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A “EUROPEAN PASSPORT”  
FOR ISSUERS

CONSULTATION PAPER



## **INTRODUCTION**

### **I. FACILITATING OFFERINGS IN THE EEA BY CREATING A "EUROPEAN PASSPORT" FOR ISSUERS**

### **II. CONCLUSIONS**

### **III. FUTURE WORK TO BE UNDERTAKEN IN ORDER TO SIMPLIFY EU PUBLIC OFFERS AND LISTINGS**

**Annex 1: Division of items for the "RD" and the "SN" related to shares**

**Annex 2: Division of items for the "RD" and the "SN" related to debt securities**

**Annex 3: Items to be summarised in the Summary**



## **INTRODUCTION**

### 1. Policy objective of FESCO

In addressing the issue of the mutual recognition of prospectuses in Europe, FESCO<sup>(1)</sup> members wish to create the opportunity for an issuer to make European public offers to all European investors or apply for listing in a manner that simplifies regulatory compliance for issuers while at the same time ensuring proper investor protection. The establishment of practical arrangements to facilitate mutual recognition of prospectuses echoes the objective of the EU Action plan for financial services to “reinforce the practical implementation of mutual recognition of prospectuses and provide for new streamlined procedures for raising subsequent instalments of capital (in particular, laying down the basis for common acceptance of shelf registration techniques)”. The driving idea of FESCO is to create a “European Passport” allowing issuers to extend their offers (or to apply for listing) to other EEA States without having to produce duplicative sets of documentation or respond to numerous additional national requirements and, also, to facilitate the access of approved documents to all European investors, without any constraint deriving from the requirement that offerings should take place in more than one EEA State simultaneously or within a short interval. The ultimate goal would be to establish a system whereby the set of documents reviewed by home country/primary listing authority would be considered valid in other jurisdictions subject only to a notification to the host State regulator.

### 2. Detailed objectives of FESCO

In order to make proposals to facilitate cross-border offerings by European companies and ensure high standards of information disclosure, FESCO has drawn up appropriate criteria to separate the prospectus into different documents and agree on how these documents should be prepared, approved and mutually recognised. FESCO has also identified other areas in which the directives could be amended to improve capital raising in the Single Market and, in particular, for small and medium enterprises (SMEs) whose securities are traded on regulated markets.

### 3. FESCO agreement and possible need for amendment of Directives

In this report, FESCO members agree to mutually recognise prospectuses established in accordance with the 80/390/EC Directive and composed of separated documents or documents incorporated by reference. In order to clarify the responsibilities of the authorities involved in the approval of the documents and the mutual recognition process FESCO members have identified the possible need for amendments to the EU directives. FESCO members also agree on policy objectives to simplify the EU legislation and to apply the mutual recognition of prospectuses in a protective manner for investors.

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<sup>(1)</sup> The Forum of European Securities Commissions (FESCO) assembles the following 17 Statutory Securities Commissions of the European Economic Area (EEA): Bundes-Wertpapieraufsicht (Austria); Commission bancaire et financière/Commissie voor het Bank- en Financiewezen/ Kommission für das Bank- und Finanzwesen (Belgium); Finanstilsynet (Denmark); Rahoitustarkastus (Finland); Commission des opérations de bourse (France); Bundesaufsichtsamt für den Wertpapierhandel (Germany); ΕΠΙΤΡΟΠΗ ΚΕΦ ΑΛΛΑΙΑΓΟΡΑΣ / Capital Market Commission (Greece); Financial Supervisory Authority (Iceland); Central Bank of Ireland; Commissione Nazionale per le Società e la Borsa (Italy); Commission de surveillance du secteur financier (Luxembourg); Stichting Toezicht Effectenverkeer (Netherlands); Kredittilsynet (Norway); Comissão do Mercado de Valores Mobiliários (Portugal); Comisión Nacional del Mercado de Valores (Spain); Finansinspektionen (Sweden); Financial Services Authority (United Kingdom). The European Commission attends FESCO meetings as an observer. The Chairman of the IOSCO European Regional Committee is also invited as an observer. FESCO is chaired by Georg Wittich, Chairman of the Bundesaufsichtsamt für den Wertpapierhandel (Germany).



#### 4. Implementation and commitment of FESCO members

FESCO members will seek to implement the mutual recognition processes set out in this paper in their regulatory objectives and, when possible, in their respective rules. If a FESCO member does not have the authority to implement certain objectives or mutual recognition processes, it will commend these objectives or mutual recognition processes to its government and/or to the responsible regulatory authority. FESCO members agree that, except for the particular cases described under paragraphs 13 and 18, the mutual recognition process set out in this paper may be implemented without waiting for changes in the 80/390/EC Directive. This commitment is underpinned by the disclosure mechanism as set for all FESCO standards.

#### 5. Chairmanship of the Expert Group

This report has been prepared by an Expert Group chaired by Salvatore Bragantini, Vice-Chairman of the *Commissione Nazionale per le Società e la Borsa* (CONSOB).

#### 6. Consultation process

This document is subject to public consultation for a period of 3 months and each FESCO member will also carry out domestic consultations. Comments should be conveyed to the Secretary General.

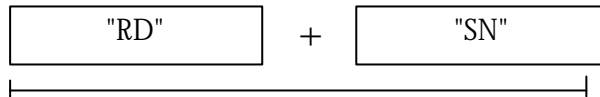
### **I. FACILITATING OFFERINGS IN THE EEA BY CREATING A “EUROPEAN PASSPORT” FOR ISSUERS**

7. The mutual recognition of prospectuses (“Listing particulars”) is permitted under the 80/390/EC Directive and subsequent modifications. Subject to national translation requirements, once approved, a prospectus must be recognised by the EEA State in which the offering is extended or listing has been applied for, without any need to obtain the approval of the competent authorities of those States. These competent authorities may not require the disclosure of additional information except specific information concerning in particular, the income tax system, the financial organizations retained to act as paying agent in that country and the way in which the notices to investors are published in the respective countries.
8. The day to day functioning of the mutual recognition of prospectuses shows that there is a need for modernisation and enhanced flexibility. The extension of an offer or a listing to various EEA States proves to be complex and some times is an obstacle to real pan-European strategies. The obligations for an issuer to comply with various specific requirements in each EEA State, like the translation of the full prospectus, does not encourage mutual recognition of information documents. As regards the objective of transparency, it should be underlined that the full prospectus is an exhaustive document that is not adapted to the needs of all kinds of investors. A document with tailored information will better suit the needs of the various categories of investors. For these reasons FESCO members have agreed to a modernisation of the current mutual recognition system of prospectuses.



9. **THE REGISTRATION DOCUMENT (RD) AS A BASIS FOR A “EUROPEAN PASSPORT” FOR ISSUERS**

FESCO members agree that the actual prospectus used for issuing or listing shares under the 80/390/EC Directive, can be separated in two documents as follows:



The Prospectus (“Listing Particulars”)

**"RD"** : The Registration Document (“RD”) is registered each year by a company after the approval of the financial statements. It contains all the information required under the 80/390/EC Directive, but obviously not the information relating to the shares or other financial instruments for which an offer or an application for listing may be made in the future.

**"SN"** : When the company makes an issue or applies for listing, a Securities Note (“SN”) is filed giving details relating to the securities being issued or listed and, if necessary, an update of the Registration Document.

The two documents, the Registration Document (“RD”) and the Securities Note (“SN”), together give all the information that must be included in the listing particulars under the 80/390/EC Directive. A subdivision of the information that should be included in the “RD” and the “SN” with regard to the schedules of the 80/390/EC Directive, has been agreed by FESCO members for Equities (Annex 1) and Bonds (Annex 2).

10. Language

FESCO members agree that competent authorities must accept for foreign issues a “RD” drafted in English or in another language accepted by the competent authority of the EEA State where the offering takes place or the admission is sought. The “SN”, if so required, must be written in the language of the solicited investors.

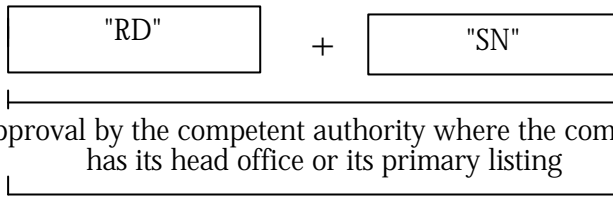
**Summary** : If the “RD” is written in a language other than the investors’ language, the competent authority may require a Summary of the RD to be published in a language accepted by the competent authority of the host country<sup>(2)</sup>. The content of this document would be a summary of the items indicated in Annex 3. The home country authority reviews the Summary and verifies that its content is consistent with that agreed upon by FESCO members. The issuer will therefore deliver a translation of the Summary to the host country authority. The responsibility of the translation lies with the issuer.

11. If the described separation of the prospectus occurs, the mutual recognition of these documents will function differently according to where the offering/listing takes place.

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<sup>(2)</sup> However this would not preclude the host country authority from requiring that items of the SN be included in the summary when the language accepted for the SN is different from the national language.

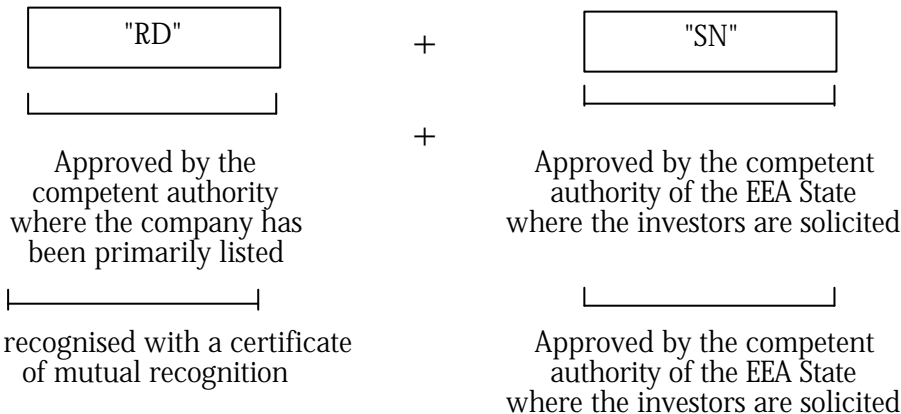
12. If the offering/listing takes place in the EEA State where the company has its head office or its primary listing and is extended to other EEA States, the responsibilities between the competent authorities will be shared as follows:



Prospectus recognised with a certificate of mutual recognition

Once the "RD" has been registered and the "SN" has been approved, the competent authority of the EEA State where the company has its head office or has been primarily listed will issue a mutual recognition certificate for the full prospectus stating that all the information provided under the 80/390/EC Directive is included and the prospectus has been approved. The competent authority where the offering is extended must recognise such prospectus.

13. If the offering/listing takes place exclusively in EEA States other than the EEA State where the company has its head office or primary listing the responsibilities between the competent authorities will be shared as follows:



When an issuer makes an offer (or applies for listing) exclusively outside its primary listing jurisdiction, it will file a "SN" with the competent authority of the EEA States where the investors are solicited. The approval of the full prospectus will be based on a certificate of mutual recognition of the "RD" (issued by the competent authority of the Member State where the company has its head Office or has been primarily listed) and on the approval of the "SN" by the competent authority of the EEA State where the offer/listing takes place.

14. Updates

The "RD" should be updated yearly, after approval of the financial statements.

When the information contained in the "RD" is modified after the publication of the updated version, the information should be published in the "SN".

Upon application for approval of the SN, the issuer must provide the host competent authority with a confirmation by the home country authority of its compliance with the requirements concerning the price sensitive information provided for by EU directives for issuers whose securities are listed, including a list of the relevant documents published by it after approval of the RD.

15. FESCO members agree that the two documents must be made available by the issuer, and in case of an offering or a listing, also by the local paying agent or the intermediary involved. The competent authorities or the exchanges involved should always be in a position to assist the investors in obtaining such documents. Furthermore FESCO members support the possibility of a separate circulation of the "RD", the "SN" and the Summary, RD and SN being the prospectus, if all the documents are available upon request at no cost. To facilitate the circulation of the various documents composing the prospectus, the members of FESCO encourage the use of electronic communication facilities such as the Internet as a means to circulate such documents. The competent authorities may accept that the listing particulars are published solely by means of being made available free of charge through electronic means provided that competent Authorities are satisfied that investors may receive the listing particulars in the form of a printed brochure if so desired. All authorities are encouraged to put approved prospectuses on their web-sites if they accept electronic publishing of the prospectus as an alternative means.
16. FESCO members encourage issuers to use the "RD" as a basis for their annual report or, vice-versa to include in their annual report all the information required in the "RD". This will contribute to a harmonisation of the annual reports of European companies and would reduce the issuer's costs. FESCO would welcome the development of specific proposals in this area by the European Commission, taking into account the various standards put forward at international level.
17. FESCO members also agree on the opportunity of allowing issuers to incorporate by reference legal documents containing the information to be disclosed in the listing particulars whether or not the shelf registration procedure is adopted.

The documents incorporated by reference must be filed and accepted by the competent authority and be drawn up in the language accepted for the listing particulars, RD or SN. Only not material information may be incorporated by reference in the RD. Material events occurring after the RD has been drawn up will normally be covered in the SN; if the issuer so wishes it can incorporate by reference in the SN documents concerning such events.

The documents must be made available at the same places where the prospectus, the RD and the SN are made available. If electronic means are accepted, the documents must be available on the same web-site at no cost to the investor who must anyway be able to obtain a printed copy at no additional cost upon request to the issuer.

18. FESCO members recognise that a smoother mutual recognition mechanism can only work if there is an increased mutual confidence between the competent authorities in charge of the oversight of the information disclosed by the issuers. Therefore FESCO members confirm the need to institutionally avoid conflict of interests as stated in standard no. 2 of the FESCO Standards for Regulated Markets (99- FESCO-c).
19. FESCO will explore the possibility of registration documents being made available through the FESCO web-site.

## **II. CONCLUSIONS**

20. The advantages for investors of the system of the "European Passport" are to:
  - have various levels of documentation tailored according to their needs (immediate answers, details on the securities issued or offered, details on the company);
  - obtain annually updated documentation on an issuer at any moment and not only when an offering or a listing is made;
  - have a rapid access to securities offered by other European companies;





- take investment decisions based on information approved by the best-placed authorities.

The advantages for issuers of the system of the “European Passport” are to:

- reduce the amount of work (and cost) required by a company and at the time of any issue;
- minimise the time taken to process and to obtain the mutual recognition of the documentation relating to an issue or a listing;
- update annually the information required by the prospectus, this information being valid for all the EEA;
- minimise the risk that an issue gets to the market after market conditions have changed.

As mentioned in the Introduction, FESCO is trying to provide a European passport for issuers that would allow them to offer their securities in various EEA States without it being necessary for them to produce a different set of documents for each EEA State thus having to comply with various legislations.

The splitting of the listing particulars in two documents, the RD and the SN, enables the competent authority of the EEA State where the issuer has its head office or where it has been primarily listed, to be in charge of the supervision of the information concerning the issuer.

In order to set up an efficient registration system the RD must be updated once a year.

Where the listing (or the offer) takes place also in the EEA State where the RD is approved the two requirements may be easily met because the competent authority approves both the RD and the SN and is therefore able to assure the updating of the information on the issuer.

### **III. FUTURE WORK TO BE UNDERTAKEN BY THE GROUP IN ORDER TO SIMPLIFY EU PUBLIC OFFERS AND LISTINGS**

21.

Through the system described in the report, the reference to the timing of offers and listing becomes irrelevant for the purposes of mutual recognition (too short interval). The procedure accepted has also eliminated the necessity to translate part of the listing particulars/prospectus (RD) if it has been drawn up in English or in another language accepted by the host competent authority.

Even through the new system, part of the documents must be filed with the host authority (ie. the SN). The ultimate goal of the exercise should be to provide a full recognition of the set of documents (which includes the information that may be required by the host competent authority ie. domestic tax system and modalities of the offer) and an automatic procedure which would allow the use of a prospectus, approved in the home country, in another EEA country subject only to prior notification to the host country authority. Undoubtedly such a system requires effective harmonisation in both the content of the prospectus (at present there is no harmonisation on the information to be provided on the modalities of the offer such as the allotment, the timing and procedure of price disclosure



etc.) and the approval procedure. The language problem must be addressed, taking stock of what has already been described in the report.

Information related to the possible requirements of the host competent authorities, such as that on the market regulation of the countries where the offer takes place and the tax system might be incorporated in the prospectus by reference to a single set of information. This information would not need to be reviewed by the home/host competent authorities as long as it is opined on by professionals licensed for the relevant subject.

The dissemination of information throughout the EEA is also of primary importance. In this context, electronic means of transmission could play a substantial role.

An additional step might be studied in particular with respect to issuers that do not make frequent recourse to capital markets. This might lead to a system where the control of the information related to the paying agents and the modalities of the offer be made by the home country authority with the cooperation of the authority where the offer actually takes place.

The experts group has identified obstacles to this new approach and for this reason, at this stage, the conditions to put forward such proposal were not present.

22. FESCO members also agree that further steps towards investor protection and enhanced efficiency for issuers would require listing particulars to be drawn up on the basis of common forms agreed by the competent authorities except for those particular cases in which the competent authority might reasonably consider an alternative format. This issue deserves further consideration.

In order to simplify the EU legislation, FESCO members emphasise the importance of consolidating the various current texts into a single directive for the harmonisation of the conditions for the offer or the admission of securities to regulated markets and the corresponding prospectus to be published by the issuer.

FESCO members agree on the need to facilitate the mutual recognition of prospectuses published by issuers whose securities are traded on a regulated market but not officially listed. Until a further modification of the directives, if a prospectus (or the documents composing the prospectus) is drawn up in accordance with the Directive 80/390/EC, it must be recognised by other competent authorities, irrespective of the nature of the regulated market on which the shares of the company are traded. Therefore the reference to the "official" listing may be substituted with the concept of the "regulated" market.

23. FESCO Members have agreed that the mutual recognition of prospectuses prepared by SMEs should be facilitated without reducing disclosure requirements. Taking into consideration the fact that listing requirements for non-official markets are different from those established for the official market and that less stringent admission requirements already exist for national exchanges devoted to SMEs, it might be suggested to amend the directives by accepting that when certain headings of the schedules annexed to Directive 80/390/EEC appear inappropriate to the period of existence of the issuer (that should be at least of one year), the listing particulars/ prospectus, besides giving appropriate evidence of the risk factors, should contain equivalent information such as, for example, information concerning the issuer's development, the commitments of the shareholders to keep their participation in the issuer's capital, etc.



24. The EU legislation would benefit by reducing the number of exemptions and by having a harmonised definition of what constitutes a public offer in Europe. Work is currently being undertaken to verify if there are common grounds among the Members in the interpretation of the cases in which Directive 89/298/EC does not apply.
25. In addition, there should be an attempt to harmonise the deadlines for the approval and the recognition of documents.
26. FESCO members also agree on the need for a harmonised set of accounting standards. To this end they are considering to recommend the International Accounting Standards.
27. FESCO members are working on the definition of a harmonised schedule for financial instruments that don't fit in schedule A and B of the 80/390/EC Directive, in particular: covered warrants and asset backed securities, which currently are outside the scope of mutual recognition system. As a first step towards this aim, the group is considering a common position on the definition and the minimum listing requirements of covered warrants.
28. At present the matter of e-commerce is being discussed at EU level and therefore its developments and impact on the offering of securities through electronic means deserves further consideration.

**ANNEX 1: Division of items for the "RD" and the "SN" related to shares**

<b>ITEM</b>	<b>REFERENCE DOCUMENT</b>	<b>SECURITIES NOTE</b>
1.1	X	X
1.2	X	X
1.3	X	X
2.1	--	X
2.2	--	X
2.2.0	--	X
2.2.1	--	X
2.2.2	--	X
2.2.3	--	X
2.2.4	--	X
2.2.5	--	X
2.2.6	--	X

2.2.7	--	X
2.3	--	X
2.3.0	--	X
2.3.1	--	X
2.3.2	--	X
2.3.3	--	X
2.3.4	--	X
2.3.5	--	X
2.3.6	--	X
2.3.7	--	X
2.3.8	--	X
2.3.9	--	X
2.4	--	X
2.4.0	--	X
2.4.1	--	X
2.4.2	--	X
2.4.3	--	X
2.4.4	--	X
2.4.5	X	X
2.5	--	X
3.1	X	--
3.1.0	X	--
3.1.1	X	--
3.1.2	X	--
3.1.3	X	--
3.1.4	X	--
3.1.5	X	X
3.2	X	--
3.2.0	X	--
3.2.1	X	--
3.2.2	X	--
3.2.3	X	--
3.2.4	X	--
3.2.5	X	--

3.2.6	X	--
3.2.7	X	--
3.2.8	X	--
3.2.9	X	--
4.1	X	--
4.1.0	X	--
4.1.1	X	--
4.1.2	X	--
4.1.3	X	--
4.1.4	X	--
4.2	X	--
4.3	X	--
4.4	X	--
4.5	X	--
4.6	X	--
4.7	X	--
4.7.0	X	--
4.7.1	X	--
4.7.2	X	--
5.1	X	--
5.1.0	X	--
5.1.1	X	--
5.1.2	X	--
5.1.3	X	--
5.1.4	X	X
5.1.5	X	--
5.1.6	X	--
5.2	X	--
5.3	X	--
5.4	X	--
5.5	X	--
5.6	X	--
6.1	X	--
6.2	X	--

6.2.0	X	--
6.2.1	X	--
6.2.2	X	--
6.2.3	X	--
6.3	X	--
7.1	X	X
7.2	X	X

**ANNEX 2: Division of items for the "RD" and the "SN" related to debt securities**

<b>ITEM</b>	<b>REFERENCE DOCUMENT</b>	<b>SECURITIES NOTE</b>
1.1	X	X
1.2	X	X
1.3	X	X
2.1	--	X
2.1.0	--	X
2.1.1	--	X
2.1.2	--	X
2.1.3	--	X
2.1.4	--	X
2.1.5	--	X
2.1.6	--	X
2.1.7	--	X
2.1.8	--	X
2.2	--	X
2.2.0	--	X
2.2.1	--	X
2.2.2	--	X
2.2.3	--	X
2.2.4	--	X
2.2.5	--	X
2.2.6	--	X
2.3	--	X
2.3.0	--	X
2.3.1	--	X
2.3.2	--	X
2.3.3	--	X
2.3.4	--	X
2.4	--	X
2.4.0	--	X
2.4.1	--	X

2.4.2	--	X
2.4.3	--	X
2.4.4	--	X
2.4.5	--	X
2.4.6	--	X
3.1	X	--
3.1.0	X	--
3.1.1	X	--
3.1.2	X	--
3.1.3	X	--
3.1.4	X	--
3.1.5	X	X
3.2	X	--
3.2.0	X	--
3.2.1	X	--
3.2.2	X	--
3.2.3	X	--
4.1	X	--
4.1.0	X	--
4.1.1	X	--
4.1.2	X	--
4.1.3	X	--
4.1.4	X	--
4.2	X	--
4.3	X	--
4.4	X	--
4.4.0	X	--
4.4.1	X	--
4.4.2	X	--
5.1	X	--
5.1.0	X	--
5.1.1	X	--
5.1.2	X	X
5.1.3	X	--



5.1.4	--	X
5.1.5	X	--
5.2	X	--
5.3	X	--
5.4	X	--
5.5	X	--
6.1	X	--
7.1	X	X
7.2	X	X

### **ANNEX 3: Items to be summarised in the Summary**

The information contained in the Summary should be directly summarised from the RD.

The Summary should include the elements of the following items of the schedule A of the 80/390/EC Directive.

1.1; 1.2; 1.3

3.1; 3.1.0; 3.1.2; 3.1.3; 3.1.5; 3.2; 3.2.0; 3.2.3; 3.2.4; 3.2.5; 3.2.6; 3.2.7

4.1; 4.1.0; 4.1.1; 4.2; 4.3; 4.4; 4.5

5.1; 5.1.0; 5.1.1; 5.1.4; 5.4 (only if consolidation principles differ from those generally accepted)

6.1

7.1; 7.2

The following items should be added:

- main risk factors;
- if the shares of the issuer are already listed on a market: information on the prices and volumes registered on the market during the last 12 months;
- the indication of where the documents composing the prospectus may be obtained at no cost.

The summary should contain summarised information on any item considered by the risk factors.