

Dear Mr Secretary General,

Please find enclosed the AFEP comments drawn up in response to the consultation launched by CESR in October 2004 on ‘Implementing measures of the Transparency directive’.

This consultation (CESR/ 04-511) mainly covers the dissemination and storage of regulated information.

AFEP would like the functions, responsibilities and costs relating to dissemination and storage to be clarified.

In particular, in the framework of the dissemination function, AFEP considers it necessary to define the concepts of the transmission and dissemination of information. The transmission function, the first stage in delivering information, entails sending information so that it can be put online on a qualified website and/or sending information to the media; the dissemination function can be defined as the last stage that allows a broad public to access this information.

Moreover, AFEP believes it would be useful to clarify the content and scope of CESR’s proposals on creating electronic networks among regulators, and that it would be necessary to envisage creating a corporate portal that is accessible at national or European level as an alternative.

**Clarify the functions, responsibilities and costs relating to dissemination and storage**

AFEP recommends recognising the possibility of using the issuer’s website for both the dissemination and storage of regulated information. Moreover, it considers it important to supervise the operator’s function and to clarify the responsibilities borne by the players and parties concerned in these two types of function, as well as the general principles for distributing costs.

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***Recognise the possibility of using the issuer's website for the dissemination and storage of regulated information***

*With regard to disseminating information*, issuers consider it essential to be able to use their own website to directly disseminate regulated information, and to be able to transmit their information to the media themselves.

Recourse to an 'operator', a commercial entity or competent authority, should remain optional, although it is pointed out that use of the competent authority's website offers certain advantages.

Where applicable, the issuer's website can supply all regulated and institutional information alone and therefore offer a reliable, precise and exhaustive source to investors and more generally to all interested surfers. Moreover, in this case issuers are able to set up mechanisms aimed at coping with possible technical breakdowns.

*In terms of storage*, the issuers believe that it should be possible to have this operated either by the 'officially appointed mechanism' or jointly by the issuers and the 'officially appointed mechanism'.

The competent authority's website, or the stock exchange's website in Member States where this system has already been implemented, should be favoured as the 'officially appointed mechanism' for this storage. In contrast, the issuer should not be compelled to have recourse to a commercial entity other than a stock exchange (in the case concerned).

Moreover, the 'officially appointed mechanism' (or the issuer where applicable) should not be bound to ensure real time access to (sensitive or non-sensitive) regulated information. As dissemination of this information is governed by specific provisions, the important factor is for storage to occur in a way that enables the public to access this information *quickly*.

***Supervise the operator's function***

*As regards the dissemination of information*, the selected/retained commercial entities should be approved at national and/or European level by the competent authorities on the basis of criteria determining the minimum conditions for performing the dissemination function.

The competent authorities should also publish a list of approvals issued. If the information is disseminated by an approved operator, it is also necessary to clarify how the addressees or targets of this information will be determined, as well as the responsibilities linked to such dissemination.

*As regards storing information*, the operator responsible for storage should be subject to approval, like the operators responsible for disseminating regulated information.

***Clarify the responsibilities borne by the parties concerned as regards dissemination and storage***

*In terms of disseminating information*, the issuer should be able to be discharged from its communication obligation at the time when the information is put online on its website, when it disseminates the information itself or when it transmits the information to an operator (competent authority or approved commercial entity) if it disseminates via other ways. When a third party intervenes (the competent authority or, if the issuer wishes, an approved commercial entity), the issuer should be released from its obligation when it sends the information, with the responsibility for dissemination then becoming incumbent on this third party.

Moreover, it is undesirable for a result obligation to be borne by whoever fulfils the dissemination function (stock market regulator, issuer, etc.). If a solution of this type were envisaged it would seem difficult or even impossible to achieve it. Potential investors are unknown by their very nature. Moreover, actual investors are often only partly known because of the various intermediaries that can come between the issuing company and the owner of the security.

*In terms of storage*, the issuer should be released from all obligations when it makes the information available on its website or, if the issuer decides to delegate this function, at the time of transmission to an approved commercial entity, or, if the officially appointed mechanism looks after the storage function alone, at the moment of transmission to this mechanism.

***Stipulate the general principles for distribution of costs***

The issuers recommend that the distribution of costs among the issuer, users and, where applicable, the approved operator or 'officially appointed mechanism' for storage should occur in accordance with the following principles :

*As regards disseminating information*, if 'the issuer may not charge investors any specific cost for providing the information' (Article 21.1 of the directive), the investors must nonetheless bear the connection expenses to the (issuer's and/or operator's) websites. When the information is disclosed by an approved operator, the issuer can only bear a portion of this operator's dissemination costs, while the latter can bill other parties for expenses.

*In terms of storage*, the issuer bears storage costs relating to its website, where applicable. Users always bear the connection expenses to the websites. The storage expenses for the central storage mechanism are the subject of a consensus among market participants, at national level.

Generally speaking, AFEP considers that the creation of hyperlinks between websites that put regulated information online (such as the competent authorities' websites) and issuers' websites would permit a reduction in the number of publications of information and the associated costs.

**Clarify the content and extent of proposals relating to the creation of an electronic network among regulators**

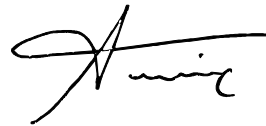
On the basis of Article 18 of the Transparency directive, CESR also wishes to reflect on creating an electronic network among regulators ‘with a view to further facilitating public access to information to be disclosed’ under the Transparency, Prospectus and Market abuse Directives’.

At this stage, issuers have difficulties in perceiving the advantages that a network of this type could offer in practice. Hyperlinks may already exist between the various websites dedicated to issuers.

As a result, it is useful to clarify the content and extent of the CESR’s proposals and also to envisage the creation of a corporate portal that refers to issuers’ websites and is accessible at national or European level as an alternative.

Thank you for the attention you are giving to these questions. We remain at your disposal to discuss them again if you wish.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. TESSIER', with a stylized flourish at the end.

Alexandre TESSIER  
Director General

CESR's Advice on Possible Implementing Measures of the  
Transparency Directive  
Consultation Paper CESR /04-511  
October 2004

Part 1: Dissemination and storage of regulated information

As the European Parliament and Council Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency obligations was published in the EUOJ of 31 December 2004, the references of the articles mentioned in the CESR Consultation have been adapted as a result.

Thus :

- Article 17.1 mentioned by CESR becomes Article 21.1 in the Directive ;
- Article 18 becomes Article 22.

**B. Consultation Paper on Dissemination of Regulated Information by Issuers and on Conditions for Keeping Periodic Financial Reports Available**

At a preliminary level, issuers wish to highlight the essential points concerning the modalities for disseminating regulated information so that CESR will provide an opinion that meets issuers' expectations, in harmony with the Transparency directive.

They consider it essential to be able to use their own website to disseminate regulated information directly, and to be able to transmit it to the media (press agencies, newspapers, etc.) themselves.

Recourse to 'operators' should remain optional, whether these be commercial entities or competent authorities, as the use of the competent authority's website offering certain advantages in this event.

In any case, the commercial entities selected/retained must be approved at national and/or European level by the competent authorities, on the basis of criteria determining the minimum standards for the dissemination of information. The competent authorities would also have to publish a list of operators approved in this way. If the information is disseminated by an approved operator, it is also necessary to clarify how the addressees or targets of this information are to be determined, as well as the responsibilities linked to such dissemination.

Issuers also wish to find solutions that minimise dissemination costs through an equitable distribution among issuers, users, and where applicable, operators. Moreover, they would like to see encouragement for the creation of hyperlinks between websites that place regulated information online (e.g. the competent authorities' websites) and the issuers' websites. Such provisions would make it possible to reduce the number of publications of information and the associated costs.

Finally, it is important to stipulate the responsibilities borne by the parties involved. It must be possible for the issuer to be discharged from its communication obligation when it disseminates information itself, at the time of putting information online at its website or, when it undertakes dissemination by other modes, when it transmits the information to an operator (competent authority or approved commercial entity).

In this context, it is desirable to clarify the concepts of transmission and dissemination of information as follows. The transmission function, the first step in the conveyance of information, involves forwarding it with a view to putting it online at a qualified website and/or sending it to the media; the dissemination function can be defined as the last stage, that allows a broad public to access this information.

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

CESR proposes minimum standards for the dissemination of information and wishes to know whether these are satisfactory and sufficient.

AFEP considers that these standards are necessary to harmonise the conditions for disseminating information to the broadest possible public.

However, AFEP believes it is important for the positions adopted by CESR to be coherent with the provisions provided for in the Transparency directive.

Thus, rather than asserting that regulated information must be provided ‘without delay’ (§ 5. a, p. 13 of the Consultation Paper), it seems preferable to use the formulation of Article 21.1 of the directive which stipulates that this information must be disclosed ‘in a manner ensuring fast access to such information’, which issuers favour. This formulation makes it possible to take better account of processing constraints and where applicable, those of transmission and validation of information with a view to posting it on a qualified website, before publication. Moreover, it is appropriate to take account of the advantages offered by the publication of information on the Internet, which allows wide dissemination to geographically distant investors at a moderate cost.

**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?**

- CESR is proposing standards for dissemination of information by issuers, on which they wish to obtain comments.

The standards proposed by CESR help to organise improved dissemination of information of the markets and all interested persons.

Nonetheless, AFEP considers it essential for CESR to explicitly recognise the role of the issuer’s website for the dissemination of information. As such, this website is the only one capable of supplying all regulated and institutional information and therefore to offer a reliable, precise and exhaustive source to all investors and, more generally, to all interested surfers.

The issuer must therefore be able to choose to disseminate information itself by having recourse to one or several media (press agencies, newspapers, etc.) or operators.

- CESR also asks whether it should envisage complementary standards.

When the issuer only files its registration document with the competent authority, or in other terms this document is 'checked on an ex post basis' during a later operation, CESR should stipulate that the competent authority can approve the information given on the issuer's website during this control. Moreover, the information given on this website can be considered as real-time updating of the registration document and be subjected to the same control rules on this basis.

Finally, it would be appropriate to envisage an equitable distribution of the dissemination costs among the issuer, users, and where applicable, the approved operator.

In compliance with the provisions of Article 21.1 of the directive, 'the issuer may not charge investors any specific cost for providing the information'. The investors must nonetheless bear the connection costs to the (issuer's and/or operator's) websites. When the information is disseminated by an approved operator, the issuer can only bear some of this operator's dissemination costs, while the operator can bill the other parties for expenses (in compliance with figure 1 provided for by CESR in page 17).

**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?**

CESR wishes to determine whether an issuer is released from its obligations by sending regulated information solely to an operator.

The issuer should be able to be discharged from its communication obligations on transmitting information to an operator, whether this is a competent authority or an approved commercial entity.

When the issuer disseminates information itself, it should be discharged from its obligations when the data is put online on its website or disseminated by other means (see the answer to question 2).

**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?**

See the answer to Question 7.

**Question 5: Should operators be subject to approval and ongoing monitoring by competent authorities or not ?**

CESR asks whether an operator should be subject to approval and ongoing monitoring by the competent authorities.

At a preliminary level, AFEP repeats its position that recourse to an operator should not be imposed on issuers.

On this basis, AFEP considers that the selected operator should be subject to approval by a competent authority. This approval will contribute to providing an assurance of seriousness and reliability to issuers which may decide to use operators' services. Given a concern for transparency, a list of approved operators should be published by the competent authorities and regularly updated (half yearly/ annual, etc) as part of ongoing monitoring.

**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 ?**

CESR is proposing minimum standards likely to be applied to operators.

Apart from the standards proposed by CESR and given the importance of financial communication, the minimum conditions for performance of the dissemination function applicable to approved operators could usefully be supplemented by the following criteria :

- appropriate internal professional ethics ;
- adequate human resources.

Moreover, when the information is disseminated by approved operators, CESR is asked to clarify how the addressees of this information will be determined, as well as the responsibilities linked to this subject. In this respect, AFEP considers it fundamentally important for the approved operator to be responsible for the effective dissemination of the information, regardless of the means used (Internet, media, etc.).

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

CESR questions itself if an issuer should be obliged to use an operator's services to disseminate the regulated information.

AFEP believes that an issuer should not be required to have recourse to an operator's services to disseminate regulated information.

In compliance with the answer given to question 3, the issuer must be able to fulfil its dissemination obligations directly, by using its own website. Alternatively it could disseminate its information to the media, or communicate it indirectly via the competent authority or, if the issuer so wishes, via a commercial entity.

**Question 8 : What are your views concerning the role of competent authorities in disseminating regulated information as operators ?**

CESR questions itself about the role of the competent authority in the function of disseminating regulated information as an operator.

AFEP believes that the competent authority can already fulfil the role of operator by disseminating regulated information on its website.



Each time that it transmits regulated information, the issuer must actually simultaneously transmit this information to the competent authority, which can then decide to publish this information on its website, in compliance with Article 19.1 of the Transparency directive ('may decide to publish such filed information').

Apart from the fact that it meets the qualifying criteria of security and confidentiality prior to dissemination, use of the competent authority's website in the information dissemination function also has major advantages :

- Due to its reputation and unique nature, it enables the public to carry out a 'supervisory' function, which is particularly useful in the area of permanent information;
- As it is managed by a public authority, it is the guarantor of quality information intended for the broadest possible public;
- While alleviating the constraints of the traceability of information, it enables the regulator to directly ensure that issuers meet their regulated information obligation.

The creation of a hyperlink to the issuer's website should be encouraged on the competent authority's website to enable investors to access the information available easily.

**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 ?**

CESR asks about the opportuneness of taking account of the risk that regulated information might not reach all actual and potential investors.

At a preliminary level, AFEP believes it is important to define the concepts of the transmission and dissemination of regulated information. The transmission function, the first stage in conveying information, entails sending the information so that it can be put online on a qualified website and/or sending it to the media; the dissemination function can be defined as the last stage that allows a broad public to access this information.

AFEP believes that the risk that regulated information will not reach all actual and potential investors throughout the European Union is dealt with appropriately by the mention of 'efficient dissemination' in the directive.

However, AFEP considers it useful to state that the issuer or, where applicable, the approved operator, can solely ensure the *possibility of access* to information by a broad public, rather than *access* to this information. It is up to the public to take active steps to access the information, which cannot be delivered to every user.

AFEP believes it is undesirable to impose a result obligation on whoever fulfils the dissemination function (stock market regulator, issuer, etc.). If a solution of this type were envisaged, the goal would seem difficult or even impossible to reach. Potential investors are unknown by their very nature. Moreover, actual investors are often only partially known because of the different intermediaries that can come between the issuing company and the owner of the security.

**Question 10 : Which of the options presented above would, in your view, minimise this risk ?**

CESR wishes to identify the option that minimises the risk that regulated information would not reach all actual and potential investors, among the options explored within the framework of question 9.

AFEP holds the view that the risk that the regulated information will not reach all actual and potential investors across the European Union is treated appropriately by the reference to 'efficient dissemination' in the directive.

See the answer to question 9 as a supplement.

**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.**

CESR wishes to know whether methods of disseminating regulated information other than those notably relating to the priority assigned to disseminating information 'without delay' or to the volume of documents to be sent, would meet the dissemination criteria.

Rather than asserting (§ 26. (1)) that regulated information must be supplied without delay, it seems preferable to use the formulation in Article 21.1 of the Directive which stipulates that this information must be communicated 'in a manner ensuring fast access to such information'.

It is worth noting that the issuer is frequently capable of supplying a reliable service that meets this characteristic.

Moreover, AFEP considers that dissemination by an issuer does not necessarily imply fragmented dissemination of the regulated information, in contrast to the position adopted by CESR (§ 27), according to which it is highly desirable to use an operator's services.

In addition, the issuer may wish to disseminate the information made available to the public to investors that it has identified. This service would be more difficult to supply if it had to go through an operator.

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

CESR requests agreement with its level 2 draft advice as drawn up on pages 23 to 27.

AFEP believes that the use of 'operators', whether this be commercial entities or a competent authority, should remain optional, as the issuers have the possibility of disseminating the information directly.

In this regard, CESR should reformulate the first assertion (points 1 and 3, p. 23) whereby the issuer would have fulfilled its information obligations by disseminating the information via the media or an operator by explicitly stating that the issuer can also fulfil its information obligations by placing the information directly online on its website.

Moreover, in compliance with the AFEP's position set out in response to question 5, CESR should add the term '*approved* operator(s)' to its draft opinion, thus corroborating their approval by a competent authority, which is essential for issuers.

Finally, in accordance with the answer to questions 9 and 10, AFEP believes that the concept of 'efficient dissemination' in the draft advice in p. 23, point 1. (c) should be clarified. The issuer or, where applicable, the approved operator, can solely ensure the *possibility of access* to information by a broad public, rather than *access* to this information. It is up to the public to take active steps to gain access to the information, which cannot be delivered to each user.

**Question 13 : Do you agree with CESR's advice in relation to this mandate.**

**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.**

CESR notably wishes to know whether it should recommend a minimum period during which regulated information would remain available to end users.

AFEP considers it useful to set a time frame of this type.

As an example, the competent authority in France already asks issuers to make their information available for three years.

In contrast, it does not seem to be necessary to make all of the information available to users during this entire period. Once the information supplements the prospectus and is available in this new form, the information included in the prospectus could be eliminated as 'isolated' information.

<p><b>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)</b></p>
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According to Article 21.1 of the Transparency directive, with regard to access to regulated information, 'the home Member State shall ensure that the issuer discloses regulated information in a manner ensuring fast access and makes it available to the officially appointed mechanism'.

According to Article 21.2 of the Transparency directive, the home Member State shall ensure that there is 'at least one officially appointed mechanism for the central storage of regulated information'.

It must be possible to have the role played by the stock market regulator, or by a stock exchange in Member States where this system has already been put in place. In contrast, the issuer should not be obliged to have recourse to a commercial entity other than a stock exchange (in the case in question).

### **SECTION 1 : CENTRAL STORAGE MECHANISM OPTIONS (ARTICLE 17.1/17.1a)**

Issuers believe that it should be possible to have regulated information stored either by the officially appointed mechanism or jointly by the issuers and the officially appointed mechanism. Where applicable, issuers have the capacities to cope with possible technical breakdowns by appropriate safeguarding mechanisms. Moreover, when issuers opt to disclose regulated information on their own website, external websites should be encouraged to create hyperlinks to the issuer's website. Finally, the officially appointed storage mechanism should be the stock market regulator's mechanism or the stock exchange's system in Member States where this system is already in place.

AFEP is in favour of the principle whereby the issuer should be freed from all obligations from the time it makes the information available on its website, or if the issuer decides to delegate this function, at the time of transmission to an approved commercial entity, or, in the absence of this, at the time of transmission to the 'officially appointed mechanism' for storage.

This storage function, which can be fulfilled according to the two forms envisaged by the Transparency directive (issuer and/or officially appointed mechanism), can usefully be accompanied by a certain number of standards that allow the provision of quality service. In this respect, the commercial entities responsible for storage should be subject to approval, like the operators in charge of disseminating regulated information.

Furthermore, in contrast to the dissemination of the most sensitive regulated information, the storage of information does not have to take place in real time.

Finally, the procedures for distributing costs linked to storing regulated information should take account of all of the parties concerned, i.e. the issuers, investors and, where applicable, the officially appointed mechanism.

### **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 ?**

CESR considers that the storage function should not be physically concentrated in a single location.

In contrast to the CESR, AFEP considers that the storage function must be physically concentrated in a single location. This location must correspond to the officially appointed mechanism. Nonetheless, the possibility of the issuer performing such a function at its own initiative cannot be excluded. Once these two storage centres exist, it is useful to organise hyperlinks between them. In particular, it is highly desirable to encourage external websites to create hyperlinks to the issuer's website.

The provisions of Article 21.1 of the Transparency directive envisage storage by an officially appointed mechanism without excluding the possibility of the issuer performing this function.

The officially appointed mechanism should be the location where the regulated information is stored.

If the issuer so wishes, its website should be able to act as a storage location insofar as a major quantity of information intended for the public is made available here.

Issuers are able to perform this storage function on their website for the following reasons:

- the public is able to access information easily via the Internet ;
- the information supplied on the issuers' website is often exhaustive (regulated information but also more institutional information ; hyperlinks to other websites such as BALO (Bulletin des Annonces Légales Obligatoires - Bulletin of Obligatory Legal Notices), the Commercial registry, etc.) ;
- the majority of these websites are updated very regularly, thus ensuring that the information is of good quality.

The officially appointed mechanism and, where applicable, the issuers also have the capacity to cope with possible technical breakdowns via appropriate safeguarding mechanisms.

When companies opt to disclose regulated information on their own website, external websites should be encouraged to create hyperlinks to the issuer's website to avoid multiple information dissemination redundancies faced by issuers, and the associated costs.

For example, in France issuers publish their accounts:

- at the Commercial Court registry,
- in the Official Journal (Bulletin of Obligatory Legal Notices) where compulsory notices are published, for companies whose securities are publicly traded; the BALO website already offers the possibility of creating hyperlinks to issuers' websites,
- on the competent authority's website,
- in specialist financial newspapers.

In any case, the Internet can be and is used by all interested parties (shareholders, future investors, etc.) throughout the world. It offers very powerful search engines that can assemble all information relating to an issuer in a moment, even if this is disseminated throughout the world.

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

CESR proposes storage options depending on the type of regulated information or the issuer's category (e.g. market or segment of listing).

AFEP considers that all the information can be stored on a single officially appointed mechanism.

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

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

While envisaging storage options, CESR wonders about how to overcome the difficulties mentioned to access regulated information, notably from a pan-European viewpoint. It considers that the establishment of electronic networks to facilitate access would lead to substantial costs.

AFEP opposes proposals aimed at making the distribution of information at several sites compulsory.

In cases where it would be implemented, there is no reason to provide for the establishment of networks insofar as search engines can be used to retrieve the information.

**QUESTION 5 : Do you consider a multiple storage mechanism regime to be a viable option ?**

CESR questions itself about the viability of multiple storage mechanisms.

AFEP believes that the multiplication of officially designated mechanisms is not viable.

See the answer to question 1.

**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?**

CESR envisages an option that would compel several centralised national storage mechanisms, which could be commercial entities, each to store all regulated information, thus avoiding the creation of electronic networks between each of these entities.

AFEP holds the view that the multiplication of officially appointed mechanisms should not be compulsory under any circumstances.

The mechanism envisaged by CESR assumes that the issuer uses the services of a commercial entity to store its information. Apart from the use of an officially appointed mechanism (stock market regulator, or stock exchange in Member States where this system has already been implemented), the issuer must have the possibility of storing the information on its own website.

The mechanism envisaged by CESR is all the more desirable because it is unnecessary to set up compulsory recourse to commercial entities in order to store information.

**QUESTION 7: Do you consider having one central storage mechanism to be a viable option ?**

AFEP believes that the storage function should be physically concentrated in a single location. This location should correspond to the officially appointed mechanism. Nonetheless, the possibility of the issuer performing this function at its own initiative cannot be excluded.

See the answer to question 1.

**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.**

CESR proposes a central storage mechanism in each Member State which could then be operated by the competent authorities in each of these States or by one of the commercial entities.

AFEP is in favour of a central storage mechanism managed under the responsibility of and by the competent authority; or, in the Member States where this system has already been implemented, by a stock exchange (see the answer to question 1).

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

CESR asks about the best means of accessing the information, and in particular, whether the competent authority's website can meet this goal.

AFEP considers the competent authority or a stock exchange in Member States where this system has already been implemented, with the exclusion of every other commercial entity, as the most appropriate official storage mechanism and the best means of accessing information.

**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.**

CESR questions itself about the possible disadvantages of making regulated information available on a competent authority's website.

AFEP do not see the disadvantage of making the regulated information available on a competent authority's website.

A competent authority's website has many advantages such as absence of cost and ease of access. Moreover, putting regulated information on a competent authority's website is a guarantee of seriousness and quality as regards how this information is offered for the investor.

It should be noted that the issuer's website can also satisfy these qualities and thus be jointly selected as a storage site.

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

CESR proposes different mechanisms to store regulated information and wishes to obtain the interested parties' opinion concerning them. It suggests that the issuer should send this information simultaneously to an operator and a central storage mechanism or that this mechanism could receive information from different sources: the issuer alone, media, Document capture services or an operator, which are themselves supplied by the issuer.

Without even selecting one of the options proposed by CESR, AFEP reiterates its position that the issuer's website should be able to perform the storage function alone or jointly with the official storage mechanism, without envisaging compulsory recourse to media services, Document capture services or operator(s).

Moreover, it is difficult to perceive the advantages of complex mechanisms to send information for storage, as proposed by CESR. Making transmission circuits more complex is not synonymous with ensuring exhaustive rapid availability.

Insofar, as it is up to the issuer to send this information to the competent authority's website under Article 21.1 of the directive in any case, it is desirable to consider that the issuer will respect these provisions by making the information available on its own website and if it is not used for the storage function, on the central storage mechanism's website (competent authority or, in Member States where this system is already in place, the stock exchange's system).

These different storage modalities enable the public to access the information easily.

**QUESTION 12 : Do you consider it necessary for CESR to prescribe one particular option ?**

CESR wishes to determine whether it should prescribe a specific storage option.

AFEP believes that CESR should favour the issuer website and/or the official storage mechanism, without envisaging compulsory recourse to media services, Document capture services or operator(s).

**QUESTION 13 : When should an issuer's responsibilities to send information to a central storage mechanism be considered fulfilled ?**

CESR questions itself about when the issuer is released from its responsibility to send information to an official storage mechanism.

AFEP is in favour of the option proposed in point (i) § 95 to 96 whereby the issuer's responsibility would be discharged when the information had been sent to the official storage mechanism.



Taking the principle applicable to the transmission of information so that it could be put online on a website for dissemination, the issuers are in favour of this same transmission for storage leading to the same presumption of legitimacy (see the answer to questions 9 and 10-B).

This presumption should apply at the time when the issuer makes the information available on its website or, otherwise, at the time of transmission to the officially appointed mechanism for storage or, where applicable and if the issuer decides to delegate this function, at the time of transmission to an approved commercial entity other than a stock exchange.

**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 ?**

CESR wishes to determine whether sensitive information should be available in real time on a central storage mechanism in order to limit the 'black holes' effect in the dissemination process corresponding to the period between the transmission of information and it becoming available online.

It is not necessary for the 'central storage mechanism' to disseminate this information in real time.

Article 21.1 of the directive stipulates that the regulated information must be disseminated 'in a manner ensuring fast access to such information'. In this framework, it is up to the issuer to disseminate sensitive information in a way that enables the public to access it quickly in compliance with the provisions in Article 2 of directive 2003/124 on the disclosure of inside information.

As a result, it is not necessary for the central storage mechanism to disseminate this information in real time.

As the market has been informed quickly, storage of this information can occur later without this having an impact on the public.

**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 ?**

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

CESR asks itself whether there is agreement on the concept that non-sensitive information does not need to be made available on a storage website in the same time frames as sensitive information.

As with sensitive information (for the reasons cited in response to question 14), AFEP believes that non-sensitive information should be made available quickly on the storage website and in any case after the time frame set for the dissemination of sensitive information.

**QUESTION 17 : Which of the above options or combination of options do you consider to be most desirable?**

CESR wishes to determine procedures for distribution costs generated by access to regulated information, notably by proposing that these be borne jointly by issuers and investors.

AFEP is in favour of this joint sharing of the burden as envisaged by CESR, while expanding the principle.

The issuer bears the costs of storage for its website. The users always bear the connection costs, whatever the site concerned.

The storage expenses for the central storage mechanism are the subject of a consensus among market participants, at national level.

**QUESTION 18 : Are there any other options that have not been identified above that you consider to be desirable ?**

See the answer to question 17

**QUESTION 19 : Which of the above options do you consider to be the best option ?**

CESR wishes to know which party (the competent authority or a commercial entity) would be the most capable of operating the centralised storage mechanism.

AFEP believes that the competent authority is the most appropriate structure for processing the centralised storage of regulated information.

Nonetheless, an issuer should have the option, where applicable, of calling on the services of an approved commercial entity to fulfil this function.

**QUESTION 20 : Do you consider there to be any other advantages or disadvantages to a Competent Authority or a commercial entity taking on the role of the central storage mechanism that have been discussed that are necessary for CESR to consider?**

CESR asks whether it should take account of advantages and disadvantages (other than those cited) in the competent authority or a commercial entity taking on the centralised storage role.

AFEP considers that CESR, (notably see question 50 p. 74) should not only envisage fulfilment of the storage function through an official storage mechanism (stock market or stock exchange regulator), but also via the issuer's website.

Storage on the issuer's website offers quality information due to its exhaustiveness and ease of access.

**QUESTION 21 : Which of the above options do you prefer ?**

CESR asks about the role the competent authority should adopt to the centralised storage mechanism while proposing options to check regulated information either ex ante or ex post, or by cumulating the two possibilities.

AFEP opposes verification performed in the framework of the storage function by a competent authority. However, AFEP considers it conceivable that regulated information could be corrected if it proves to be obviously incorrect, within the limits authorised by legislation.

Information other than that relating to significant stakes and to holders of securities accepted for trading in a regulated market is the subject of verification aimed at ensuring it is compliant within the relevant reporting framework according to the provisions of Article 24.4 (h) of the directive.

There is no provision in the directive stipulating that verification of this information should be carried out for the storage of this information, especially as regards the content and accuracy of regulated information.

Moreover, CESR seems to consider (§ 151) that the Prospectus directive would prohibit any dissemination of the prospectus until it has been checked and approved by the Member State's competent authority.

Yet, Article 12.3 of the Prospectus directive stipulates that 'Where an issuer has only filed a registration document without approval, the entire documentation... shall be subject to approval' by the competent authority.' Filing with the competent authority *without previous verification* is therefore authorised.

For example, issuers in France who have already filed three registration documents subject to ex ante verification, can be incorporated into the ex post verification system.

In any case, compulsory verification cannot be considered as applying on a general basis.

**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 ?**

CESR asks itself whether the information stored in this way should explicitly appear as having been reviewed - or not - by this authority.

In principle, this distinction appears desirable in the official storage mechanism, insofar as it provides improved legibility of the consulted information.

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

CESR questions itself whether it should make transmission standards for regulated information compulsory.

AFEP considers that CESR's initiative aimed at harmonising transmission standards for regulated information to be constructive. However, it is up to the CESR to give an opinion to the Commission rather than make these standards compulsory.

The reflection currently being carried out by CESR fits into the framework of a level 2 mandate given by the European Commission. It is up to the Commission to determine the provisions that it considers most relevant in the opinion submitted to it by CESR. These provisions will then be incorporated in a high level text (directive or regulation), thus making these application provisions compulsory.

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

No comment.

**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 ?**

**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 ?**

**QUESTION 27 : Are there any other issues relating to security that you think CESR should consider ?**

**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?**

**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 ?**

**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 ?**

CESR proposes several criteria that contribute to clarifying the storage functions.

AFEP considers that all of these criteria contribute to the provision of a quality storage service.

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

CESR wishes to determine whether the official storage mechanism should be obliged to hold all regulated information in an electronic format.

Insofar as the information will reach the official storage mechanism in an electronic format on most occasions, retention in this same format should be envisaged.

If some documents are sent to it in paper format, for example, retention in this format should also be possible.

The essential task is actually to ensure that the information required is stored exhaustively.

**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 ?**

CESR wishes to know whether the official storage mechanism should record references such as the issuer's address details, the date of publication and the type of regulated information...

AFEP believes that these clarifications are important for the traceability of information. The user of this information can thus position it in time, and the issuer is sure of having supplied information that is easily identifiable.

**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 ?**

CESR wishes to know whether an official storage mechanism should offer its services in all the languages of each Member State.

A service of this type does not appear to be necessary.

As they have the choice in the majority of cases of publishing their regulated information either in a language accepted by the competent authority, or in a language customary in the sphere of international finance, in compliance with the provisions of Article 20 of the Transparency directive, issuers already often publish in language customary in the sphere of international finance. More generally, the overall financial community regularly uses a language customary in the sphere of international finance for its publications.

**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 ?**

CESR wishes to know whether the official storage mechanism should offer its services on a continuous basis.

Offering this service on a continuous basis, which is technically feasible, is highly desirable.

As this stored information is accessible over the Internet, any interested person must be able to access it anywhere in the world, without having to suffer the impact of any time lag.

**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 ?**

CESR wishes to know whether the official storage mechanism or the DCS should confirm receipt of the information.

This provision is important for the system's reliability.

If it wishes to supply information to a website other than its own storage website, the issuer must be able to ascertain successful receipt of the transmitted information, via acknowledgement of receipt. Thus, in the event of a technical breakdown, it can carry out a new transmission in a relatively short time frame.

**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 ?**

**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 ?**

CESR wishes to know whether the issuer like the official storage mechanisms or DCS should supply hard copy forms in the event of the electronic system breaking down.

Rather than providing paper copies which are difficult to supply in large quantities in the event of an electronic breakdown, it seems preferable for the issuer, like the official storage mechanisms or the DCS, to inform users of different possibilities on its storage website. Where applicable, the documents can be placed at the disposal of the public in compliance with the provisions of Article 14 of the Prospectus Directive.

**QUESTION 38 : Do you believe that a central storage mechanism should be obliged to provide technical and customer care service support helpdesks ?**

CESR wishes to know whether an central storage mechanism should be obliged to provide a user support service.

As this provision appears to favour end users of information, it should be encouraged, but not required.

Moreover, its cost should be borne by the end users.

**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 ?**

CESR wishes to know whether the official storage mechanism should be obliged to distinguish clearly between regulated information and all other types of information which would be in its possession.

As only regulated information is likely to be transmitted to the official storage mechanism, this distinction is unnecessary.

**QUESTION 40 : Do you believe that a central storage mechanism should be obliged to make the amount of its fees transparent to investors ?**

No comment.

**SECTION 2: REQUIREMENT FOR AN ELECTRONIC NETWORK (ARTICLE 18)**

**Question 41 : Do you agree with CESR's interpretation of the first aim of this guideline ?**

**Question 42 : Do you agree with CESR's proposal to extend Article 17 to include information disclosable under the Prospectus Directive ?**

**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 ?**

**Question 44 : In what circumstances do you think that it is necessary or desirable to create such links ?**

**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 ?**

**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 ?**

**Question 47 : Do you agree that a small number of central storage mechanisms operating at a European level would benefit from economies of scale ?**

**Question 48 : Do you agree that economies of scale would also be gained if multiple central storage mechanisms were operated commercially ?**

**Question 49 : Do you agree that central storage mechanisms**

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

**Question 51 : What risks do you consider are inherent to either option ?**

At this point issuers have difficulty in perceiving the advantages that the creation of an electronic network among regulators could have in practice. Hyperlinks may already exist between the different websites dedicated to issuers.

It is therefore useful to clarify the content and scope of the CESR's proposals and, moreover, to envisage the establishment of a corporate portal that sets up referrals to issuers' websites and which is accessible at national or European level as an alternative.