FEDERATION BANCAIRE DE
L'UNION EUROPEENNE

UNICE
THE VOICE OF BUSINESS IN EUROPE

F23
BI/SBS
N° 890

E-mail

H. E. Mr Poul SKYTTE CHRISTOFFERSEN
Ambassador Extraordinary and Plenipotentiary
Permanent Representation of Denmark to the EU
Rue d'Arlon, 73
1040 Brussels

Brussels, 26 September 2002

Subject: Prospectus Directive

Your Excellency,

We understand that the Council working group on Financial services will meet on 30th September for a final discussion on the most appropriate solution with respect to the approval procedures for offering documents by amending the definition of home Member State.

Representing a major segment of issuers and financial intermediaries in Europe, UNICE, on behalf of more than 16 million companies in Europe, and the FBE (European Banking Federation), spokesman of 3,000 banks in Europe, strongly believe that the current Commission proposal will weaken investor protection, disregards the current product specialisation developed by regulators, and indeed will fragment markets to the detriment of an integrated European capital market. UNICE and the FBE urge therefore the Council of Ministers to reject the Commission's current proposal and instead support the European Parliament's flexible approach, for the following reasons:

1. **Investors will be better protected**
   The "proximity" factor and product knowledge plays an essential role in the context of investor protection. If a French bank wants to tap the German warrants/certificate market, it will logically go to the German authorities for the approval of its prospectus since these authorities are best placed to understand the products issued in their market and the requirements of German retail investors. In a truly integrated EU market, the investors deserve no less than the best protection available to them for each issue.

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2. **Markets will continue to benefit from expertise and from pan-European integration**
   Under the current regime - Listing Particulars Directive (article 37) and the Public Offers Directive (article 20) - there is no restriction on the choice of competent authority when public offers/listings are made simultaneously in two or more Member States. **There is no compelling reason to change this market practice, except for market protectionist attitudes, which should be absolutely rejected.** Authorities have developed expertise (please see <u>Enclosure 1</u>) for certain products, benefiting EU financial markets, which the current Commission proposal simply ignores. In a dynamic global market, Europe cannot afford discouraging specialisation. In fact, there will be no winners from the renationalisation of markets that will be forced by the proposal. Forcing issuers to go back to their country of registered office for a review of prospectus documentation, even if there is no connection whatsoever with the offer, will impair EU economic and financial competitiveness overall.

3. **No regulatory arbitrage is possible since there is maximum harmonisation**
   The Prospectus Directive is a full harmonisation Directive, which means that the prospectus documentation will basically be the same in all the countries. The "race to the bottom" argument is therefore fully unfounded. The fact that all the documentation will be the same does not however mean that issuers should not have a problem with being tied to the regulator of their registered office, since timing plays an essential role when issuing, in particular for non-equity securities. While the Prospectus Directive provides maximum deadlines (15 to 30 days) for the approval of prospectuses, those deadlines are particularly problematic for products such as warrants/certificates, markets where prospectus documentation can be approved within 10 days. Notification requirements for passporting products require a further 3 days. **These delays are simply unacceptable if the aim of the Directive is to facilitate the raising of capital in Europe.** The Commission's amended proposal indeed acknowledges that timing and product knowledge can create problems for issuers by allowing the withdrawal of an application (art. 13.2) and the transfer of the approval to another authority (art. 13.6). However, these half-remedies will not prevent a major backlog of security issuance in the EU.

4. **The use of denominations to allow issuer's choice is meaningless and artificial**
   As IPMA research shows (please see <u>Enclosure 2</u>), bonds are normally issued in small denominations, which start at even less than €1,000. Moreover, many offerings are sold to both institutional and retail investors and it does not make much sense to force issuers now to prepare two sets of different documentation in order to overcome the problems due to the restricted choice of competent authority. Moreover, retail investors may indeed be better protected by getting product documentation approved by the authority where the issue is being offered. Finally, products such as warrants and certificates are simply not sold in denominations. Therefore, there is no logical reason why a professional and retail split should be made for the question of choice of competent authority.

Issuers have had to wait for ten years to get the current regulatory framework revised in order to overcome present mutual recognition problems. **The Council of Ministers will miss an excellent opportunity to increase competitiveness in Europe if it rushes into a political agreement in November that does not support current offering practices and renationalises markets.**

Yours sincerely,

Nikolaus BÖMCKE
Secretary General
FBE

Philippe DE BUCK
Secretary General
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<u>Enclosures:</u> 2

<u>Enclosure 1 to letter n° 890</u>

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COMPARATIVE TABLE OF EU EXPERIENCE WITH PROSPECTUS APPROVAL BY PRODUCT

	IPOs	**Eurobonds**	**Warrants/Certificates**	**MTNs**	**Pfandbriefe**	**Exchangeable and Convertible Bonds**
Austria	**Active market**	N/A	**Active market (not much). No problems with passporting structured certificates from Luxembourg.**	N/A	N/A	N/A
Belgium	Active market	Limited experience	Active market but n o experience in structured certificates.	Active market	Active market	Active market
Denmark	Experience[1]	No experience	No experience	No experience	No experience[2]	No experience
Finland	N/A	N/A	N/A	N/A	N/A	N/A
France	Active market	Active market	Active market in naked warrants. Some problems with passporting products because in some cases warrants/certificates have not been considered as securities.	Active market	Active market	Active market
Germany	Active market	Active market	Active market in naked warrants. **Very experienced in exotic structures.**	Active market	Active market	Active market
Greece	N/A	No experience	No experience	No experience	No experience	No experience
Ireland	Active market	Active market for non retail	Limited experience – non retail only	Active market for non-retail	Limited experience – enabling legislation is very new	Limited experience
Italy	Active market	Active market	Active market. **As for structured certificates, familiar with Turbo and short certificates. However, Bank of Italy considering to qualify index certificates as investment funds products.**	Active market	Not yet introduced in Italy. The Ministry of Finance is evaluating the possibility of regulating such securities in the near future.	Active market

	IPOs	Eurobonds	Warrants/Certificates	MTNs	Pfandbriefe	Exchangeable and Convertible Bonds
Luxembourg	Very limited experience	Active market	Active market from a stock exchange listing point of view. **Experienced with structured certificates.**	Active market	Active market	Active market from a stock exchange listing point of view
Netherlands[3]	Stock exchange: Active market. Highly experienced.	Euronext does have experience and is active wih Eurobonds, MTN's and similar products (ABS/MBS). Their reviewing capabilities however are limited and their knowledge is average (e.g. problems with understanding concept and application of rules for subordinated debt).	Stock exchange: Active market. Experienced but not with structured certificates.	Not known	Not known	Stock exchange: Active market. Experienced.
Portugal	N/A	N/A	N/A	N/A	N/A	N/A
Spain	N/A	N/A	Limited approval for warrants for retail[4]	No experience	Active market	Reluctant to approve all "atypical financial contracts", e.g. reverse convertibles[5]. Limited experience with exchangeable bonds due to long standing policy of rejecting exchangeable bonds (now changed)
Sweden	N/A	N/A	N/A	N/A	N/A	N/A
UK	N/A	Active market	No experience in naked warrants	Active market	No experience	N/A

[1] The Danish Securities Council (DSC) is the relevant authority regarding approval of prospectuses but due to delegation the Copenhagen Stock Exchange mainly approves prospectuses. DSC approves prospectuses at the first public offer of securities not to be listed on a stock exchange.

[2] It should be noted that according to Danish law, Danish mortgage credit institutions are not obliged to prepare a prospectuse.

[3] In The Netherlands, the stock exchange Euronext Amsterdam is currently the (partly) self regulated body supervising prospectuses with respect to products listed on its markets. For a number of years, discussions have been held regarding the transferral of that authority to the Dutch Authority for the Financial Markets ('AFM') of any supervision of prospectuses related securities issues in The Netherlands, and this transfer is in process. Currently, the AFM has no experience in reviewing prospectus for equity, equity derivatives or debt. The supervision of non-quoted securities issues and of offer documents issued in connection with a public tender offer, already rests with the AFM.

[4] The Spanish regulator CNMV approves warrants targeted to non-institutional investors only for a limited type of options (European or American or other basic types of options, but not Asian options or
other more "exotic" ones), and for a limited type of underlying assets (not for a basket of indices, for example). Earlier in 2002, CNMV did not want to approve a prospectus for a warrant issuance programme for Asian options, even despite the fact that it was targeted only to institutional investors. The CNMV wanted to have the warrants issued on an "issue per issue" basis and not under a programme. Eventually, it was approved.

[5] A reversible convertible is a time deposit whose yield is linked to the performance of a certain share, and that under certain circumstances of poor performance allows the issuer to repay the deposit at maturity not in cash, but in kind, delivering the underlying shares valued at the initial price.

INTERNATIONAL BOND MARKETS DATA
MARCH-JUNE 2002, DENOMINATIONS AND VOLUME [1]

EURO
Denominations

Number of Issues (Denominations in 000's)

	Less 1k	1k	2k	5k	10k	40k	50k	100k	200k	250k	500k	1m	9m	TOTAL
P1	8	159			14		1	11	1	2	2	1		199
P2	4	116		1	33		4	34		1	4	1		198
P3	4	82		3	24	1	18	61	2	5	7	1		208
P4	125	18	1	4	6		16	35			9		1	231
TOTAL	140	375	1	8	81	1	40	137	3	8	23	3	1	836

This table shows that, from March to June 2002, **77% of the number of issues** had 50,000 Euro denomination or less. Based on the below table, this represented **88% of the volume** of bonds. If the denomination used is 10,000 Euro, still **72% of the number of issues** and **86% of the volume of issues** are below or at 10,000 Euro. **Therefore, a proposal to use these denominations would cut off the majority of the bond market form choice of competent authority.**

[1] DATA COLLECTED BY DEALOGIC, BONDWARE, COURTESY OF IPMA.

EURO
Currency Amount

Volume of Bonds (millions)

	Less 1k	1k	2k	5k	10k	40k	50k	100k	200k	250k	500k	1m	9m	TOTAL
P1	598	146552			10872		2858	10278	500	2018	1178	482		180703
P2	900	29610		458	7980		1045	8739		285	606	170		49793
P3	378	5900		150	1731	72	1042	3701	80	245	221	51		13571
P4	125	28	25	45	81		206	542			115		16	1413
TOTAL	7371	182320	25	653	20664	72	5151	23260	580	2548	2117	703	16	245480

P1 = March 2002
P2 = April 2002
P3 = May 2002
P4 = June 2002