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CESR The Committee of European Securities Regulations
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FRANCE

**CESR's Advice on Possible Implementing Measures of the
Transparency Directive**
Part 1: Dissemination and storage of regulated information
Feedback on Consultation Paper of
October 2004

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February 03, 2005

Dear Madam,
Dear Sir,

DIRK is an interested party in the consultation process begun by CESR in 2004. As such, a representative of DIRK is a member of the Consultative Working Group on Transparency Directive.

Before we present our comments, we would like to briefly introduce DIRK to you:
DIRK (Deutscher Investor Relations Kreis e.V.) is the German investor-relations association and was founded in 1990. It is a registered association since 1994. Its members comprise more than 220 German listed companies including all DAX 30 companies, represented by their respective investor relations officer. One of DIRK's goals is to actively articulate the common interests of its members by means of an open dialogue with all institutions involved in the capital market.

As the association of German investor-relations professionals, we would like to comment as follows:



SECTION 1 – DISSEMINATION OF REGULATED INFORMATION BY ISSUERS

Question 1: What are your views on the minimum standards for dissemination? Are there any other standards that CESR should consider?

Minimum standards for dissemination are based on open electronic standards, which offer flexibility and are not tied to any vendor, platform, software program, network or publication medium. The XML standard fulfills those requirements.

A common data standard would allow to process issuer data matched with market data for intelligent use of information (e.g. peer group benchmarking; sector analysis).

Question 2: What are your views on the standards for dissemination by issuer? Are there any other standards or related issues that CESR should consider?

The issuer should have the free choice whether to use an operator. However, the issuer should be able to fulfill the standard technical service level for electronic dissemination (cf. question 1).

Question 3: Should an issuer be able to satisfy all of this Directive's requirements to disclose regulated information by sending this information only to an operator? Please explain reasons for your answer?

This dissemination possibility should be made available, but does not need to be the only for disseminating information. It is expected that the issuer and the disclosing operator will sign service level agreements to ensure that the operator delivers the information in the same way as when the issuer would do it themselves. The requirement that a competent authority would need to be sure that the relevant operator was authorized to act on behalf of that issuer, can be fulfilled by including the digital signature of the signing issuer. In such occasions it is necessary that this digital signature infrastructure is available.

Question 4: Do you agree with the structure set out in Figure 1? Are there other structures that would be in line with the Transparency Directive requirements? Please set out reasons for your answer.

The structure is an option. However issuers' obligation should end with the availability of the information at a public (central) information platform, which allows access to all interested parties. They can automatically pull the information from there, using intelligent technology or an operator, offering such services for a certain price.

Another option should be direct dissemination by the issuer to all parties involved. Operators as well as shareholders and other interested parties could subscribe to receive the regulated information at the same time as the public domain. In electronic terms there might be virtually no time differences (milliseconds) in sending the information to all parties. It might however be useful to think about dissemination of the information in at least one standard mandatory format to be used by all issuers.

Question 5: Should operators be subject to approval and ongoing monitoring by competent authorities or not? Please set out reasons for your answer.

It might be useful to have approval and ongoing monitoring to verify that a minimum quality and security level of operators is (still) in place.

Question 6: What are your views on the proposed minimum standards to be satisfied by operators? Are there any other standards that CESR should consider?

A checklist and the monitoring results should be published, so that issuers can see if the operators are compliant (transparency is needed here as well).

Question 7: Should issuers be required to use the services of an operator for the dissemination of regulated information?

No. Important is the fulfillment of standard requirements. It would help competition and fair pricing if operators were not mandatory.

Question 8: What are your views concerning the role of competent authorities in disseminating regulated information as operators? Please set out reasons for your answer.

Clear separation of responsibilities is required here. A double role (competent authority and operators) must not be possible. This will increase the transparency.



Question 9: Do you consider it necessary to attempt to address the risk that regulated information may not reach every actual and potential investor throughout the EU? Please set out reasons for your answer.

One central storage and retrieval place accessible via Internet would (in principle) allow every actual and potential investor throughout Europe to access regulated information. In order to implement the EU directive this seems to be inevitable. It might be useful to have Operators forwarding default to Central Storage. The public might decide to shop at operators or to go to Central Storage. We expect that Operators differentiate with Central Storage access through their services.

Question 10: Which of the options presented above would, in your view, minimize this risk? Please set out reasons for your answer.

The risks (security and availability of the right information) will be minimized when the number of intermediate steps and number of parties is minimized. However that would lead to monopolies, which are not desirable. We expect that the combination of operators and central storage is the best combination. Issuers should be free which services to use; direct to all parties themselves, via operators and (per default) to Central Storage. It is expected that Central Storage is not going to compete with Operators.

Question 11: Do you consider there to be other methods of dissemination that would satisfy the minimum standards for dissemination? If so, please provide a description of such dissemination methods, and how they would work.

By using one mandatory electronic standardized format in which the information must be disseminated. This could be achieved by using XBRL as the standard. The issuer will send this electronically to the operator and (/or) the Central Storage. The human readable format will be rendered from this XBRL standard.

Question 12: Do you agree with this draft Level 2 advice?

Yes, subject to the comments above and the requirement that also all price sensitive regulated information is made available through Central Storage (items 3 and 4).

Also it should be made clear that dissemination requirements can be fulfilled when the regulated information is freely accessible from an electronic platform where investors and media can subscribe to and automatically receive the information in the moment of dissemination.



There should be no obligation for the issuer to feed the information into the systems or preferred media of the investor. In order to have this level of convenience and added value, the investor has to make own arrangements or use a service provider at his own cost.

Therefore item 1 (d) should read: investors are not charged any specific costs for accessing regulated information.



SECTION 2 – CONDITIONS FOR KEEPING PERIODIC FINANCIAL REPORTS AVAILABLE

Question 13: Do you agree with CESR’s advice in relation to this mandate. Please give reasons.

Yes, accessibility and ease of usage will be critical topics here.

Question 14: Do you consider that it is necessary for CESR to establish a minimum time period for which all regulated information should be made accessible to end-users. If so, please indicate: (a) what you consider this time period should be and (b) why; and whether or not you consider this time period should apply to all regulated information or only certain types. If only to certain types please specify what they are.

Assuming that electronic filing in one standard format (preferably XBRL) is going to be mandated, we see no reasons that the time in which the information is made available through Central Storage is different from other disclosure mechanism. Only serious network, computer or electricity failures might cause unexpected interruptions and delay in delivery. The time period should therefore be “real time” for information as specified on page 26 item 3 and before opening of EU stock exchanges for item 4 (at least notification where to find the information).

C. Progress Report on the Role of the Officially Appointed Mechanism (Article 17 1a) and the Setting up a European Electronic Network of Information about Issuers (Article 18) and Electronic Filing (Article 15 4a)

SECTION 1 – CENTRAL STORAGE MECHANISM OPTIONS (ARTICLE 17.1/17.1a)

QUESTION 1: Do you agree with CESR’s interpretation of the requirement of Article 17.1.a that central storage does not necessitate physical storage in one place? Please give reasons.

We agree that the information does not need to be physically stored in one place. From a user’s perspective it should however look and feel as if all information was stored in one place.

From a processing, maintenance, security and costs perspective it might be desirable to have the information on one physical place. When multiple physical locations are used it will be highly recommended to have uniform interfaces (standard Application Programming Interfaces definitions). Imagine that an issuer submits its information in fragments to various operators in different countries (still fulfilling compliancy with the Transparency Directive ...), then this information must be seen by the end-user in “one single and total view”.

QUESTION 2: Do you consider storage of regulated information by type to be a viable option?

This option seems not very viable due to its complexity and operational costs involved, as well as the monitoring and the detailed definitions that go along with what belongs to a certain type of information and what not.

We would recommend storing the information in a data standard (e.g. XML/XBRL) which allows intelligent and complex search functions. This would allow investors to make faster and better use of information.

QUESTION 3: How do you consider the difficulties set out above could be overcome?

Linking the different Central Stores would be possible by using one uniform API (most like a Web Services based concept) to access the information to produce a complete view. Each Central Store must expose which type and from which period(s) they keep information of a certain issuer as well as in which physical and IT format(s) the information is available and how it can be requested.



QUESTION 4: Are there any advantages or disadvantages to this option that have not been set out above. If so, please give details.

Disadvantage of different Central Stores is that each Store must be contacted to ensure that end-users and investors see a complete view of all information which an issuer has filed. This might lead to extra operational costs (one single request results in x times more requests to the x different stores).

Advantage is that the processing load is spread and that issuers can be better served in their local language. The member State Central Stores might send it to an EU Central Store. This seems to be the best scenario...

QUESTION 5: Do you consider a multiple storage mechanism regime to be a viable option? Please give reasons.

For the reasons as given under 3 and 4 and in the paragraphs of the report multiple storage mechanism in each member state will make it even more complex and more costly to maintain and process. Issuers do not want to address many central stores; they prefer a simple approach, which really reduces their burden.

QUESTION 6: Are there any advantages or disadvantages to this option that have not been set out above, that are necessary for CESR to consider? If so, please give details.

See 3 and 4, except that x is now y, where $y > x$.

QUESTION 7: Do you consider having one central storage mechanism to be a viable option? Please give reasons.

This is the easiest form to implement and to maintain. To overcome monopoly behavior etc. it might be highly desirable to have open competition between the central stores of the member states and to have a monitoring authority that controls their behavior... Each issuer should be free to file anywhere in the EU.

QUESTION 8: Are there any advantages or disadvantages to this option that have not been set out above that are necessary for CESR to consider. If so, please give details.

Cf. answer 7

QUESTION 9: Which of the above options do you prefer? Please explain the reason(s) for your choice.

Regulated information directly via the Central Store would be best (subscription when relevant might be via Competent Authorities...). Maybe the Central Store can be a non-profit co-operation funded by the Competent Authorities and other stake holders that uses the services, monitored by a (delegated) EU authority.

QUESTION 10: Do you consider there to be any disadvantages to regulated information being accessible through a Competent Authority's website. If so, please give details.

No, see 9.

QUESTION 11: Which of these options do you prefer? Please explain the reason(s) for your choice. Are options missing? Please explain which ones.

Central Stores in each member State and one EU Central Store combines the benefits of local support and services in national language (and behavior) with a central view on all information.

QUESTION 12: Do you consider it necessary for CESR to prescribe one particular option? Please explain your reasons.

It would be desirable to make clear statements which help to process to continue and speed up.

QUESTION 13: When should an issuer's responsibilities to send information to a central storage mechanism be considered fulfilled? Please explain your reasons.

For price critical information this should be an electronic confirmation or tracking number generated by the central storage mechanism (or its authorized delegates). This is comparable to a parcel tracking system of a logistics provider. The number is generated as soon as the information is received at the central store (not the moment of publishing; it might take more time when it is a piece of paper to publish this information electronically).

QUESTION 14: Should all price sensitive information be made available in real-time by the central storage mechanism to moderate the affect of "black holes" resulting from the dissemination process?

Yes. It would mean that those investors (the "black-holes" group) will need to subscribe at the Central Store to obtain the information. (see also 9).

QUESTION 15: Do you agree that non-price sensitive regulated information does not need to be made accessible by a central storage mechanism to the same deadlines as price sensitive regulated information? Please explain your answer.

Yes, but disseminated information should be made available within a certain time limit

- E.g. Electronic formats within 4 hours after its receipt/ dissemination.
 - A list of limited supported electronic formats and version numbers must be published, otherwise issuers can use formats that are not viewable or convertible anymore, these formats should not be accepted!
- Non-electronic formats within 1 day after its receipt

QUESTION 16: To what time deadlines should a central storage mechanism be required to make regulated information available?

Cf. answer 15

QUESTION 17: Which of the above options or combination of options do you consider to be most desirable? Please give reasons.

Most desirable is that the users of the Central Storage(s) pay for the operating costs (not all tax payers use these services...).

A method for operational funding is to ask the issuers, the investors and other stakeholders a fee. The tariff model should encourage the stakeholders to move to electronic standards. (see also 9).

An initial start-up funding to build the system could be provided by the EU or other public funding.

QUESTION 18: Are there any other options that have not been identified above that you consider to be desirable? If so, please give details.

Cf. answer17.

QUESTION 19: Which of the above do you consider to be the best option? Please give reasons for your answer.

Operating and controlling should be in separate entities, regardless whether storage is provided by private/commercial or public organizations.

QUESTION 20: Do you consider there to be any other advantages or disadvantages to a Competent Authority or a commercial taking on the role of the central storage mechanism that have been discussed that are necessary for CESR to consider? If so, please give details.

In order to assure a simple and cost efficient process, storage and dissemination should be started from the same electronic platform or operator.

QUESTION 21: Which of the above options do you prefer? Please give reasons.

There should be an ex-ante check of formal compliance of regulated information to be disseminated and/or stored. The investor has to rely to a certain level of accuracy. This ex-ante check should not unduly delay the process.

The responsibility for accuracy of content is with the issuer. There is no practical way, that any central authority can control content previous to publication. Imagine the time which would be needed to check on annual reports.

QUESTION 22: Do you think it is necessary to make the status of the stored information as reviewed or not reviewed by the regulator transparent in the storage mechanism? Please give reasons.

If stored information is reviewed for formal accuracy ex-ante, there is no need for a status. Any incorrect information detected ex-post should lead to a prominent display of the incorrect information together with a correction and the date of correction.

QUESTION 23: Do you consider that it is necessary for CESR to mandate the standard to which all regulated information should to be transmitted?

Yes, definitely.

The XBRL standard is the best standard to use. Arguments for this are:

- XBRL is open and free standard
- The XBRL standard is already being embraced by many regulators
- An enormous effort has gone into this standard to exchange financial information
- No viable alternative exists
- To create alternatives will cost at least the same amount of time effort as has been given to XBRL (5 years at least)
- Not standardized in formation does not server the purpose of transparency

QUESTION 24: Do you consider that the standard to which all regulated information should be transmitted is something that should be left to some point in the future, after the Directive has been implemented? Please give reasons.

No.

All market participants have to make changes to their current procedures in order to comply with the new EU regulation. This effort should not be repeated in short time.

Rather the effort should be used for an immediate implementation of a future proof and efficient electronic system based on the international standards of XBRL.

The regulators would miss a unique opportunity to achieve transparency in the capital market at reasonable cost and beyond any other existing or thinkable system.

The issuers could better accept the cost of adjustment, because the use of XBRL would also bring them benefits in other sectors, like faster consolidation of internal accounts, faster generation of quarterly reports, faster credit ratings etc.

QUESTION 25: Do you agree that security measures relating to the processing of unpublished regulated information are better dealt within the standards set out for operators than standards set for central storage mechanisms? Please give reasons.

As we prefer a system where issuers have to send the regulated information only once to the appropriate entity, there will be no difference.

QUESTION 26: Do you consider that a central storage mechanism should be obliged to ensure that the regulated information it holds is complete and unedited? Please give reasons.

Yes.

QUESTION 27: Are there any other issues relating to security that you think CESR should consider? Please give details.

Not at this point.

QUESTION 28: Do you believe that a central storage mechanism should be obliged to ensure that the regulated information it receives is from an authentic source? Please give reasons.

Yes. This should be part of the ex-ante check on formal compliance.

QUESTION 29: Do you believe that a central storage mechanism should be obliged to record the date and time on which it receives regulated information in order that its performance may be measured? Please give reasons.

Yes. This is also necessary to document the time of public availability especially for time sensitive information.

QUESTION 30: Do you believe that a central storage mechanism should be obliged to record the date and time on which it receives regulated information for the purposes of investors? Please give reasons.

Yes, cf. answer 29. There should be no time difference between dissemination and reception at storage. In case there is both dates have to be recorded.

QUESTION 31: Do you believe that a central storage mechanism should be obliged to hold all regulated information in an electronic format? Please give reason.

Yes. There should be no paper files because this would be more costly and less efficient. Information that cannot be processed in standard electronic format, online and real time is of much less value to the investor.

QUESTION 32: Do you believe that a central storage mechanism should be obliged to record all the above reference data for each piece of regulated information? Please give reasons.

Yes, otherwise the central storage is nothing else than a historical archive – useless for time critical information.

QUESTION 33: Do you believe a central storage mechanism should be obliged to offer its internet based services in all native languages of every Member State? Please give reasons.

This seems desirable not practical and too costly.
However, using a standard data format like XBRL would allow offering search and analysis functions in all different languages. Furthermore key financial data could be presented in different languages without translation of the individual document. Standard tagging would tie specific numbers of an issuer to uniform text/descriptions.

QUESTION 34: Do you consider a central storage mechanism should be obliged to offer its services on a continuous basis 24 hours a day 7 days a week? Please give reasons.

Yes. Investors should have access at **their** working hours worldwide.

QUESTION 35: Should central storage mechanisms and/or Document Capture Services be obliged to have systems in place to confirm the receipt of regulated information? Please give reasons for your reply.

Yes, the issuer must have the security and assurance that he has fulfilled the legal requirements.

QUESTION 36: Do you believe issuers should be obliged to submit regulated information, in hard copy form, if the electronic services of a central storage mechanism or Document Capture Service for the receipt of regulated information are unavailable? Please give reasons for your reply

No, central storage mechanisms should always have a back up or alternate system (could be the storage system of another country or at central EU level). The systems must be integrated anyway to allow access from any investor to any company information via one service portal.

QUESTION 37: Do you believe that a central storage mechanism should be obliged to provide access to regulated information in hard copy form if its electronic systems are unavailable? Please give reasons for your reply

No, cf. above

QUESTION 38: Do you believe that a central storage mechanism should be obliged to provide technical and customer care service support helpdesks? Please give reasons for your reply

Preference should be given to a standard access and query procedure for all storage mechanisms. In this case an electronic / web based instruction should solve the majority of problems. In addition a central help desk / call center (using a charging telephone number) would be sufficient for all Europe.

QUESTION 39: Do you believe that a central storage mechanism should be obliged to clearly distinguish regulated information from other types of information it may hold? Please give reasons for your reply.

Any information that is not regulated information should be kept out of this storage mechanism. There is no need for that. There could be clearly marked links to the issuer's website or commercial services.



QUESTION 40: Do you believe that a central storage mechanism should be obliged to make the amount of its fees transparent to investors? Please give reasons for your reply.

Yes.

QUESTION 41: Do you agree with CESR's interpretation of the first aim of this guideline? Please give reasons.

Yes.

SECTION 2 – REQUIREMENT FOR AN ELECTRONIC NETWORK

QUESTION 42: Do you agree with CESR's proposal to extend Article 17 to include information disclosable under the Prospectus Directive? Please give reasons.

This needs further evaluation about the type and volume of information in the prospectus. It addresses the same user (investor), therefore it seems desirable to store the information in the same system. On the other hand, the storage mechanisms will not be available by July 2005 and should not be limited by such early timing. I.e. prospectus storage may be considered in the design of storage and dissemination mechanisms to be implemented at a later date.

QUESTION 43: In view of the proposals set out for central storage mechanisms, do you consider it either necessary or desirable that electronic links are created between national securities regulators and operators of the regulated market? Please give reasons.

The concept should be that issuers send the information only once to a portal or platform which allows dissemination and storage. These platforms have to be linked across the EU member states to a virtual network. Regulators websites may serve as entry points for both issuers and investors to submit and to request information.

QUESTION 44: In what circumstances do you think that it is necessary or desirable to create such links? Please give reasons.

Cf. answer 43

QUESTION 45: Do you consider that the overlap between types of information required by the directives justifies the creation of links between these two separate sources of information? Please give reasons.

Not necessarily. However, using uniform data standards for both types of information would safeguard consistency of information and allow easy cross referencing with electronic links.

QUESTION 46: If you consider linkages between these two types of information to be justified, when do you think the creation of such links should be established? Please give reasons.

Only after the uniform data standards will have been introduced.

QUESTION 47: Do you agree that a small number of central storage mechanisms operating at a European level would benefit from economies of scale? Please give reasons.

Yes, this is obvious.

QUESTION 48: Do you agree that economies of scale would also be gained if multiple central storage mechanisms were operated commercially? Please give reasons.

Yes.

QUESTION 49: Do you agree that central storage mechanisms could, in part, be publicly funded? Please give reasons.

No, but there should be a limit to the costs that can be charged to the users. If no commercial operator is able to cover his costs, the system has to be reviewed rather than public funded. There can be public funded loans (low interest charge) to operators for building the system.

QUESTION 50: Do you believe that central storage mechanisms, within a pan-European context, should be operated commercially or by a Competent Authority? Please give reasons?

There is no need for a physical pan-European central storage. Several commercial operators may compete but use the same technical standards and thus form a virtual pan-European central storage mechanism when properly linked together. May be there is the need of a control board to manage the linkages and fulfillment of technical standards which would be a (European) regulator's task.

QUESTION 51: What risks do you consider are inherent to either option? Please give reasons.

- Commercial only may jeopardize security and compliance.
- Authority only would certainly be less cost efficient.

QUESTION 52: Do you agree that the balance between competent authorities' needs and filers' needs is best achieved through the use of electronic sending methods, rather than non electronic means, such as mailing of paper documents? Please give reasons.

Yes, only uniform electronic data allow information processing and transparency at reasonable costs.



QUESTION 53: Do you agree that the e-filing mechanism should be introduced gradually and that it should allow parallel paper treatment for specific situations? Please provide examples of such specific situations.

No, because there is enough time to prepare electronic systems at the level of operators, service providers and competent authorities. Issuers who do not want to file electronic data may then use the transformation services of service providers at their own costs.

QUESTION 54: Do you agree that it does not seem necessary to develop different requirements for occasional filers or small entities? If not, please provide suggestions to address their needs.

Yes, because occasional users may employ service providers to transform their information into the required formats.

QUESTION 55: Do you agree that it could be useful to provide specific solutions on the procedures of electronic filing according to the type of the addressed regulated information (i.e. specific templates text, etc.)? Please provide examples of different type of regulated information which need specific solution.

Yes, all data that is useful for analysis, benchmarks and other comparisons should be filed based on standards and formats which can be processed without further manual handling.

QUESTION 56: Do you agree with the approach adopted with regards to proposed minimum standards or would you prefer to see more general proposals? In this case, please provide a list of general proposals.

Yes.

However the system would be most flexible if a common data format like XML/XBRL would be used. Also only this format allows storing of documents in their original structure, which is a major legal requirement.

QUESTION 57: Do you agree with the minimum standards which all the competent authorities would have to comply with when they put in place the procedure to enable filing by electronic means? If you do not agree, what other standards would be more appropriate?

Yes, but the use of XML/XBRL should be mandatory.

QUESTION 58: What other issues, if any, should CESR take into account when responding to the Mandate concerning the “filing by electronic means with the competent authority of the home Member State”?

Any new system governing the future should be based on the technology available at the time of implementation of such systems.

Therefore it is necessary to examine suitable emerging technologies for the design of such systems. It might be useful to even support the implementation of new technologies in order to achieve a broadly accepted and future proof system.

Darmstadt, den 03.02.2005

Hamburg, den 03.02.2005



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