

AMF Position No. 2006-17 Concept of profit forecasts

Reference texts: EC Regulation No. 809/2004 of 29 April 2004, Annex 1 § 13 / Annex 4 § 9 / Annex 9 § 8 / Annex 10 § 13 / Annex 11 § 8

The AMF asks issuers to apply the stipulations appearing in the market group report¹ reproduced below.

Implementation of European Regulation No. 809/2004 of 29 April 2004 concerning the information contained in a prospectus - Details relating to the concept of forecasts

The implementation of European Regulation No. 809/2004 of 29 April 2004 adopted pursuant to the Prospectus directive (the "European Regulation") raised numerous questions among issuers regarding the treatment of profit forecasts.

The European Regulation gives a potentially very broad definition of profit forecasts and, when an issuer chooses to include a profit forecast in a prospectus, it requires a description of the underlying assumptions and a report by the statutory auditors certifying that these forecasts have been established on the basis of the indicated assumptions and that the accounting policies used are in compliance with the accounting policies applied by the issuer for establishing its accounts.

As a reminder, the European Regulation defines a profit forecast as "*a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used*".

The recommendations published by CESR on the implementation of the European Regulation specify, moreover, that in the case of a share offering, the forecasts that have been made public by the issuer are presumed to constitute significant information which should be included in the prospectus.²

Regarding the definition of profit forecasts, the Autorité des Marchés Financiers has identified, in consultation with the trade associations, criteria for analysis to determine in what cases prospective financial information constitutes profit forecasts within the meaning of the European Regulation.

The Autorité des Marchés Financiers wishes to provide a reminder that issuers remain, at all times, subject to the obligation of constant information for the public, notably in the event of a significant change to information already made public.³ Regarding prospective financial information, issuers shall refer to the work of the working group chaired by Jean-François Lepetit on profit warnings in order to ensure fast, satisfactory market disclosure.

¹ A market group was formed by the AMF in November 2005 to reflect on the definition of profit forecasts. This group comprised representatives of the CNCC, AFEI, AFEP and MEDEF.

² In its recommendations of February 2005 (CESR/05-054b), the CESR specifies that when an issuer has published profit forecasts by other means than via a previous prospectus, it must, in the event of a corporate action, consider the validity and significance of these forecasts and decide whether they should be included in the prospectus established for the corporate action. The CESR considers that when the corporate action concerns equity securities, the forecasts given by the issuer are presumed to be significant.

³ Article 222-6 of the AMF General Regulation.

A - Conclusions of the working group

The Autorité des Marchés Financiers, in consultation with auditors' organisation Compagnie Nationale des Commissaires aux Comptes, French investment firms' organisation Association Française des Entreprises d'Investissement, French private enterprise organisation Association Française des Entreprises Privées" and French employers' association MEDEF, formed a working group in charge of analysing the concepts of "forecasts" and "trends" contained in European Regulation No. 809/2004 on prospectuses (the "European Regulation"), given the problems of interpretation raised by these terms.

I. Introduction

Since the entry into force of the European Regulation, corporate financial disclosure has seen the definition and conditions of publication of a forecast regulated. For the first time, a regulatory definition of forecast information is given via the concept of a "profit forecast". The concept of a "trend" is also specified.

It can be observed that, in various circumstances, issuers frequently publish prospective financial information that can be covered by various commonly used terms (objectives, future prospects, trends, etc.).

This prospective financial information is not brought into question but, in light of the broad definition of a forecast appearing in the European Regulation, could be renamed a "profit forecast", which entails certain consequences.

The objective of the working group was to provide clarifications for the harmonised implementation of these concepts by proposing a methodological approach supported by analysis criteria in order to determine in what circumstances the prospective information published by issuers constitutes profit forecasts within the meaning of the European Regulation.

The AMF has deliberately limited its approach to forecasts falling within the framework of the drafting of a prospectus. The profit forecast which could, moreover, be provided in a registration document is not discussed in the present document, given that the European Regulation does not deal with the registration document.

The approach followed therefore concerns prospective financial information published by issuers within the framework of a prospectus.

This document does not discuss the subject of profit estimates either, since this point was already dealt with by a recommendation of the AMF that appeared in its monthly review of October 2004.⁴ Remember that in the case of a prospectus, Article 2.11 of the European Regulation specifies that a "profit estimate" is a profit forecast that concerns the profit for a financial year that is ended and for which the profit has not yet been published. While a profit forecast is by nature uncertain, insofar as (1) certain events may not be anticipated at all or not occur as expected or (2) management's actual actions may differ from its original intentions, the degree of uncertainty entailed in a profit estimate is far lower. Profit estimates are in fact historical information, because they concern a period that is ended, and are not strictly speaking underpinned by assumptions on whose effective realisation the profit level depends, as is the case for profit forecasts. If an issuer decides to give a "profit estimate", it will be required to set out not the main assumptions but the basis on which it was established, in accordance with the AMF recommendations relating to reporting estimated financial data, and to obtain a report from its statutory auditors concluding that "the profit estimate has been properly compiled on the basis stated".

⁴ Monthly review of October 2004

II. Overview of the question of forecasts and objectives

The definition given by the European Regulation raises several questions with regard to existing communication practice in France, defined in particular by the report of the working group on "profit warnings" chaired by Mr Lepetit and made public in April 2000.

Until now, only the report of this working group had proposed an official definition of "forecasts", less broad than that of the European Regulation, and had specified the concept of "objectives", which does not appear in the European document.

This report specified that: *"forecasts are quantified resultants of studies aiming to determine a set of quantities relating to a future period (called assumptions). These studies are usually based on econometric modelling techniques taking into account assumptions and the analysis of historical data. The more distant the forecast horizon, the more speculative is the nature of the assumptions adopted.*

For firms, forecasts generally cover the short term (also called projections) or the medium term. In finance, forecasts combine macro- and micro-economic assumptions (for example, inflation, interest rates, commodity prices, etc.) and ratios specific to the firm (e.g., cost of sales/turnover). Although they can also be expressed in narrative form, short- and medium-term financial forecasts are often presented in the form of projected accounts, which can be as detailed as the annual accounts, or in a more summary form".

Given that some issuers also published "forecasts", the report had concluded that it was advisable to specify in companies' communication the exact nature of the prospective information given, and the explanatory factors that accompany the publication of "forecasts" and the degree of validation by the statutory auditors.

It was also specified that it was necessary to establish rules for updating information when "forecasts" had been published and no longer reflected the expectations of the managers.

The concept of "**objectives**", for its part, had been defined as follows in the work of the LEPETIT working group in April 2000: *"the objectives **translate in a quantified summary form the effects expected of the strategy** determined by the governing bodies, **whether in commercial terms (e.g. market share or turnover growth) or in financial terms (e.g. return on capital employed, earnings per share, etc.)**. They therefore express **goals that the firm's managers have set themselves according to their expectations of prevailing economic conditions**, often expressed in a standardised manner, and the means they have decided to employ. They may be long-term or short-term (near-term operating objectives necessary to implement the strategy) and **are usually translated into an action plan (or business plan) over several years, which may itself be broken down into annual plans**, the financial aspects of which will be translated into budgets".⁵*

Accordingly, with the entry into force of the European Regulation, a new terminology now prevails, and the impact of the changes brought about by the European Regulation should be assessed. From now on, the concept of a profit forecast is distinguished from the concept of trends, recalling that point 8 of the preamble to the Regulation emphasises, regarding the disclosure of a profit forecast in a registration document, that *"This information should not be confused with the disclosure of known trends or other factual data with material impact on the issuers' prospects. Moreover, they should provide an explanation of any changes in disclosure policy relating to profit forecasts when supplementing a prospectus or drafting a new prospectus".*

The question therefore arises as to how the definition of objectives in the LEPETIT report fits in with that of the European Regulation and whether the concept of objective is still applicable.

For example, issuers wanting to publish "objectives" will have to ask the question as to whether, despite the terminology chosen by them, objectives appearing in a prospectus could not be considered as a profit

⁵ The words in bold have been highlighted in this way for the purposes of the approach, although they are not in bold in the report.

forecast, when information provided makes it possible to determine a "*likely level of profits or losses for the current financial period and/or financial periods subsequent to that period*" or whether "*future profits or losses can be calculated*" on this basis.

The objectives are the subject of communication by the issuers and often do not constitute a real profit forecast.

However, if information called "objectives" in fact corresponded to the definition of a profit forecast within the meaning of the European Regulation, the issuer would in that case be required by the European Regulation to set out its main underlying assumptions and to include a report by its statutory auditors for which the terms of the conclusion are stipulated by the European Regulation. If the statement of the main assumptions is absent or insufficient, the statutory auditors of the accounts would be unable to conclude that the profit forecast was "properly compiled" on the basis stated.

In light of the issue mentioned above, the working group examined the content of the "profit forecast" and "trends" in greater detail, distinguishing between them and the concepts of "objectives" and "future prospects". The working group also specified the information necessary for setting out the assumptions and produced a list of analysis criteria which could be applied in order to determine whether prospective information constitutes a profit forecast or not when this information is published in the schedules of the European Regulation registration document.

III. Comments on the definitions and requirements of the European Regulation

a) Requirements of the European Regulation

The European Regulation has since 1 July 2005 defined the information to be presented in the prospectus.

This Regulation requires information on the trends but leaves up to the issuer the initiative of indicating a profit forecast.

Regarding the trends,⁶ heading 12 of Annex I to the European Regulation requires that the issuer who draws up a prospectus "*indicate the most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document*" and "*mention any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's prospects for at least the current financial year.*"

Regarding the profit forecast, heading 13 of Annex I specifies, for its part, that:

"If an issuer chooses to include a profit forecast or a profit estimate, the registration document must contain a statement setting out the principal assumptions upon which the issuer has based its forecast or estimate (...), a report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.

If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case."

⁶ Issuers are invited to refer to the various annexes to the European Regulation in order to find out the minimum information to be presented, adapted to the specific nature of the various types of issuers and/or the various categories of transferable securities concerned.

b) Definitions

The trends, which are not defined by the European Regulation, break down according to two types of object, because these trends must cover both information of a recent historical nature (*"since the end of the last financial year until the date of the registration document"*) and information of a forward-looking nature that could *"significantly influence the prospects of the issuer, at least for the current financial year."*

The trends on information of an historical nature raise no particular problem other than that of their identification and the sincere description of their expected impacts. Regarding trends that could significantly influence the prospects of the issuer, they should, according to the working group, be expressed more in general or narrative terms when they concern quantities relating to the profit and loss account so as not to be confused with a profit forecast. At all events, they should not make it possible to determine a likely level of future profits precisely.

Moreover, the CESR specified on this subject *"that in practice, there is often a fine distinction between what constitutes a profit forecast and what constitutes information on trends as explained in detail under heading 12 of Annex I to the Regulation. A general discussion on the future or prospects of the issuer provided as part of the information on trends will not, as a general rule, constitute a profit estimate or forecast."*

The profit forecast, for its part, is defined by the European Regulation as *"a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used"*.

Based on this definition, the working group oriented its thinking by proposing a pragmatic use of the definition and clarifying certain concepts such as "profits and losses".

When reading the European Regulation, it can be noted that this definition points to two possibilities, namely, the profit forecast can be:

- *a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period,*

For the working group, the concept of "profits or losses" should cover not only the net book profit/(loss), but also an operating profit/(loss). The profit/(loss) should be a consolidated profit/(loss), analysed on an overall level, and not information possibly given at the business segment level, except in special cases where the profit/(loss) of a segment or the sum of the profits/(losses) of the segments reported, contributes most of the group's profits. For its part, CESR recommends, moreover, providing information concerning *"profit before tax, disclosing separately any non-recurrent items and tax charges if they are expected to be abnormally high or low."*

The working group considers that the issuer may choose to indicate a profit forecast after tax by complying with transparency of information regarding the customary or uncusomary nature of the tax expense.

- *or [a form of words] which contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used"*.

From this second, very broad approach, it follows that prospective information may be considered as constituting a profit forecast if, in combination with other published prospective information, it makes it possible to calculate a future profit, even if the issuer has not quantified this information. For example,

this profit may be given indirectly if it follows from a published forecast turnover and if other information necessary to calculate the future profit has also been provided by an issuer, especially for the trends.

Conversely, based in particular on the recent trends indicated by the issuer, an issuer may mention that prospective financial information of this type cannot constitute an indirect profit forecast. This mention must in that case be explicit and inform the reader that it is impossible to make valid extrapolations from the indicated trends and hence calculate a future profit.

If an issuer has, in a previous prospectus or in another document (press release, registration document, presentation to analysts, etc.), disseminated prospective financial information that could be termed a profit forecast, it must consider whether this forecast is still valid and significant, and decide whether or not it should be included in the prospectus.

The CESR⁷ considers that there exists a presumption that a profit forecast, published in a document other than a previous prospectus, constitutes significant information for the market in the context of a share issue.

If the issuer considers, after examination, that this profit forecast is no longer valid, it must clearly indicate this. Note that issuers may not subsequently report this same prospective financial information judged non-valid, presenting it again as a profit forecast.

In the case of groups of companies, the AMF gives a reminder that CESR specified⁸ that an issuer must also evaluate the effects of the acquisition of a stake in a company and of a profit forecast announcement by said company on its own financial position, and report on this as it would have done if the profit forecast had been made by itself.

c) Similar concepts: Objectives and future prospects

"Profit forecasts" and "trends" have been repositioned relative to the concepts of "objectives" and "future prospects", notably due to the legal obligation to provide information on future prospects in the management report.

As recalled above, the concept of "**objectives**" was defined in the work of the LEPETIT working group in April 2000.

The same report observed that *"The role generally attributed to managers is to indicate their strategic guidelines, the action plans and the financial objectives that they set themselves as a result of this strategy. These objectives generally cover several years, are in summary form (earnings per share growth, return on capital employed, market share, etc.), and are based on standard assumptions regarding the economic environment"*.

It can be observed that the concept of objectives does not appear in the European Regulation.

The practice of announcing objectives, as it existed beforehand, should be reviewed in light of the European Regulation. Issuers wanting to announce "objectives" to the market should consider that notwithstanding the terminology used on that occasion, objectives could be considered as being in fact a profit forecast, if the combination of the various information provided in the registration document schedules of the European Regulation makes it possible to determine a *"likely level of profits or losses for the current financial period and/or financial periods subsequent to that period"* or if *"future profits or losses can be calculated"*.

The concept of "**future prospects**" comes under the legal information to be provided: the management report⁹ must *"outline clearly and precisely the business of the company, and where applicable its*

⁷ §44 of the CESR Recommendations of February 2005.

⁸ §46 of the CESR Recommendations of February 2005.

⁹ Article D. 148-1 of the decree of 1967.

subsidiaries during the past financial year, the profit/(loss) of this business, the progress made or the difficulties faced and the future prospects".

It is not required that quantified information be provided in the management report under future prospects.

Issuers must therefore be attentive to the wording of the part relating to the description of future prospects in the management report, in order to avoid a possible reclassification as profit forecasts.

IV. Other reflections of the working group

The AMF wanted to also emphasise two other points relating to the statement of assumptions underpinning the forecasts and the statutory auditor's report, without making any predictions as to the future professional standard of the auditors' organisation Compagnie Nationale des Commissaires aux Comptes.

a) Statement of assumptions

The European Regulation¹⁰ requires the insertion of *"a statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate. There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies. The assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the estimates underlying the forecast"*.

The AMF emphasises the importance for issuers of having not only sufficiently substantiated internal documentation when establishing the profit forecast, but also of performing sufficient external communication regarding the main assumptions underlying the profit forecast at its dissemination.

This statement of the main assumptions is necessary, in the same way as that relating to the accounting policies applied, for a good understanding of the profit forecast by investors. It also allows the statutory auditors to express their opinion regarding the "properly compiled on the basis stated" nature of the profit forecast.

The statement of the main assumptions implies neither a detailed description of them, nor the obligation to make public all the assumptions adopted.

b) The statutory auditors' report

Whenever a profit forecast is included in a prospectus, the European Regulation¹¹ provides for the establishment of a *"report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer"*.

The work performed by the statutory auditors on the profit forecast involves their examining the process for establishing the profit forecast and ensuring in particular:

- that the main assumptions adopted by the issuer are effectively stated;
- that the profit forecast indeed reflects the stated assumptions;
- that the calculations are performed correctly on the basis of the stated assumptions;
- that the accounting policies used for establishing the profit forecast are in compliance with those followed for establishing the historical financial information of the entity.

¹⁰ See in particular Article 13.1 of Annex 1 to Regulation 809/2004.

¹¹ See Article 13.2 of Annex 1 to Regulation 809/2004.

If the main assumptions are not effectively stated or in the absence of an organised process for producing the profit forecast, the statutory auditors could be led to establish a report stating that they are unable to conclude that the "forecasts were properly compiled on the basis stated".

B- Analysis criteria defined by the market working group

Analysis criteria make it possible to characterise a profit forecast within the meaning of the European Regulation on the prospectus.

The proposed criteria result from an analysis which has been organised around three main features: the quantified profit indicators, the same indicators including the time frame and information presented in a purely narrative manner.

It was considered that the closer a given indicator is to the profit level, the greater is the likelihood that this indicator could be considered as constituting a profit forecast within the meaning of the European Regulation.

I. Quantified profit indicators

The quantified performance indicators based on the accounts (net margin, operating profit, profit before tax, net profit) **are apparently presumed** to come within the definition of a profit forecast.

In relation to the definition of the European Regulation, certain published data are covered by the definition directly, while others would be covered indirectly if the combination with other data provided by the issuer in a prospectus makes it possible to calculate a likely level of future profit.

Accordingly, two sub-categories can be formed:

1) Data considered directly as profit forecasts

- Operating profit.
- Earnings Before Interest and Tax.
- Profit before tax.

2) Accounting data or financial indicators that may, on certain conditions, be considered as constituting an indirect profit forecast

- a) Some prospective information published in a prospectus could be considered as constituting an indirect profit forecast:
 - Operating margin ⇨ Forecast, unless other factors prevent estimating the profit.
 - EBITDA, EBITDAR ⇨ Presumption of forecast. These indicators will be considered as a profit forecast provided that the expenses relating to amortisation, depreciation or interest and bank charges can be clearly determined based on the other information reported in the registration document schedule. However, the issuer may, where appropriate, be able to explain that it is not possible to determine the likely profit level on this basis.
- b) Some prospective information published in a prospectus could be considered as constituting an indirect profit forecast when other data provided by the issuer within this framework make it possible by combination to calculate a likely level of future profit.



- Forecast turnover: ☞ Is normally not a profit forecast unless other factors published in the prospectus make it possible, in combination with this turnover, to calculate a likely profit level. Accordingly, a forecast turnover will constitute a profit forecast if historical structural aspects of the profit and loss account provided in the prospectus are sufficiently recurrent and make it possible, in light of the trends mentioned within this framework, to calculate a likely level of future profit. The combination of information on turnover, the customary structure of the profit and loss account and the trends indicated within this framework (*pursuant to Article 12.1 of Annex 1 to the European Regulation*) could in that case enable the reader to make a profit forecast, within the meaning of Article 2.10 of the European Regulation.

Example:

A car park rental company, which announces a forecast turnover and for which it can easily be estimated, in light of the historical information provided elsewhere, that operating expenses are practically fixed (*depreciation of the building, caretaking expenses, etc.*) or directly proportional to the turnover, may be considered as indirectly communicating a profit forecast. The profit can easily be estimated based on the historical data assumed to be recurrent, especially in the absence of a reported turnaround in the trends.

Conversely, in an IT service provider company, the announcement of a forecast turnover could not, for example, be considered as a profit forecast, given the fluctuating nature of its business (diversity of individual contracts, variable profit margin per contract, etc.) and, as a consequence, an irregular historical margin.

- Profitability ratio¹² or operating profit margin ☞ profit forecast, if other factors make it possible to calculate the likely level of future profit (for example, if the base to which the ratio applies is announced elsewhere).
- FOCF¹³ ☞ This indicator is generally calculated from the net profit or EBITDA. This information will be considered as a profit forecast if indications making it possible to determine the likely profit level, based on FOCF, are given in the prospectus.
- Free cash flow ☞ A forecast, if indications making it possible to deduce the likely profit level from it are given in the prospectus.
- ROE¹⁴, ROCE¹⁵ ☞ Forecast, if the historical or forecast reference bases indicated elsewhere in the prospectus make it possible to calculate the profit.
- Planned dividends ☞ A forecast if it is indicated that the historical payout ratio, constant moreover, would be maintained.

II. Prospective financial information and time frame

The time scale should also be taken into consideration to distinguish between the profit forecast and other prospective financial information.

In general, prospective information concerning a distant time frame will usually be considered with more reservation by the reader due to contingencies which reduce its likelihood. Accordingly, the more distant the time frame of such information, the less possible it is to determine a **likely** profit level.

¹² Profitability ratio: Corresponds to the ratio of net profit or profit from ongoing operations to equity.

¹³ Free operating cash flow.

¹⁴ Return on Equity.

¹⁵ Return On Capital Employed.

Conversely, the closer the time frame concerned by prospective information, the more the reader is justified in considering it as reasonably feasible.

The analysis performed on the time frame is organised as follows:

When the issuer states prospective financial information as a profit forecast or if the information given corresponds to data considered directly as a profit forecast as in paragraph 1) of point I, the issuer must set out the main underlying assumptions and obtain a report from its statutory auditors.

When the issuer communicates prospective financial information as mentioned in paragraph 2 of point I, the analysis to be conducted will be as follows:

- Information given regarding current financial year N

Prospective financial information given at a date n and concerning the current financial year (*financial year N*) **should be considered as an indirect profit forecast** within the meaning of the European Regulation if, in light of the information provided within the framework of a prospectus and the trends that are mentioned therein, the financial data in question makes it possible to determine the likely profit level.

- Information given regarding financial year N+1

Prospective financial information given at a date n concerning financial year **N+1 should be considered as an indirect profit forecast** within the meaning of the European Regulation if, in light of the information provided within the framework of the prospectus and the trends that are mentioned therein, the financial data in question makes it possible to determine the likely profit level. The issuer could, however, indicate, with substantiating evidence, that this information cannot be used to establish such a forecast. Note, however, that the closer the information given at a date n is to the closing date N+1, the more it should be considered that the presumption of a profit forecast exists.

- Information given at n concerning a financial year after N+1

Prospective financial information given at a date n *and concerning financial year N+2 or a more distant time frame could be considered as a forecast* only if the historical information provided elsewhere makes it possible, in light of the trends that are mentioned therein, to calculate the likely level of future profit by extrapolation. The issuer may, however, indicate that this information cannot be used to establish such a forecast.

III. Information given in explicit narrative form

The following expressions confirm that a known historical threshold has been reached or exceeded on the upside or downside, but cannot usually be considered as giving a **sufficiently precise** likely profit level:

"Profit will/should show a [significant, sharp, strong, moderate] improvement"

"Profit will/should show a [significant, sharp, strong, moderate] decline"

These expressions should be considered as providing a profit forecast only if it is possible to know the likely profit level using other quantified information taken from the prospectus.

Note, however, that for companies that are faced with or have in the past faced financial problems, the following expressions, given as an example, **will be considered as a profit forecast** if the time frame is specified and in light of the impact that this type of information could have on the share price performance and the sufficiently precise indication of a likely profit range:

"The ["current" or "following"] financial year will be balanced in terms of profit..."

"A return to profits is expected by ..."

C – Treatment of profit forecasts in registration documents

During the work of the market group, questions arose concerning the positioning of the concept of "objective" relative to that of "profit forecasts" and the treatment of these forecasts in registration documents.

1. Treatment of profit forecasts in registration documents

The view of the COB and then the AMF has always been to consider that all significant financial information made public by issuers before the filing of a registration document had to be included in that document.

The guide for establishing registration documents published in January 2006, for example, stated that *"First of all, regarding recent changes and future prospects, the information requested by the COB and the AMF is at present covered by several sections of the European Regulation. Therefore, the AMF simply wishes to give a reminder that the registration document must contain all significant information that could have an influence on the share price and has been given to the market, including, where applicable, information of a forecast nature."*

The registration document constitutes, in fact, the place in which all information relating to the financial position and prospects of the issuer is centralised. This document would therefore be incomplete if the presentation of historical information (annual and consolidated accounts, annual report) was not accompanied by a presentation of the prospective financial information (profit forecasts or objectives) made public by the issuer.¹⁶

Unless they state explicitly that this information is no longer valid, the AMF considers that issuers should continue to include in their registration document all the prospective financial information that has been made public.

However, issuers can freely communicate in the registration document on profit forecasts or objectives within the meaning of the LEPETIT report.¹⁷ Maintaining the concept of objectives and the publication of objectives in a registration document are not contrary to the European Regulation, which covers only the information to be provided in the event of a public offering transaction. Moreover, it seems advisable to maintain the concept of objectives in light of the development of financial communication, which is based on the efforts of French issuers to improve their information policy, the work and research carried out by the regulator and trade associations to supervise this communication, and the appetite of the market and investors for this type of information.

Issuers must clearly indicate whether the prospective information appearing in the registration document is forecasts or objectives, in accordance with the analysis criteria defined in Annex 3. If it is classified as profit forecasts, issuers must publish, at the same time, the underlying assumptions and the statutory auditors' report.

¹⁶ As a reminder, the person in charge of the registration document must certify, after taking every reasonable measure to this effect, that to the best of its knowledge the information contained in the registration document corresponds to the facts and there is no omission liable to alter its impact.

¹⁷ The concept of objectives had been defined as follows in the work of the LEPETIT working group: "the objectives translate in a quantified summary form the effects expected of the strategy determined by the governing bodies, whether in commercial terms (e.g. market share or turnover growth, etc.) or in financial terms (e.g. return on capital employed, earnings per share, etc.). They therefore express goals that the firm's managers have set themselves according to their expectations of prevailing economic conditions, often expressed in a standardised manner, and the means they have decided to employ. They may be long-term or short-term (near-term operating objectives necessary to implement the strategy) and are usually translated into an action plan (or business plan) over several years, which may itself be broken down into annual plans, the financial aspects of which will be translated into budgets".

2. Links between the registration document and the prospectus

If the registration document is incorporated in a prospectus, issuers must systematically determine, based on the analysis criteria adopted by the working group, whether the prospective financial information given in the registration document constitutes profit forecasts, within the meaning of the European Regulation, objectives or trends.

If this information constitutes profit forecasts, issuers must present the underlying assumptions and the statutory auditors' report except in the following cases:

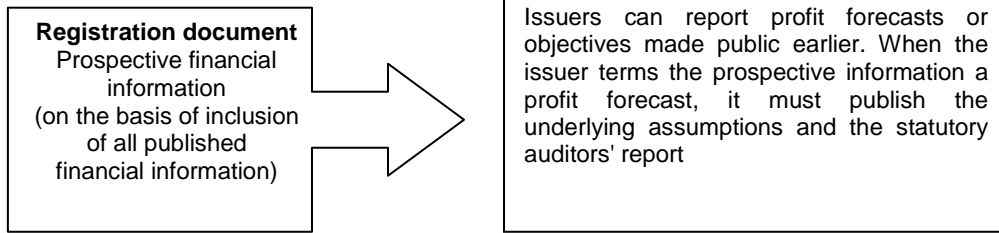
- Subsequent to writing, the issuer has published forecasts of historical financial information (e.g. annual or interim accounts) fully or partially covering the period referred to by the forecasts. The issuer shall in that case specify in the prospectus, if it does not want to include its initial forecast in its prospectus and did not announce new forecasts when publishing its accounts, that the published accounts make the previous forecast information no longer valid.
- The issuer decides not to maintain its forecasts and must in that case indicate explicitly in the prospectus that the forecasts published previously are no longer valid.

If this information is termed objectives or trends, no additional due diligence is required for the prospectus.

A decision tree summarising this position is presented in Annex 1.

Annex 1: Decision tree for the treatment of forecasts

Filing of a registration document



Filing of a prospectus

