



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

common position of the Council on the adoption of a Directive of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

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1- BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2001) 280 final – 2001/0117(COD) ¹ :	01 June 2001
Date of the opinion of the European Central Bank ² :	16 November 2001
Date of the opinion of the Economic and Social Committee ³ :	17 January 2002
Date of the opinion of the European Parliament, first reading ⁴ :	14 March 2002
Date of transmission of the amended proposal to the EP and the Council (document COM(2002) 460 final – 2001/0117(COD) ⁵ :	10 August 2002
Date of the adoption of the common position ⁶ :	24 March 2003

2- OBJECTIVE OF THE COMMISSION PROPOSAL

The proposed Directive seeks to ensure that adequate and equivalent disclosure standards are in place in all Member States when securities are made available to all European investors either through an offer to the public or because they are admitted to trading on a regulated market.

Under current EU rules, mutual recognition is granted only to prospectuses that set out the information required in the Listing Particulars Directive (80/390/EEC) and are approved by the competent authorities. The host country authority, in the case of recognition of the prospectus, is authorised to require additional information related to the domestic market. Regulations and practices vary widely between European Member States. As a result EU capital markets have been fragmented and it has rarely proved possible to use the existing

¹ OJ.C 240 E, 28.08.2001 p.272

² OJ.C 344, 06.12.2001 p. 4

³ OJ.C 80, 03.04.2002 p.52

⁴ Not yet published in the Official Journal

⁵ OJ.C 20 E, 28.01.2003 p.122

⁶ Not yet published in the Official Journal

prospectuses to raise capital across frontiers within Europe. Additionally there is no European recognition system for securities falling outside the scope of the 80/390/EEC Directive.

To this end, the proposed Directive harmonises requirements for the drawing up, approval and distribution of the prospectus. The entry into force of the Directive will result in the creation of a true European passport for issuers by giving, Community-wide validity to the prospectus approved by the issuer's home competent authority, in order to facilitate the raising of capital for all types of issuer.

The key features of the proposed Directive are the following:

- definition of clear conditions related to the prospectus for offers to the public of securities and for admission to trading on a regulated market;
- harmonisation of the essential definitions in order to avoid loopholes and different approaches, thus ensuring a level playing field throughout the EU;
- the introduction of special EU rules for securities with an high minimum denomination (€ 50 000), which are designed to be traded by professionals;
- an adapted regime aimed at making things easier for small and medium-sized companies, which would not be obliged to draft a prospectus if only a small amount of securities is offered to the public;
- disclosure standards based on international standards (IOSCO) with schedules adapted depending on the nature of the issuer and the type of securities involved, for example: equity securities such as shares, non-equity securities such as bonds, derivatives securities such as covered warrants, securities with a high minimum denomination and mortgage bonds;
- the introduction of new prospectus formats for frequent issuers, notably for offering Euro Medium Term Notes, derivatives securities such as covered warrants, or for mortgage bonds issued on a continuous or repeated basis;
- an effective regime for the "single passport". For companies to issue securities, or admit them to trading, in any EU Member State, they would simply need to notify the authorities in that country of their prospectus and show that it has already been approved by the appropriate authority in another Member State.

The proposed prospectus Directive also follows the approach suggested by the Committee of Wise Men (chaired by Mr. Lamfalussy) in February 2001 and endorsed in a Resolution of the Stockholm European Council in March 2001. This approach is based on differentiating framework principles from implementing measures.

3- COMMENTS ON THE COMMON POSITION

3.1 General comments on the common position

The Belgian, Spanish and Danish Presidencies have treated as a matter of priority the Commission's initial and amended proposals for a Directive on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market. Following the Report of the European Parliament (First Reading) on 14 March 2002, and after the adoption by the Commission of its amended proposal on 9 August 2002, the ECOFIN meeting of 5 November 2002 reached a political agreement on the substance of a compromise text, embodied in the Common Position of 24 March 2003. The European Commission is in a position to accept the Common Position.

The common position follows closely the Commission's amended proposal. At the same time it includes a large number of amendments proposed by the European Parliament to the original Commission proposal to the extent they were included in the amended Commission proposal. The majority of the changes contained in the common position in comparison with the amended Commission proposal are of a predominantly technical drafting nature and have been made in order to enhance legal certainty or to make the text clearer, while others modify the Commission proposal in a more substantial manner, e.g. the change in the definition of the home Member State, definition of the powers of the competent authority, language regime etc.

3.2 Specific comments on individual provisions

– Preamble

Recitals 8, 38, 39 and 40 embody the respective EP amendments (amendments 1, 8, 9 and 10 partially) regarding comitology procedure.

Recital 35 is no longer in line with the EP amendment on a single competent authority (amendment 7); the Commission agreed to this amendment and had it incorporated in its modified proposal (former recital 29). However, the text of the Directive (Art. 21) was modified in the course of the discussions and thus the recitals had to be adapted accordingly.

Recital 16 embodies the EP amendment on the importance of conduct of business rules for investor protection (amendment 3).

Recital 20 embodies the EP amendment on the need for tailored disclosure standards for non equity securities (amendment 4).

Recital 21 takes into account the EP amendment on the possibility to draft a prospectus in one single document (amendment 5, first part). The second part of EP amendment 5 for its, with respect to the possibility to apply a national regime for domestic offers, has not been included as such in the common position. However, the EP approach in that respect has been introduced in the Article 1 paragraph 2 for certain type of offers and securities (excluding UCITS of the open-ended type which are in the scope of other Directives).

Recital 13 is not in line with the EP amendment on the determination of the home competent authority (amendment 2).

Recital 25 takes on board in an implicit manner the elements of EP amendment 6 related to the suppression of the requirement for an yearly update of the registration document.

Finally, the recitals have been amended to take account of the changes to the enacting terms of the Directive. Notably some new recitals (11, 15, 19, 22, 26, 30, 44 and 45) were introduced in the common position, respectively related to the consequences of being outside of the scope of the Directive; to consequences of being exempted from the obligation of publication of a prospectus; the contents of a summary; the need for flexibility in relation to the information to be provided in a base prospectus in the context of an offering programme; the list of published information; data protection; a review clause; and to the possible establishment of a European Securities Unit.

CHAPTER I - GENERAL PROVISIONS

Article 1 - Purpose and scope

Amendments 11 and 65rev modifying the scope of the Directive were not included in the Commission amended proposal and have not been included in the common position either. The Council has introduced in the common position some further exemptions from the scope of the Directive.

For the sake of clarity, recital 11 states that securities which are not covered by the scope of the Directive remain unaffected by it. Therefore, the Directive does not impose any obligation upon issuers of exempted securities and leaves to each Member State the possibility to impose or not disclosure obligations upon those issuers.

The additional exemptions cover: shares of capital in central banks of Member States (Article 1(2)(c)); shares whose main purpose is to provide the right to occupy an apartment or real estate (Article 1(2)(g)) because such shares are not fungible; small offers of securities totalling less than 2 500 000 euro (Article 1(2)(h)); mortgage bonds "bostadsobligationer" issued only in Sweden (Article 1(2)(i)), because they do not have the same legal structure compared to those described in Article 5(4) (b); small offers of bonds issued by credit institutions (Article 1(2)(j)). The additional exemptions partially respond to the EP amendments 5(second part) and 35 calling for the application of a national regime instead of the Community regime provided for in the proposal in certain cases and an 'opt-in' system at the issuer choice.

However, certain of those exempted issuers might be interested by the harmonised disclosure regime and the automatic mutual recognition procedure of prospectus. Issuers referred to in Article 1(2) (b),(d),(h),(i) and (j) may benefit from the 'opt-in' option set out in Article 1(3) and draw up a prospectus according to the Directive if they so wish.

Article 2 - Definitions

Amendments 16 on the determination of the home competent authority and 17 on the definition of market capitalisation were not included in the Commission amended proposal and have not been included in the common position either. The common position also amends a number of definitions in comparison with the amended Commission proposal.

In the definition of "securities", Article 2(1)(a), it has been made clear that money market instruments with a maturity of less than 12 month are not considered as securities for the purposes of the Directive. This is in line with amendment 13 of the European Parliament.

The definitions of "equity securities" and "non-equity securities" are unchanged from the amended Commission proposal, but recital 12 of the common position adds an explanation of how these terms should be understood.

The definition of "qualified investors" in Article 2(1)(e) has been amended to give a more precise definition of legal entities which are small or medium sized enterprises. The principles included in this definition are in line with amendment 76 of the European Parliament. However, the figures in this definition are different and in line with existing and possible future SMEs definition at Community level.

Concerning natural persons to be treated as qualified investors, the common position makes it an option for Member States to choose to let them be considered as qualified investors. This is in order to strike a balance between the flexibility foreseen in the Commission amended proposal, which was based on amendment 15 of the European Parliament, and the need felt by some Member States to guarantee natural persons resident on their territory the full investor protection offered by the Directive. This option has, however, been extended to place small and medium-sized enterprises on the same footing as natural persons, since the need for investor protection is considered the same in both cases. Amendment 15 of the European Parliament is thus partially included in the common position.

The definition of "credit institution" in Article 2(1)(g), has been made more precise, by including a reference to Directive 2000/12/EC.

Subject to certain changes, the common position follows the main approach of the Commission amended proposal concerning the definition of "home Member State" with separate treatment for equity and small denomination non-equity securities on the one hand and large denomination non-equity securities aimed at the professional market on the other, but strikes a different balance between the two categories, inspired by amendments 2 and 16 of the European Parliament. The balance is now struck in a way that permits issuers of higher denomination bonds and certain derivative instruments to choose as the home Member State either the Member State where it has its registered office or the Member State where the securities in question are to be admitted to trading or are offered to the public for the first time. The limit for higher denomination bonds is set at 5 000 euro per unit.

For EU issuers of all other securities the home Member State is defined as the Member State where the issuer has its registered office. For non-EU issuers the treatment is that foreseen in the Commission amended proposal, with the added provision that an issuer who has not chosen its home Member State, because another entity had offered its securities to the public or asked for admission to a regulated market, can, according to the Directive, subsequently elect a different home Member State.

The definition of "approval" in Article 2(1)(q) has been made more precise in the common position and is more stringent compared to one provided in the last paragraph of EP amendment 35.

Article 2(2) of the Commission amended proposal has been deleted in order to avoid both a positive and a negative definition of what constitutes an offer of securities to the public. The types of offer in that provision have now been set out in Article 3(2) of the common position.

Article 2(3) of the Commission amended proposal has been amended to make it clear that the definition of small and medium sized enterprises can be adjusted either upwards or downwards and the adjustment must take account of EU legislation and recommendations.

Amendment 19 of the European Parliament is thus included in the common position (Article 2(4)).

Article 3 - Obligation to publish a prospectus

Article 3(1) has been redrafted to set out the obligation incumbent upon Member States in a more precise manner.

Article 3(2) refers to the types of offer set out in the deleted Article 2(2) of the Commission amended proposal. It states that these offers are covered by the scope of the Directive, but not by the obligation to publish a prospectus. The limit set out in Article 3(2)(e) was amended compared to Article 2(2) of the Commission amended proposal, since very small offers (less than 100 000 euro) will not be subject to the obligation to publish a prospectus in Member States. The last subparagraph of Article 3(2) has been redrafted to make it clear that when placements of securities are made through financial intermediaries, it is the final result of the placement that matters.

Article 4 - Exemptions from the obligation to publish a prospectus

Amendment 20 of the European Parliament, included in spirit and with a different wording, has been partially included in the common position. Except for paragraph 2(h), Article 4 essentially follows the Commission amended proposal with only minor amendments. Paragraphs 1(b) and (c) and 2(c) and (d) specify that when the competent authority assesses whether the information in the document to be made available is equivalent to that of a prospectus, it must take into account what is required according to Community legislation. In the cases set out in paragraphs 1(d) and (e) and 2(e) it is sufficient to require that the document setting out the required information is made available, as is the case in paragraph 1(b) and (c) as opposed to published, as proposed in the Commission amended proposal.

In order to improve the situation of directors and employees, it has been added that the application of paragraph 1(e) is restricted to cases where the employer has securities already admitted to trading on a regulated market and therefore is subject to ongoing disclosure requirements. The information requirement in paragraph 2(f) has been aligned to the requirement in paragraph 1(e) and a document containing some core information must now also be made available in the case referred to in paragraph 2(f).

Article 4(2)(h) of the common position introduces an exemption not foreseen in the Commission amended proposal, namely to exempt securities already traded on a regulated market from the obligation to publish a prospectus when admission to trading is sought on another regulated market in the Community. This possibility offers added flexibility to market participants and goes, at least in the spirit, into the direction of EP amendment 11 – though this was not included in the Commission’s amended proposal, and it is not included as such in the text of the Council common position either.

The scope of the implementing measures to be adopted pursuant to Article 4(3) is narrower compared to the extent of the comitology powers foreseen in EP amendment 20 and incorporated in the Commission’s amended proposal; the comitology provision has been restricted to technical developments regarding the interpretation of certain of the exemptions from the obligation to publish a prospectus included in this same Article (par. 1 and 2) as well as the meaning of equivalence.

EP amendment 21 was not included in the Commission amended proposal and has not been included in the common position either. It was felt that the exemptions from the obligation to publish a prospectus should not necessarily be identical in the case of securities offered to the public and in the case of securities admitted to trading on a regulated market.

CHAPTER II - DRAWING UP OF THE PROSPECTUS

Article 5 - The prospectus

Article 5(2) of the common position stipulates that the summary should convey the essential characteristics and risks associated with the issuer in a brief manner and in non-technical language. This approach is more flexible compared to amendment 24 of the European Parliament setting out that the summary should be limited to 2 500 words which was also incorporated in the Commission amended proposal. In fact, the Council considered this type of provision too restrictive to be applied as a stringent requirement. Nevertheless, it is now indicated in recital 19 that the summary should normally not exceed 2 500 words.

EP amendment 22 related to the possibility to choose the format of the prospectus is included with a different wording in Article 5(1) and (3). This is also in line with EP amendment 31 requiring the abolition of mandatory format for prospectuses related to securities admitted to trading on a regulated market

Article 5(4) addresses the need for an adequate documentation system, allowing frequent issuers to issue on a regular basis using a fast track procedure beyond the registration document system. A base prospectus regime was introduced to cover offering programs for non equity securities with the addition of equity warrants. This new system encompasses partially and in spirit the EP amendments 6 and 20 (part related to non equity securities issued under a programme).

Article 6 - Responsibility attached to the prospectus

The Article 6 included in the Commission amended proposal has been clarified to take account of the fact that Member States have the obligation to ensure that responsibility for the information given in a prospectus is at least incumbent upon certain persons defined in par. 1 of this article, but also may extended at national level responsibility to other persons such as an issue arranger. This text, though not in contradiction with amendment 27, does not really reflect its content or its spirit.

A differentiated regime for civil liability attached to the summary is provided for in Art 6(2) of the common position; this is in line with EP amendment 24.

Article 7 - Minimum information

EP amendments 23, 28 and 75 related to prospectuses adapted to certain type of issues are incorporated in spirit in the common position with a different wording. Particularly the last paragraph of amendment 23 and amendment 28 were partially taken into account: notably the distinction between securities destined to a public offer and those designed for admission to trading was not included in the common position. Amendment 29 of the European Parliament, already included in the Commission amended proposal, has also been included in the common position and extended to cover non-financial information too. In its amended proposal, the Commission agrees to delete the comitology provision for possible implementing measures related to the organisation of offers as provided for in EP amendment 30; the text of the common position confirms that no implementing measures are needed in this area.

Article 7 is largely unchanged in the common position. Article 7(1)(c) has been aligned to Article 5(4)(a) and an addition has been made in Article 7(1)(f) stipulating that, where necessary, account should be taken of the public nature of the issuer, in developing the different models of prospectuses.

Article 8 - Omission of information

Article 8 has remained the same in its basic lines compared to the Commission amended proposal. Amendments 25 and 26 of the European Parliament are included in the common position albeit in a slightly different wording. The scope of the implementing measures to be adopted by the Commission has been limited to the provisions included in paragraph 2 of the same article which determines in which cases the competent authority of the home Member State may authorise omission of certain information from the prospectus. This text is different from the one included in EP amendment 26, which provided for adoption of level 2 measures if the information requirement is inappropriate to the issuer's sphere of activity or to its legal form.

Article 9 - Validity of a prospectus, base prospectus and registration document

Article 9(4) is in line with the first sentence of EP amendment 32 related to the 12 months validity of a registration document.

Article 10 - Information

In its amended proposal, the Commission incorporated the last paragraph of the EP amendment 32 on a differentiated regime for SMEs but maintained the principle of a yearly update on the information that should normally be found in a registration document. Article 10 of the common position has been redrafted in order to reduce the administrative burden on issuers and to reduce costs. The obligation on the issuers is limited to the provision of a document or a list that contains or refers to all information that the issuer has already published or made available to the public over the previous 12 months in one or more Member States and in third countries in compliance with obligations under Community and national laws and rules dealing with the regulation of securities. No new disclosure obligations are imposed, since disclosures under existing law should be adequate. This should be in line with the voluntary regime provided in the EP amendment 32.

However, Member States are free to impose a more stringent regime at national level in order not to lower investor protection and existing disclosure regime in certain Member States.

Article 11- Incorporation by reference

Article 11 incorporated the precise information items described in the EP amendment 34 with a different approach and wording (reference to existing Community legislation); this incorporates partly amendment 34. However, the provision related to the adoption of implementing measures is not in line with this amendment, which provided for the deletion of the comitology procedure.

EP amendment 33 related to the mandatory use of a language customary in the sphere of international finance for information to be incorporated in a prospectus by reference to other documents was not included in the Commission amended proposal and in the common position.

Article 12 - Prospectuses consisting of separate documents

Article 12 is unchanged from the Commission amended proposal and there was no specific EP amendment on this matter. However, it is not in line with EP amendment 32 which is not very clear and gives the impression that update of information should be done exclusively with the registration document.

CHAPTER III - ARRANGEMENTS FOR APPROVAL AND PUBLICATION OF THE PROSPECTUS

Article 13 - Approval of the prospectus

EP Amendment 35 was not included in the Commission amended proposal and has not been included in the common position either. However, the new exemptions introduced in Article 1 partially respond to this amendment providing for the application of a national regime instead of the Community regime in certain cases and an opt in regime at the issuer choice.

Concerning the maximum deadlines for approval of prospectuses, the Commission in its amended proposal reduced those deadlines compared to its initial proposal (from 40 to 30 days for the IPO). However, these deadlines are still different from the ones required by the EP amendments 36 and 37 (7 days in general and 20 days for the IPO)).

The Commission included EP amendment 38 to permit approval by default in its amended proposal. However, the Council decided to come back to the initial proposal where failure of the competent authorities to react shall not be deemed to be an approval of the application. Amendment 38 of the European Parliament is thus not included in the common position.

The Commission also agreed to EP amendment 39 but the Council changed the wording to make it clear that the deadlines set out in Article 13 can be adjusted and not only reduced. The main part of amendment 39 of the European Parliament is thus not incorporated in the common position

Article 14 - Publication of the prospectus

Amendments 40, 41, 42 and 43 of the European Parliament are included in the Commission amended proposal and in the common position. Amendment 42 of the European Parliament has also been included in the common position, but with a slightly different wording. In fact, this text is more in line with the amendment of the Parliament than the Commission amended proposal, in which, the explicit reference to a minimum period of six days for IPOs had not been included.

The Article is essentially unchanged from the Commission amended proposal, but the common position introduced certain additional options to Member States (publication always in electronic form in paragraph 2, publication of a notice in paragraph 3, the publication of prospectuses on the website of the competent authority).

Article 15 - Advertisements

In its amended proposal, the Commission took on board EP amendments 44 and 45. However, paragraph 5 of the Commission amended proposal was modified in order to allow that material information addressed only to qualified investors might not be made available to the public. In cases where a prospectus has to be published, such material information shall be included therein or in a supplement, in accordance with the provisions relating to

prospectuses. Amendment 45 of the European Parliament designed to avoid selective disclosure is thus not included in the common position.

In comparison with the Commission amended proposal, paragraph 3 was reworded to take account of the fact that this provision can also apply before a prospectus has been published and paragraph 7 was redrafted slightly to make it clear that the implementing measures are not restricted to the period before the prospectus is published.

Article 16 - Supplements to the prospectus

There was no amendment from the European Parliament to Article 16. It is essentially unchanged from the Commission amended proposal, but Article 16 was amended in the common position in order to enhance the protection of the investor. It is now stated explicitly that where a supplement is necessary the summary shall also be supplemented to take account of the new information. More importantly, investors who have already agreed to purchase or subscribe to the securities before the supplement was published have been given the right to withdraw their acceptances with a delay of at least two working days after the publication of the supplement.

CHAPTER IV - CROSSBORDER OFFERS AND ADMISSIONS TO TRADING

Article 17 - Community scope of approvals of a prospectuses

In its amended proposal, the Commission has taken on board EP amendments 47, 48, 49, 64 and 50, albeit with some different wording. Article 17 in the common position is unchanged from the Commission amended proposal.

Article 18 - Notification

In its amended proposal, the Commission has taken on board EP amendment 53. In comparison with the Commission amended proposal, the wording of Article 18 in the common position was only slightly modified to take account of the fact that it is not necessarily in all cases the issuer who is responsible for drafting the prospectus, and to make it clear that the host Member State has a right to receive a copy of the prospectus from the home Member State.

CHAPTER V - USE OF LANGUAGES AND ISSUERS INCORPORATED IN THIRD COUNTRIES

Article 19 - Use of languages

Paragraph 1 is identical to the Commission amended proposal and thus includes the first part of amendment 51 of the European Parliament, providing that where an offer is made only in the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State. The rest of amendment 51 is only partially included in paragraphs 2,3 and 4 of the common position but the Article follows the same objective as the text of European Parliament in its first reading which is to avoid excessive burden for issuers.

However, the Council introduced some changes compared to the Commission amended proposal. In order to ensure that the competent authority of the home Member State is always in a position to understand the prospectus it has to approve, a new provision stipulates that even in cases where the offer is not made nor admission sought in the home Member State,

the prospectus has to be drawn up either in a language accepted by the home Member State's authority or in a language customary in the sphere of international finance, the choice being made by the issuer. Moreover, in line with paragraph 3, paragraph 4 of the common position added an option for Member States, both home and host, to decide whether their national legislation should require that a summary be drawn up in their national language(s).

Article 20 - Issuers incorporated in third countries

In its amended proposal, the Commission has taken on board EP amendments 53, 54 and 55, albeit with a different wording for the latter. Article 20 of the common position mainly follows the amended Commission proposal. However, the wording of paragraph 1(b) has been tightened to stipulate that the information requirements referred to in (b) must be equivalent, and not just "broadly equivalent". Amendment 54 of the European Parliament, introducing the word "broadly" is thus not incorporated in the common position.

CHAPTER VI - COMPETENT AUTHORITIES

Article 21 - Powers

In its amended proposal, the Commission took on board EP amendments 73, 56, 57, 58 and 59 related to the powers given to competent authorities. However the common position emphasised the concentration of competence in the central competent administrative authority and diverged from the amended proposal and amendments of the European Parliament.

Paragraph 1 stipulates that the designation of other administrative authorities to apply Chapter III must be required by national law, not merely by an administrative decision and it is limited for a period of 5 years. This system is no longer in line with EP amendment 73. Because of its federal structure, the Federal Republic of Germany has been granted a transitional period before it has to designate a single central competent authority, see Article 30(3).

The possibility for the competent authority to delegate tasks to other bodies has also been largely removed so as to concentrate the responsibility for the supervision and approval of the prospectuses with the competent authority. Thus, EP amendment 56 providing for delegation of tasks in a permanent manner has not been incorporated in the common position. In order to allow for a transitional period in those Member States which currently permit the delegation of functions, delegation will continue to be possible for a period of five years after the entry into force of the Directive. However, the conditions set out in paragraph 2 for delegation during the transitional period correspond to those set out in the Commission amended proposal, which in turn incorporated the main part of amendments 7 and 56 of the European Parliament

EP amendments 58 and 59 were maintained in the common position but amendment 57 concerning on site inspections has not been included in the common position. Paragraph 4 now states that the competent authority shall also have the right to carry out on-site inspections under the conditions set out in national law, which may require that such inspections may be undertaken only following a judicial decision and or in collaboration with other authorities. Member States also have the possibility to give additional powers to their national competent authority beyond the minimum requirement set out in Article 21(3).

Article 22 - Professional secrecy and co-operation between authorities, and Article 23 - Precautionary measures

EP amendment 63 on co-operation was included in the Commission amended proposal with a different wording in the last sentence of Article 22(2). Those articles are unchanged in the common position compared to the Commission amended proposal.

CHAPTER VII - IMPLEMENTING MEASURES

Article 24 - Committee procedure

EP amendments 60 and 61 were included in the Commission amended proposal and the Article is not modified in the common position compared to the Commission amended proposal.

Article 25 - Sanctions

There was no amendment from the European Parliament on Article 25. It is essentially unchanged from the Commission amended proposal, but the wording has been made more precise.

Article 26 - Right of appeal

There was no amendment from the European Parliament on Article 26. It is essentially unchanged from the Commission amended proposal.

CHAPTER VIII - TRANSITIONAL AND FINAL PROVISIONS

Article 27 - Amendments, Article 28 - Repeal, Article 29 - Transposition, Article 32 - Entry into force, and Article 33 - Addressees

These articles are unchanged from the Commission amended proposal and there was no amendment from the European Parliament on those issues.

Article 30 - Transitional provisions

EP amendment 62, related to the deletion of the transitional period for the first application of the yearly update of the registration document, was taken on board in the Commission amended proposal.

In comparison with the Commission amended proposal, the common position adds two transitional provisions.

The first of these as set out in paragraph 2 provides an option for Member States to use the exemption in Article 5(a) of Directive 89/298/EEC for a maximum period of five years. This will exempt, in certain Member States, certain debt securities from the obligation to publish a prospectus during the transitional period, provided they are issued in a continuous or repeated manner by credit institutions or other financial institutions equivalent to credit institutions which regularly publish their annual accounts and which, within the Community, are set up or governed by a special law or pursuant to such a law, or are subject to public supervision intended to protect savings.

The second of these is the exemption granted to the Federal Republic of Germany concerning Article 21(1).

3.3 New article introduced by the Council

Article 31 - Review

In order to ensure the review of the Directive the common position introduced an obligation for the Commission to make an assessment of the application of this Directive and present a report to the European Parliament and the Council, accompanied where appropriate by proposals for its review. Recital 44 states that this assessment should focus in particular on the process of approval of prospectuses by Member States' competent authorities, and more generally on the application of the home country principle, and whether or not problems of investor protection and market efficiency might result from its application. The Commission should also examine the functioning of Article 10.

4- CONCLUSION

The Commission considers that the Common Position adopted by the Council on 24 March 2003 is faithful to the objectives and the spirit of the Commission amended proposal of 9 August 2002 which is to ensure investor protection and market efficiency, in accordance with high regulatory standards adopted in the relevant international fora. The Commission also considers that the Common Position incorporates a large majority of Parliament's amendments, either completely or partially. In short, the Commission believes that the Common Position achieves a good balance between investor protection and market efficiency. The Commission hopes that the Directive can be approved during the year, in line with the deadline set in the Financial Services Action Plan and at the Stockholm European Council. If this can be achieved, and it must, it will facilitate the widest possible access to investment capital on a Community-wide basis while at the same time increasing investor confidence in corporate disclosure. This has never been as important as now.

The Commission therefore recommends this Common Position to the European Parliament.