB so far.

Cooperation focuses in particular on exchanges of information for the policing of violations of laws and regulations on insider trading, price manipulation, false or misleading information, and disclosures to investors.

B - CONTRIBUTION TO EUROPEAN EXPANSION

1 – Completion of the twinning programme with the Polish Securities and Exchange Commission

In 2002 the COB and the Polish regulator, Komisja Papierów Wartościowych i Giełd (KPWiG) signed a twinning programme financed by the European Commission ahead of Poland's accession to the EU. The programme began on 25 September 2000 and was completed on 31 December 2002, after a six-month extension. It had three objectives:

- preparing the Polish finance ministry for the free convertibility of the złoty
- creating a system to combat money laundering and preparing for the transposition of EU directives on financial markets
- implementing an operational market-surveillance system

For the first objective, the COB was assisted by the Banque de France, for the second by the Ufficio Italiano dei Cambi and TRACFIN, and for the third by the CONSOB. Furthermore, the COB seconded a member of staff to the KPWiG in Warsaw on a 14-month assignment. This wide-ranging project required major efforts on the part of the French and Italian authorities, with 88 days' work by experts on-site in Poland and 17 seminars and training sessions. In addition, the Polish authorities took part in 28 visits to seven EU countries, the equivalent of 309 working days divided among 61 persons. Last, a substantial portion of Poland's financial regulations –a total of 27 laws and decrees – was reviewed and the resulting amendments were submitted to the government and parliament.

The COB and the authorities working with it encountered two main problems. First, the ongoing review of EU directives complicated preparations for transposition because of ongoing discussions within the Union, particularly on the Prospectus, Market Abuse and Investment Services Directives. Second, the call for tenders issued by the EU for the technical development

of a market surveillance system was unsuccessful because of the inadequate quality of the respondents. This was mainly due to the fact that, for competition reasons, companies which had already participated in the development of the COB system were not permitted to submit bids. In consequence, the COB and the KPWiG had to overhaul the contents of the programme and substantially revise the initial budget.

In conclusion, however, it should be noted that all the objectives were achieved, especially as regards the conditions for the convertibility of the złoty, preparations for the transposal of EU directives , and the creation of a body responsible for money laundering prevention. Concerning the market surveillance system, the COB transferred its know-how to the KPWiG, which is now capable of implementing the system itself.

2 - Participation in the initiative for Effective Financial Services Supervision in Accession Countries (EFSSAC)

The European Commission has formed a group of experts in banking, insurance and financial services. The group, on which each member state is represented, will contribute to the process of verifying the qualifications of EU accession candidates. It will participate in peer reviews aimed at ascertaining whether those candidates have a regulatory system capable of effectively monitoring the application of Community rules and the orderly operation of financial systems.

In 2002 each accession country was visited by a six-person team of experts in banking, insurance and financial markets from six member states. At the end of the week-long mission, the experts drafted a report presenting and analysing financial supervision in the country in question. They then presented an assessment of the degree of implementation of the international principles recognised by IOSCO (for securities), the Basel Committee (banking) and the IAIS (insurance). These observations were supplemented by recommendations aimed at encouraging the incorporation of international principles in national law.

The European Commission successfully completed the second phase of consolidation of the peer review programme covering all accession countries. This involved two meetings of the EFSSAC plenary group in Brussels.

The Commission hailed the quality of the work done under the supervision of member states' financial regulators through short missions to monitor developments in regulatory practices in each accession country.

The COB took part in a peer review in Slovakia in May 2002 and completed the follow-up mission in June 2003.