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Information and Notices

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[1] Text with EEA relevance

I

(Information)

COMMISSION

Euro exchange rates [1]

19 June 2003

(2003/C 144/01)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,1655	LVL	Latvian lats	0,6542
JPY	Japanese yen	138,52	MTL	Maltese lira	0,4278
DKK	Danish krone	7,4249	PLN	Polish zloty	4,462
GBP	Pound sterling	0,6965	ROL	Romanian leu	38 100
SEK	Swedish krona	9,0773	SIT	Slovenian tolar	233,775
CHF	Swiss franc	1,5518	SKK	Slovak koruna	41,7
ISK	Iceland króna	85,59	TRL	Turkish lira	1 665 000
NOK	Norwegian krone	8,1295	AUD	Australian dollar	1,7425
BGN	Bulgarian lev	1,9462	CAD	Canadian dollar	1,5762
CYP	Cyprus pound	0,58558	HKD	Hong Kong dollar	9,0897
CZK	Czech koruna	31,45	NZD	New Zealand dollar	1,9967
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	2,0195
HUF	Hungarian forint	266,08	KRW	South Korean won	1 394,52
LTL	Lithuanian litas	3,4528	ZAR	South African rand	9,3141

[1] *Source:* reference exchange rate published by the ECB.

Publication of a request under Article 9 of Regulation (EEC) No 2081/92 to amend one or more parts of the specification of a name registered under Article 17 or Article 6 of that Regulation

(2003/C 144/02)

Publication confers the right to object within the meaning of Article 7 and Article 12d of the Regulation. Any objections to this request must be forwarded via the competent authority of a Member State, a WTO Member country or a third country recognised under Article 12(3) within six months of the publication date.

The amendment is not a minor one and it must therefore be published under Article 6(2) of the Regulation.

COUNCIL REGULATION (EEC) No 2081/92

APPLICATION TO AMEND A SPECIFICATION: ARTICLE 9

1. **Registered name:** 'Nocciola del Piemonte'

2. **Responsible department in the Member State**

Name: Ministero delle Politiche agricole e forestali

Address: Via XX Settembre n. 20 — I-00187 Roma

Tel. (39-06) 481 99 68

fax (39-06) 420 31 26.

3. **Amendment(s) requested**

— specification heading(s):

☒ name

☒ description

☐ geographical area

☐ proof of origin

☒ method of production

☐ link

☒ labelling

☒ national requirements

— amendments:

Name: It is proposed to amend the name registered as the PGI 'Nocciola del Piemonte' to 'Nocciola del Piemonte' or 'Nocciola Piemonte'.

Description

— It is stipulated that the PGI 'Nocciola del Piemonte' or 'Nocciola Piemonte' is reserved for hazelnuts in the shell, shelled or partially processed. It is also stipulated that the name of the PGI may also be used in the description and presentation of and publicity for foodstuffs in which, among the ingredients determining the characteristics and quality of the product, 'Nocciola del Piemonte' or 'Nocciola Piemonte' is the sole product of its type.

— There is a formal change to the description of the production area, in that, although the perimeter of the area remains unchanged, following the recognition of the new Province of Biella, the lists of municipalities in the provinces affected have been rewritten.

Method of production

— The density of planting is amended to 200 to 420 plants per hectare (from 250 to 400), with a maximum density of 500 plants per hectare only in the case of plantations dating from before the entry into force of the Decree granting recognition (2 December 1993).

— The requirement for the Region of Piedmont to provide annually an estimate of average production and the starting date for harvesting, taking into account the seasonal trend, is abolished.

— It is laid down that the hazelnut groves must be entered on a list held by the authorised inspection body rather than in the register held by the chambers of commerce responsible for the area concerned.

— It is permitted to market hazelnuts in the shell loose only at the stage of first marketing, i.e. sales by an agricultural producer to a first purchaser responsible for a processing and/or packaging plant.

— The packaging requirements for shelled, partially processed and finished products are more clearly specified (packing suitable for food use), including in the case of production systems deigned to bring out the quality of the product. In addition, the product may be marketed only where prepackaged or packaged at the time of sale.

Labelling

— The information to be included on the labelling is more clearly stipulated as are a number of labelling requirements designed to guarantee the traceability of the product. In particular, the information to be included on the labelling of processed products having 'Nocciola del Piemonte' or 'Nocciola Piemonte' as the sole ingredient is specified.

— It is made compulsory to indicate the year of harvest on the label of both hazelnuts in shell and shelled.

— A number of labelling requirements considered to be already covered by the general rules for the labelling of foodstuffs are deleted.

National requirements

— Reference to the national regulations laying down penalties for failure to comply with the specification is deleted, although those regulations continue to apply.

— Article 9 on the checks carried out by the inspection body is inserted.

4. **Date of receipt of the full application:** G/IT/00305/16.04.02.

Final report of the Hearing Officer in case COMP/E-1/37.027 — Zinc phosphate

(prepared under Article 15 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21)

(2003/C 144/03)

(Text with EEA relevance)

The draft decision does not give rise to particular comments on the proceedings which took a normal course.

The parties' rights of defence were fully respected.

The draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views.

Done at Brussels, 28 November 2001.

Karen WILLIAMS

Non-opposition to a notified concentration

(Case COMP/M.3064 — Ahlström Capital/Capman/Nordkalk)

(2003/C 144/04)

(Text with EEA relevance)

On 10 February 2003, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),

— in electronic form in the 'CEN' version of the CELEX database, under document No 303M3064. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,
Information, Marketing and Public Relations,
2, rue Mercier,
L-2985 Luxembourg.
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

Prior notification of a concentration

(Case COMP/M.3206 — Schroder Venture Limited/Rodenstock)

Candidate case for simplified procedure

(2003/C 144/05)

(Text with EEA relevance)

1. On 12 June 2003 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1], as last amended by Regulation (EC) No 1310/97 [2], by which the Channel Islands undertaking Permira Europe II Fund (Permira), controlled by Schroder Ventures Limited (Channel Islands), acquires, within the meaning of Article 3(1)(b) of the Regulation, sole control of the whole of the German undertaking Rodenstock GmbH by way of purchase of shares of the Rodenstock Optics Services GmbH (ROS) especially formed for the purposes of transaction.

2. The business activities of the undertakings concerned are:

— Permira: Europe II Fund: venture capital fund,

— Rodenstock GmbH: development and production of lenses, frames and pairs of glasses.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved. Pursuant to the Commission Notice on simplified procedure for treatment of certain concentrations under Council Regulation (EEC) No 4064/89 [3], it should be noted that this case is a candidate for treatment under the procedure set out in the notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.3206 — Schroder Venture Limited/Rodenstock, to:

European Commission,
Directorate-General for Competition,
Merger Registry,
J-70,
B-1049 Brussels.

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[1] OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

[2] OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

[3] OJ C 217, 29.7.2000, p. 32.

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 June 2003

at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council on investment services and regulated markets, and amending Council Directive 85/611/EEC, Council Directive 93/6/EEC and European Parliament and Council Directive 2000/12/EC (COM(2002) 625 final)

(CON/2003/9)

(2003/C 144/06)

1. On 16 December 2002 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a directive of the European Parliament and of the Council on investment services and regulated markets, and amending Council Directive 85/611/EEC, Council Directive 93/6/EEC and European Parliament and Council Directive 2000/12/EC (COM(2002) 625 final) (hereinafter referred to as the 'proposed directive').

2. The ECB's competence to deliver an opinion is based on the first indent of Article 105(4) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty') and Article 3.3 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute'), since the proposed directive contains provisions with a bearing on the integration of European financial markets with possible effects on financial stability. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the ECB, the Governing Council of the ECB has adopted this opinion.

3. The main objective of the proposed directive is to update the regulatory framework for investment services in order to take into account the fundamental changes that have taken place in European financial markets in recent years. Since the adoption of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field [1] (ISD), developments in information technology have had substantial consequences for the structure and efficiency of securities markets. At the same time, there has been a considerable increase in cross-border transactions, due to the introduction of the euro, which has accelerated the need for a truly integrated European securities market.

4. Against this background, the ECB broadly welcomes and supports the proposed directive, which aims at improving the level of regulatory harmonisation and to extend it to new investment services and financial instruments. The proposed directive deals with new issues arising from the increased competition among stock exchanges and new order-execution platforms, laying down rules to ensure that different execution venues are subject to the same set of rules and are therefore able to compete with one another while guaranteeing investor protection, market transparency and efficiency. In order to attain the above-mentioned goals, the proposed directive lays down a comprehensive set of rules concerning all the trading venues, namely regulated markets, multilateral trading facilities (MTFs) and intermediaries that execute client orders internally. However, the ECB finds that the proposed directive could further clarify a number of issues, as explained below.

5. First, the application of the legislative methodology recommended by the Committee of Wise Men on the Regulation of European Securities Markets (Committee of Wise Men). Generally, the ECB welcomes the use of the comitology procedure in the proposed directive, as recommended by the Committee of Wise Men. The Committee of Wise Men's Report aims to make EU securities legislation more effective, flexible and transparent, allowing adequate and timely response to dynamic market developments. In the light of this objective, the choice of legal instruments — either directives or regulations — is an important issue. As the Committee of Wise Men stated '[Directives] leave more latitude for Member States to implement Community Law but too often lead to uneven transposition and different interpretations'. In the terminology of the Committee of Wise Men the proposed directive falls under the category of 'Level 1' legislation, i.e. 'framework principles'. It sets 'key political choices to be taken by the European Parliament and the Council of Ministers' in the core area of financial services. Framework principles should be implemented by way of

[1] OJ L 141, 11.6.1993, p. 27.

'Level 2' Community legislation, rather than implemented by the Member States, since this national implementation would lead to a diversified legal situation. Basic framework principles should be the same and apply uniformly throughout the EU. Either Member States are not given any latitude to implement the proposed directive, in which case the use of a directive is inappropriate, or they are given discretion and the 'framework principles' will lead to differences within the EU. If both 'Level 1' and 'Level 2' acts are directives requiring national implementation, this will not ultimately solve one of the problems outlined by the Committee of Wise Men as delaying the development of European securities markets, namely, 'the absence of clear Europe-wide regulation'. In fact, the Committee of Wise Men stated, regarding Level 1 'Framework' legislation: 'More use should be made of Regulations, rather than Directives ... The Committee considers that Regulations should be used whenever possible'. The ECB supported the conclusions of the Committee of Wise Men, as indeed did the Stockholm European Council of March 2001 endorsing its Report. The ECB notes that indeed regulations offer significant advantages as opposed to directives, as they are directly applicable in the Member States without any need of implementation through national legislation. The resulting uniformity at the level of basic framework principles should lead to a 'Level 2' Community implementation that may take into account national specificities in the detail. The need to accommodate national technical specificities arises at Level 2, as it deals with specific implementing measures, whereas Level 1 only sets out the basic framework principles of the legislation in question. Therefore, the ECB would generally favour that in future Community legal acts containing such basic framework principles take the format of Regulations instead of Directives, leaving the implementation of such principles to 'Level 2' legislation by way of the comitology procedure taking into account national technical needs.

6. The Committee of Wise Men Report stresses that financial legislation should demonstrate a clear and effective dividing line between the Framework Principles ('Level 1') and detailed implementing rules ('Level 2'). However, this dividing line is not evident in the proposed directive. In some instances, framework principles are already formulated in a very detailed manner (e.g. the provisions concerning the conditions and procedures for authorisation in Title II Chapter I). Elsewhere, in contrast, framework principles are considerably more abstract and a wide range of provisions will require definition by way of Level 2 legislation (e.g. the operating conditions for investment firms laid out in Title II Chapter II). The ECB considers that the proposed draft could be further refined as regards the dividing line between the Framework Principles pertaining to Level 1 and the detailed implementing rules to be left to Level 2. As a possible guiding principle, the scope of rules to be adopted through Level 2 legislation could be extended as far as possible in order to achieve a high degree of both harmonisation and flexibility in the regulation of European securities markets. As a specific example, the ECB notes that the 'basic definitions' set out in Article 3(1) of the proposed directive may benefit from detailed implementing rules at Level 2 in so far as they need clarification (Article 3(2)). Particularly with regard to the definition of 'financial instruments', it would be expedient to include the ability to amend the list in Section C of Annex I by way of Level 2 comitology, if necessary within certain conceptual boundaries, in order not to alter the scope of the proposed directive. This route would facilitate having basic framework principles in a directly applicable single European act with primacy throughout the EU. Recent discussions in comitology fora have highlighted possible general criteria for recourse to either regulations or directives at Level 2. The ECB would support the possible use of directives in 'Level 2 Implementation Legislation' wherever there was a need to take into account national specificities in detail. Finally, the ECB notes that, in general, the national central banks of Member States (NCBs) should be closely involved in the preparation of implementing measures relating to their respective competencies (e.g. clearing and settlement systems: see also paragraphs 18 to 22 of this opinion).

7. Second, the exemptions from the scope of the proposed directive. The ECB notes that Article 2.1(f) and Article 2.2 exempt members of the European System of Central Banks (ESCB) from the application of the proposed directive. The ECB welcomes such rules, which reproduce exemptions already contained in the current ISD while taking into account the new institutional framework set out by the Treaty, as according to Article 107 of the Treaty and Article 1.2 of the ESCB/ECB Statute, the ESCB is composed by the ECB and by national central banks of all Member States. More specifically, Article 2.2 of the proposed directive updates the current wording of Article 2.4 of the ISD. The ECB welcomes this rule, which recognises that, on the basis of the proposed directive, investment firms do not have an automatic right to become counterparties of the NCBs. In fact, the particular nature of the functions performed by the NCBs in the Eurosystem justifies a special legal regime, as established by the Treaty and the Statute, which secondary Community law cannot derogate from, and underlined in particular by their independent status. It should be recalled that Article 105 of the Treaty lists the basic tasks to be

carried out by the ESCB, (namely to define and implement the monetary policy of the Community, to conduct foreign exchange operations, to hold and manage the official foreign reserves of the Member States and to promote the smooth operation of payment systems) in observance of the guidelines adopted by the ESCB's decision-making bodies. The ECB and the NCBs in the Eurosystem have specific additional operational tasks, including the conduct of all types of banking transactions with countries outside the Eurosystem and with international organisations pursuant to Article 23 of the Statute and, in the case of the ECB, the management of the ECB's capital, subscribed by the NCBs in accordance with Articles 28 and 29 of the Statute. With regard to monetary policy operations, the ECB wishes to underline that Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem [1], and in particular Annex 1 thereof (General Documentation on Eurosystem monetary policy instruments and procedures), provides that counterparties to Eurosystem monetary policy operations must fulfil certain eligibility criteria which are defined on a non-discriminatory basis. The goal is to give a broad range of credit institutions access to Eurosystem monetary policy operations, thus enhancing equal treatment of institutions across the euro area whilst ensuring that eligible Eurosystem counterparties fulfil certain operational and prudential requirements. The exemptions in Articles 2.1 and 2.2 reduce any uncertainty regarding the scope of rights conferred by the proposed directive, and remove a possible misconception that the ISD would result in investment firms obtaining an automatic right to become counterparties for central bank operations.

8. Third, the rules concerning intermediaries. In accordance with Article 1(2) of the proposed directive, credit institutions performing investment services will be subject to the provisions of Articles 12 and 13 (organisational requirements, trading process and finalisation of transactions in an MTF) as well as to Chapters II and III of Title II (operating conditions for investment firms and rights of investment firms). The ECB welcomes the application of these provisions to credit institutions in order to safeguard a level playing field among market participants and trading venues and to ensure an adequate coordination with the provisions of Directive 2000/12/EC. Moreover, the ECB understands that Chapter II of Title IV, dealing with cooperation between competent authorities of different Member States, will nevertheless apply with regard to the cross-border provision of investment services by credit institutions. In effect, these provisions regulate supervisory cooperation in a manner specific to the cross-border provision of investment services, for instance with due regard to retail investor protection issues, whether or not they are provided by credit institutions. Therefore, the ECB understands that the aforementioned Chapter II of Title IV will necessarily cover credit institutions just as any other type of investment service providers. The ECB also notes the possible need to revise Annex I of Directive 2000/12/EC, which contains the list of activities subject to mutual recognition. The competent fora of the banking sector could verify the extent to which such revision might be warranted.

9. In addition, the ECB notes that, according to Article 62 of the proposed directive, investment firms providing only the service of investment advice will be exempted from the capital adequacy requirements of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions [2] (CAD). In effect, as stated in Section III.1 of the explanatory memorandum, investment advice does not give rise to market risk or systemic risk, which are the regulatory underpinnings of the CAD. Investment advice may instead be a source of operational risk, since firms failing to comply with due diligence standards may be asked to compensate individual clients accordingly, therefore potentially affecting the firm's stability. In order to tackle the potential need to compensate investors, Article 11(2) of the proposed directive introduces an obligation for investment firms providing only investment advice to hold professional indemnity insurance as an alternative to the initial capital requirements of the CAD. In this respect, the ECB would like to draw attention to the fact that operational risk is gaining increasing recognition in the regulatory framework, given its potentially damaging effects to an institution's stability. In particular, it is foreseen that operational risk, also deriving from the provision of investment advice, will become subject to the revised EU capital adequacy framework for banks and investment firms. Therefore, investment firms providing only investment advice may, in the future, also be subject to capital requirements relating to the operational risk of such activity. The ECB therefore suggests that any alternative solutions to the general capital requirements provided for in the CAD should be carefully considered, and even limited in scope, in view of the forthcoming revision of the capital adequacy framework.

10. Furthermore, the ECB shares the concern addressed by the proposed directive as regards the need to take effective measures against possible conflicts of interest. The proposal provides for such measures in two instances. In accordance with Article 16(1) and (2), investment firms

[1] OJ L 310, 11.12.2000, p. 1, as amended by Guideline ECB/2002/2 of 7 March 2002 (OJ L 185, 15.7.2002, p. 1).

[2] OJ L 141, 11.6.1993, p. 1, as last amended by European Parliament and Council Directive 98/33/EC (OJ L 204, 21.7.1998, p. 29).

will be required to identify potential conflicts of interest in their activities and to set up adequate operational arrangements either to prevent or to manage such conflicts to avoid adverse effects. Under Article 36(1)(a), regulated markets will likewise be required to have arrangements to identify and manage the potential adverse consequences of conflicts of interest, in particular where they may arise from regulatory functions delegated to the market by the competent authority. The ECB welcomes these provisions, in particular as it agrees with the Commission's general assessment in the explanatory memorandum that the potential for conflicts of interest may intensify in the context of increased competition between the different methods of trade execution and also between trading venues of the same kind. In addition, the ECB considers that adequate conflict of interest provisions across trading venues could also contribute to ensure a level playing field among market players. The ECB would like to put forward the following comments with a view to enhancing the relevant conflict of interest provisions. First, Article 16(2) requires investment firms to take preventive measures against possible conflicts of interest between themselves and their clients or to establish and operate organisational and administrative arrangements to manage such conflicts. However, the proposed directive could be read as providing for preventive and protective requirements as alternatives, however, these are generally viewed, also in academic literature, as complementary in the context of the supervision of financial intermediaries and of investor protection in particular. For instance, it seems reasonable to report the existence of a conflict of interest to a client prior to the execution of a transaction, and not only once such a conflict emerges as prejudicial. Against this background, the ECB finds that the proposed Article 16(2) should regard preventive and protective measures against conflicts of interest as complementary instead as alternatives. This would also be in line with the proposed wording of Article 36(1)(a). Second, the ECB welcomes the opportunity to make Article 16(2) more effective through Level 2 legislation. The ECB notes, however, that the other provision dealing with conflicts of interest in the proposed directive (the aforementioned Article 36 dealing with regulated markets) does not provide for similarly detailed implementing measures. In the light of the importance of effective measures against possible conflicts of interest in the new regulatory framework, the ECB would favour the inclusion of comitology provisions not only in Article 16, but also in Article 36. Such a general comitology-based approach would not only help to tackle the evolving nature of conflicts of interest and the procedures for dealing with them, but would also facilitate comparable working standards, where appropriate, among the different trading formats.

11. Fourth, the new regulatory framework on trade execution. The proposed directive, while retaining the existing dual classification between regulated markets and investment firms, introduces the operation of MTFs as a new core ISD service, thereby allowing investment firms operating such facilities to be authorised and subjected to a customised regulatory regime. Reflecting rapid technological advances in recent years, MTFs have been important in supporting the move away from national structural rigidities to cross-border trading and cross-border alliances, allowing a more efficient exploitation of the benefits of the single market. The proposed inclusion of the operation of MTFs in the list of core ISD services is therefore welcome, as it recognises the changing nature of financial intermediation and enables MTFs to make their facilities and services available to users throughout the EU and the euro area. Furthermore, the proposed directive provides rules concerning intermediaries that execute clients' orders internally. To ensure that the interests of clients are not jeopardised by the existence of conflicts of interest, investment firms are subject to 'best execution' obligations and to client order-handling rules.

12. There is always a trade-off between competition and concentration in trading activity. Concentration improves the liquidity of markets and enhances the efficiency of the price-discovery mechanism. Liquidity attracts more liquidity and, as a result of this cycle, the most successful market becomes a natural monopoly. Over the years, efficient natural monopolies of this kind have emerged at a national level. However, there are concerns that national monopolies may be obstacles to innovation and efficiency in a new environment, where the single currency calls for the move to integrated EU and euro area-wide financial markets. The proposed abolition of the rule on the concentration of trades on regulated markets existing in the current ISD, together with a new harmonised legal framework recognising the new trading venues, will improve competition by allowing the latter to challenge established positions of regulated markets. The resulting enhanced competition will support the creation of an efficient and integrated pan-European financial market, which is also in the ECB's interests. It cannot be ruled out that intensified competition between trading venues in this new environment may lead to temporary market fragmentation with possible negative consequences for price formation. However, the proposed directive addresses such concerns efficiently by increasing market transparency. In this context, the ECB notes that it is crucial to ensure appropriate price transparency as regards all execution venues so that competition enhances overall market efficiency. In addition, the proposed directive provides 'best execution' rules in order to ensure, through increased disclosure of

execution quality, that intermediaries have order-routing practices that allow investors to obtain the best conditions available in different market venues.

13. As Section II of the explanatory memorandum also notes, there is growing consensus amongst financial regulators and commentators that an effective transparency regime allows the benefits of competition between trade-execution venues to be reaped, while limiting any adverse consequences for overall market efficiency, e.g. in the form of fragmentation. Market transparency is generally regarded as central to both the fairness and efficiency of a market and in particular to its liquidity and quality of price formation. Therefore, it would be desirable to have a coherent transparency regime for all asset classes that apply across all market venues. A transparency regime that is confined to regulated markets and ignores 'off-exchange' trade execution will be partial in reach and suboptimal in effect, since off-exchange trading may include trading information relevant to investment decisions. On this basis, it is argued that all market participants should be able to factor information on such trades or trading interests into their investment decisions and thereby maximise the efficiency of price formation. In order to avoid such undesirable consequences, the Commission proposes to enhance market transparency by imposing the obligation to display publicly the bid and ask prices at which the market is willing to conclude the trades (pre-trade transparency) on all trading venues. Furthermore, it lays down reporting requirements for the prices and volumes of trades executed by the eligible entities (post-trade transparency). In principle, the ECB welcomes these rules as advancing the fundamental goal of allowing investors to choose the more efficient trading venues. As a consequence, liquidity will eventually flow to the more efficient markets, with a consequent improvement in price formation.

14. However, the ECB notes, that in order to achieve this goal it would also be necessary to provide the means for a full comparison of the price terms offered by different trading venues for the same financial instruments. This could be achieved by consolidating, to the extent possible, information on prices of financial instruments at a European level. Indeed, given progress in the field of technology, the 'best execution' rule can only work if investors and intermediaries have information on the quotations of each trading venue in which securities are traded. In a fully integrated European market, the best execution (best bid/best offer) can only be EU-wide and based on quotations available on an EU-wide basis. The consolidation of information should ensure that it forms the basis for the 'best price' being applied to the relevant transaction. As the other main barrier to such comparison, the existence of different currencies, has been eliminated in the euro area with the introduction of the single currency, there is indeed a strong case for consolidating price information at an EU or euro area level. Such consolidation should first and foremost be pursued by the private sector, ensuring full availability of such information to all interested parties. Public authorities could act as catalysts by fostering collective action in the private sector to solve any coordination problems.

15. Furthermore, the ECB notes that the proposed directive limits the pre- and post-trade transparency obligations to transactions in equities that are listed on regulated markets, excluding, for instance, transactions in debt securities listed on regulated markets. In this respect, it is worth noting that at the end of 2002, the nominal outstanding amount of debt securities listed on regulated markets that were potentially eligible for Eurosystem credit operations exceeded the market capitalisation of the EU stock exchanges. In other words, the proposed directive leaves a very significant asset class outside the pre- and post-trade transparency obligations. In addition, neither the proposed directive nor the explanatory memorandum explains the reasons for this limited implementation of the pre- and post- transparency obligations. On the contrary, Section II of the explanatory memorandum states that at the heart of the proposed directive is an effective transparency regime, which seeks to ensure that appropriate information regarding the terms of recent trades and current opportunities to trade in all marketplaces, trading facilities and other trade-execution points is made available to market participants on an EU-wide basis ([1]). In line with this declaration, Article 23 of the proposed directive refers to all financial instruments listed in Annex I in connection with the transparency obligations. However, Articles 25, 26, 27, 28, 41 and 42 unexpectedly limit the pre- and post-trade transparency obligations to shares.

16. The ECB emphasises that the application of the new transparency rules to debt securities as well as to shares would make a significant contribution to the efficiency of the price formation process for these securities and to the preservation of market integrity. As regards the first issue, the ECB notes that the vast majority of assets eligible for Eurosystem credit operations are debt securities listed or quoted on a regulated market. However, these assets are frequently traded on alternative (i.e.

([1]) See explanatory memorandum, p. 13.

non-regulated) platforms. In such cases, the best source of price information may not be the regulated market where the asset is listed. Defining a proper reference price source for the eligible assets is of great importance for the Eurosystem, since the valuation of such assets and the application of risk control measures rely almost entirely on market prices. Therefore, it is important for the Eurosystem that not only the regulated market where assets are listed, but also the alternative trading platforms, where a significant amount of transactions takes place, are governed by the transparency obligations, thus ensuring proper price formation. As the Commission also notes in the explanatory memorandum, the MTFs are now the main organised trading venues for bond trading and accounting, however, for only 1 % of equity trading volumes in the EU [1]. Limiting pre- and post-trade transparency obligations to equity instruments would therefore necessarily mean that the proposed transparency regime would cover the MTFs in a very limited way. This is not fully in line with the objectives of the proposed directive. Furthermore, it is widely recognised that price transparency is beneficial to market integrity. If those wishing to trade are able to maximise their information on current bids and offers and recent trades across a wide range of facilities where an instrument is traded, as stated in Standard 3 of the Standards for Alternative Trading Systems issued by the Committee of European Securities Regulators (CESR), then this will enhance price transparency. Thus limiting the application of transparency rules to shares would deny those authorities charged with detecting market abuse the possibility to fulfil their duties as regards the debt markets.

17. The ECB notes that according to Article 60 of the proposed directive, the Commission shall report to the European Parliament and Council on the possible extension of the scope of the provisions concerning pre- and post- trade transparency obligations to transactions in classes of financial instruments other than shares no later than four years after the entry into force of the proposed directive. However, the ECB recommends that the Commission reconsiders the scope of the transparency rules and extends them to debt securities or to all financial instruments listed on regulated markets. If this is not possible, the period indicated in Article 60 should be shortened to two years.

18. Fifth, the rules concerning clearing and settlement systems. The ECB welcomes the Commission's decision not to address the regulation of clearing and settlement within the proposed directive and agrees with the underlying reasons as expressed in Section V.1 of the explanatory memorandum. Indeed, the efficient clearing and settlement of securities transactions is crucial to the orderly functioning of securities markets, the smooth conduct of monetary policy operations and the stability of the financial system as a whole. Because of the systemic importance of operators offering such services and the complex technical and public policy considerations involved, the regulation of these distinct types of market functions should be addressed separately. On the other hand, the close relation between trading and post-trading requires coordinated regulation. Therefore, the ECB recommends the Commission to finalise an adequate regime for clearing and settlement. The ECB is highly interested in the current discussion on the content of a Community programme on post-trading infrastructure and assures the Commission of its full support in defining the main lines of policy underlying any proposed action.

19. In view of the preceding considerations, the proposed directive confines its treatment of clearing and settlement to clarification of the rights of investment firms and members of and participants in regulated markets to access, at their choice, of clearing and settlement facilities located in other Member States. According to Article 32(1), Member States shall ensure that investment firms from other Member States have the opportunity to access directly and indirectly central counterparty, clearing and settlement systems in their respective territories for the purposes of finalising transactions in financial instruments, and that access to such facilities is subject to the same transparent and objective commercial criteria that apply to local participants. In particular, Member States cannot restrict the use of those facilities to the clearing and settlement of transactions in financial instruments undertaken on a regulated market or an MTF in their respective territories. Similarly, according to Article 32(2), Member States shall ensure that regulated markets in their respective territories offer direct, indirect and remote members or participants the right to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market. The ECB supports the view that all investment firms should have equal opportunity to join or have access to regulated markets throughout the Community, and shares the opinion that, regardless of the manner in which transactions at present are organised in Member States, it is important to abolish technical and legal restrictions on direct, indirect and remote access to regulated markets. In order to facilitate the finalisation of cross-border transactions, the ECB also shares the view that it is appropriate to provide for the access to clearing and settlement systems throughout the Community by investment firms, including those operating MTFs, irrespective of whether transactions have been concluded through regulated markets in the Member State concerned. With respect to the access and choice of central counterparties, the ECB has already made its views public concerning the need for open access to ensure a level playing field for service providers.

[1] See the box on New developments in EU financial trading on page 8 of the explanatory memorandum.

20. The ECB shares the Commission's view that investment firms which wish to participate directly in partner country settlement systems should have to comply with the relevant operational and commercial requirements for membership and prudential measures to uphold the smooth and orderly functioning of financial markets, as stated in Recital 35. The ECB understands that the term 'prudential measures' does not refer to the system provider's internal risk and control measures, but to measures implemented by public authorities entrusted with the orderly functioning of the financial markets. Therefore, this should be reflected in the wording of the proposed directive by including not only prudential measures, but also oversight, since the smooth and orderly functioning of the financial markets can also be ensured by other regulatory measures which might be in place in Member States.

21. According to Article 32(2), the right of members of or participants in a regulated market to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market is subject, inter alia, to 'agreement by the competent authority responsible for the regulated market that technical conditions for settlement of transactions concluded on the regulated market through a settlement system other than that designated by the regulated market are such as to allow the smooth and orderly functioning of financial markets'. In line with the preceding comment, it should be noted that competence for ensuring a smooth and orderly functioning of financial markets might reside with authorities other than the market authorities, such as authorities specifically competent for the clearing and/or settlement of (regulated market) securities transactions, according to the regulation of each Member State. The wording of Article 32 should also contemplate these authorities and potentially coordinate their respective roles. In addition, instead of making the right of designation subject to specific agreement by the competent authority/ies, it could be advisable to impose minimum harmonised requirements. In this respect, the interest and/or competence of central banks in the smooth functioning of securities clearing and settlement should be recognised. The ECB understands that the Commission, when asking CESR to advise it, will also mandate CESR to consult the NCBs regarding the implementing measures of Article 32(4).

22. The ECB understands that the intention of Article 32(4) is to create objective criteria for the competent authorities to assess the designation of a particular system by indirect or remote members of or participants in a domestic regulated market. It is vital to ensure that the competent authorities are not perceived by participants as discriminating in favour of domestic systems where these authorities do not agree with a particular designation, provided that their decision is based on objective and harmonised criteria. Once the relevant decision-making bodies have endorsed the ESCB-CESR recommendations, they could become the benchmark for the NCBs and other competent authorities.

23. Sixth, exchange of information and reporting requirements. The ECB welcomes Article 54(6), which removes any legal barrier to information exchange between competent authorities and the members of the ESCB, including the NCBs and the ECB, for the purposes of performing their respective tasks. The growing degree of integration of financial markets within the EU and the euro area definitely calls for increased efforts to cooperate and exchange relevant information in a rapid and efficient way. This should involve, in particular, the relevant supervisory authorities on a multi-national and multi-sector basis, as well as the NCBs.

24. Finally, the ECB notes that according to Article 56 of the proposed directive, host Member States may, for statistical purposes, require all branches within their respective territories to report to them periodically on their activities. The ECB would like to point out that a subgroup of investment firms and branches are part of the ECB's reference population for meeting the ECB's statistical reporting requirements, as defined in Article 1 of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank [1]. In order to minimise the reporting burden, the ECB recommends that authorities should check the statistical data already available, implementing any additional requirement to collect statistics under Article 56 of the proposed directive. Moreover, where statistics are collected under this Article, the ECB would welcome an exchange of information.

25. This opinion shall be published in the *Official Journal of the European Union*.

Done at Frankfurt am Main on 12 June 2003.

The President of the ECB

Willem F. DUISENBERG

[1] OJ L 318, 27.11.1998, p. 8.