

29 July 2004

Mandate to CESR for technical advice on possible implementing measures concerning the Transparency Directive

Reply of Euronext to CESR's call for evidence dated 29 June 2004
(Ref. CESR/04-165)

Introduction

Euronext is grateful for the possibility to comment on the mandate given to CESR in relation to the transparency directive. However, we will have to focus on certain issues only because of the tight deadline for responding (one month during the holidays season) and the fact that there are very many other consultations / calls for evidence underway in the securities field during such period.

We also regret that no representative of exchanges is included in CESR consultative group on the transparency directive although exchanges have expertise with respect to issuers' regulated information and, in particular, regarding the difference in needs they may have. It is also unfortunate that only one entity disseminating regulated information is represented on such group.

Comments

Information about major holdings:

CESR is asked for technical advice on possible implementing measures on the type of financial instruments resulting in an entitlement to acquire, on the initiative of the holder, shares to which voting rights are attached and which have already been issued as well as aggregation of financial instruments to be taken into account for the notification requirements with respect to major holdings (art 11a).

The Commission invites CESR to consider the definition of financial instruments established under the Directive on Financial Instruments Markets for the purpose of the notification requirement of major holdings. Euronext believes that such definition is inappropriate since it is too wide and includes instruments, which are not relevant for the purpose of notifying major holdings in listed companies. We therefore propose that CESR considers the possibility to refer to the definitions of the prospectus directive regarding equity and non-equity securities.

Publication of regulated information:

CESR is asked for technical advice on possible implementing measures on minimum standards for dissemination of regulated information (art 17.1).

1- CESR is particularly invited to consider how to ensure fast access to regulated information on a non discriminatory basis for all investors (whether or not located in the issuer's home Member State).

Euronext wishes to underline that another important obligation has to be taken into account when considering this point: the issuer must use a media as may reasonably be relied upon for the effective dissemination of information to the public throughout the EU (Art. 17.1).

In our opinion, fast access refers to the issue of where to find the information easily on a consistent basis and be able to retrieve it, whereas effective dissemination relates to making the information sufficiently visible. When designing its implementing measures, CESR should not consider the notion of access in isolation but take account of its interrelation with dissemination. This is all the more necessary since implemented measures required from the Commission by the level 1 directive focus on minimum standards for "dissemination of regulated information".

Giving investors reliable and sufficiently detailed data in a timely manner is key. In addition to the concise information provided by data vendors / news agencies, investors should be able to have access to detailed information as soon as a piece of regulatory news is disclosed to the public. The website of the issuer would, in that respect, not be sufficient because access may be unavailable for technical reasons or information may be mixed with commercial messages.

CESR is asked to consider whether different methods for the dissemination of information are needed depending on the type of regulated information, the type of issuer or market segment in which securities are included or other criteria. We believe that such an approach would indeed be valuable.

- Regarding the type of regulated information, inside information (price sensitive) and periodic information are the most important ones. Fast and wide dissemination should in all instances be ensured for such type of information.
- With respect to the type of issuer or market segment in which securities are included, a minimum level of dissemination should be required from issuers but dissemination cannot be the same for all issuers. For instance, data vendors / news agencies will not provide information at the same level for the top twenty securities of leading markets and SMEs in smaller markets.
- Regarding other criteria, the media by which investors are informed in the various Member States (e.g. new technologies developed or not, use of news papers) should be taken into account.

In order to ensure both fast access and effective dissemination, investors should (1) know where to find reliable and detailed information and also (2) be exposed to such information even if it is in a more concise manner.

In order to achieve this, the three services identified below should be ensured:

- An authorised access point where detailed and reliable information are available at the time they are made public;
- An authorised access point where detailed and reliable information are stored and accessible by investors (the officially appointed mechanism);
- A mechanism ensuring appropriate coverage of the information by the relevant media depending on the situation existing in the various Member States.

CESR advice should ensure that these services may be provided by one or several entities at the choice of the issuer but appropriate links between the access point for real time information and storage should be in place to ensure a user friendly environment.

2. Officially appointed mechanisms for the central storage of regulated information

A separate mandate will be given on this issue. This mandate should however take account of the fact that officially appointed mechanisms could serve to discharge tasks covered in the first mandate (real time access to detailed information and possibly dissemination of information). This is particularly true when considering the need to simplify as much as possible the various mechanisms to be used for ensuring appropriate information of investors and to avoid multiplying the providers involved.

Since regulated information will not necessarily be published on the internet site of the national competent authority, such officially appointed mechanisms will be very important. They will allow investors from other Member States to know where to obtain fast access to regulated information, contributing to a more integrated European financial market. Such mechanisms could also provide investors real time access to detailed information and offer issuers dissemination of information. This would foster integration even more.

Moreover, the officially appointed mechanisms will be overseen by competent authorities and will have to meet some minimum quality standards of security. Such minimum standards regarding security should also be imposed on access point for real time detailed information. Similar or other standards (i.e. minimum coverage) should also be imposed on mechanisms ensuring dissemination of the information. CESR will have to ensure a consistent approach for all these standards.

Euronext believes that it is necessary to assess the differences between the official appointed mechanisms and the national electronic networks of art 18.1(a). Apart from the fact that the information concerned may not be exactly the same the officially appointed mechanisms and the national electronic networks seem very similar concepts. National electronic networks are aimed at facilitating public access to information to be disclosed under dir 2003/6/EC –market abuse, Dir 2003/71/EC –prospectus and Transparency Dir whereas the officially appointed mechanism is a central storage but for regulated information (info disclosed under the transparency directive, the market abuse directive or under the laws, regulations or administrative provisions of MS requiring additional info). It seems to be a great degree of overlap between the two concepts and CESR should try to combine them as much as possible.

Availability to the public of annual and half-yearly financial reports

CESR is invited to consider technical conditions to such availability and, in particular, such obligation could be fulfilled by providing such information to the officially appointed mechanism of art. 17.1(a). In our view, the storage mechanism should comprise as much information as possible, the proposal therefore seems to make good sense.

Procedural arrangements for the election by the issuer of its home member state

CESR is also invited to consider the issue of coordination of filings between the competent authority elected by the issuer under art. 2.1(i)(ii) and several competent authorities competent authorities elected under the prospectus directive.

It seems that the issuer, when electing a competent authority under the transparency directive, should as much as possible be bound by the choice made as a consequence of the obligations contained in the prospectus directive. This would avoid forum shopping.

CESR is further invited to consider the issue of the applicable regime in case of delisting from the regulated market of the home Member State whilst continuing being listed in other Member States.

It seems that the issuer should have the choice between the Member States where its securities remain listed, but again it should be taken account of the choice made under the prospectus directive in order to avoid forum shopping.

Half-yearly financial reports

Regarding the clarification of the nature of the auditors' review of the half-yearly report, we wish to underline that CESR should in any case take account of the costs implications for issuers when establishing its advice to the Commission.

Concerning the clarification of the notion of "major related parties transactions" as part of an interim management report for issuers of shares, we urge CESR to clarify that only the transactions in effect and producing material consequences at the time of the drafting of the report need to be identified. CESR should also ensure consistency with the guidelines it may give at level 3 on this issue regarding the content of the prospectus.
