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CESR consultation on the Development of Pan-European Access to Financial Information Disclosed by Listed Companies

**ASSOCIATION FRANCAISE DES ENTREPRISES PRIVEES
(AFEP)**

The purpose of AFEP is to present the views of large French companies to the European Institutions and the French authorities, mainly with regard to the drafting of non-sectoral legislation (on the economy, taxation, company law, financial affairs, competition, intellectual property rights, consumer affairs, social regulations, employment legislation, environment, financial information, etc.).

Given the importance of these European legislative documents (directives and regulations) which are subsequently incorporated into national law, it is essential for companies to be present on the spot when they are being drawn up. AFEP, whose headquarters are in Paris, set up its Brussels office in 1987.

AFEP represents more than 90 of the top private sector companies operating in France. The stock market value of the French listed companies which belong to AFEP amounted in 2009 to 930 billion euro, employing more than 5.6 million people, and a combined turnover of over 1500 billion euro.

The Presidents of AFEP's member companies are actively and directly involved in the definition of the main lines of economic and social policy to be submitted to the European and national authorities, as well as deciding which actions to carry out in the interest of the growth of companies in a market economy.

As a genuine force for generating new proposals, AFEP is also a prime forum for contacts between member firms and governmental authorities, which do not hesitate to consult the Association when they are considering plans for reform or regulations. Senior officials in the European Union and French administrations regularly take part in meetings organised at the headquarters of the associations, enabling direct and constructive dialogue to take place.

1. BACKGROUND INFORMATION

1.1. European Commission consultation

- The Commission¹ raises the question as to whether the Officially Appointed Mechanisms (OASMs), as currently designed, are able to fulfil the role of « *gate* » to *historical financial information* on listed companies *at European level and considers a more centralised storage system than those currently used by stakeholders or the network that is being put in place*:
 - . *Use of companies' websites*: According to the Commission staff working document², quoting the External Study, stakeholders use the *companies' websites* as primary source of information rather than the storage mechanism and “would not be unhappy with the national independent storage mechanisms”;
 - . *Interface central list/ network of storage systems*: the current model (“Model C”), a simple electronic network model, consists of a single *interface* for end users - e.g. a website - containing a *central list of all EU listed companies with, for each issuer, a hyperlink to the relevant storage system* on which regulated information can be found;
 - . *A more centralised storage system?*: the Commission considers that the network interconnecting the different national databases is only at an initial stage with rather modest results so far – compared with the US – and that there is need for an evolution beyond the “Model C”³. The Commission staff⁴ considers that “a *more centralised storage system* would certainly be able to fulfil the role of “gate” to historical financial information. The vision of the Commission is to facilitate investors’ access to information and the work of financial intermediaries and analysts on a wider EU scale, in particular to allow interested parties to search in the different OASMs with a single research engine (“harmonised searching facilities”). *Easing access for users of information would require additional steps, such as establishing (at a minimum) a single action access point to disclosed information, comprehensive databases, electronic filing with straight through processing facilities and harmonisation of the methodology to store information (methods of classifying and identifying information to storage), e.g. by using common/harmonised input formats (such as XBRL) and standard forms, so as to make information comparable*⁵.
- By contrast, the External Study is favourable towards the enactment of a *single EU access point to stored regulated information*, which remains close to the existing situation (Model C): a single EU access point at CESR level with a direct Internet link to a compulsory and harmonised section of the *issuers' website* where the information would be stored⁶,

¹ Report from the Commission - Section 3 § 16.

² Annex 15 § 15.22 and footnote 468.

³ Commission staff working document - Annex 15 § 15.35.

⁴ Commission staff working document - Section 2.6. § 39.

⁵ Commission staff working document - Annex 15 §§ 15.4., 15.36., 15.39 and 15.42.

⁶ Commission staff working document - Annex 15 § 15.28.

although there is no conclusive support for having access to all available information via a single point of entry. In addition the External Study is more cautious on the possible use of XBRL, as it indicates that “more experience from countries where XBRL is used would appear necessary before an EU decision or recommendation on the use of XBRL be made.”⁷

1.2. CESR consultation

In August CESR issued for comments a series of proposed measures for developing pan-European access to financial information disclosed by listed entities: these measures would imply implementation and maintenance costs for issuers. The purpose of the various measures is to harmonise and enhance pan-European search facilities for financial information and to investigate the possible mandatory use of eXtensible Business Reporting Language (XBRL) for the financial reporting.

Two options are envisaged: organising national information depositories that would be accessible through one European search engine or centralising all data in a European central database.

Under the first option, CESR has examined the feasibility of requiring harmonised search facilities throughout the OAM network, which would be based on a set of search keys and reference data items.

2. GENERAL COMMENTS

While the question of storage of regulated information is covered by the recent consultation of the European Commission (EC) on the Transparency Directive, we regret that the CESR consultation takes place before responses to the EC consultation have been considered. We equally regret that the CESR consultation is made in such a short timeframe, which made it particularly difficult for issuers to consider the CESR proposals.

In relation to a possible use of XBRL, we also regret that the CESR consultation does not give any explicit indication on the prerequisites and practical implications of both options and the steps proposed in option 1, concerning in particular the reference to binding technical standards.

Indeed, supporting an option or certain steps in option 1 could wrongly lead the CESR and the EC to consider that there is an agreement in principle - or overall agreement - of stakeholders on these prerequisites or implications. In this regard, the future CESR consultation on XBRL should not be based on the assumption of such an agreement and should not be limited to an analysis of provisions for a transition to mandatory XBRL filing.

⁷ Commission staff working document - Annex 15 § 15.42.

2.1. Storage of regulated information

- *Issuers consider that regulated information should continue to be stored on national OASMs and do not favour an EU central storage mechanism or a single European OAM;*
- *We believe that there is no market demand for an other model than that currently used by stakeholders or than the current model (“Model C”)⁸, which has proved to provide adequate functionalities with lower costs;*
- *We are strongly opposed to a more centralised/integrated storage network/system - including Option 2 -:*
 - . *The costs/drawbacks in terms of administrative burdens for issuers and quality of information provided would largely outweigh hypothetical benefits;*
 - . *Option 2 would not reflect the supervision system that is currently being put in place in the European Union, where national competent authorities remain in charge of the day-to-day supervision of issuers and thus supervise filings locally.*
- *We prefer a network model, under certain conditions, without supporting the option 1 proposed in the CESR consultation to require a more sophisticated network model:*
 - . *We agree with step 1 of option 1, and in particular with the following proposals:*
 - * *extending the list of issuers to cover issuers of all securities;*
 - * *harmonising the presentation of information stored by OAMs / develop uniform classification and identification criteria, using in particular:*
 - *common category and sub-category labels;*
 - *a common list of types of regulated information used at the national OAMs, along the lines proposed in Appendix 3.*
 - . *However we are concerned about two major aspects of steps 2 and 3: the proposed exclusion of pdf documents and the use of common input formats and technical standards. We believe that the submission of regulated information to the storage mechanisms should not result in the mandatory use of XBRL (such as mandatory XBRL filing) in companies’ internal applications (see details in § 2.3. below). Therefore:*
 - * *We disagree with step 3 of option 1, which introduces an integrated OAM network by imposing binding standards for OAMs (and, as mentioned in § 100, would be quite similar to option 2 if feed from national OAMs to the Central Access Point (CAP) were required);*
 - * *We question the proposals in steps 2 and 3 of option 1 – and more specifically the alternatives (i) and (ii) under step 3 - to use binding technical standards, store (more)(meta)data at the CAP and to harmonise search facilities at OAM level.*
- *In any event, the responsibility for filing regulated information should not be modified as a result of changes that would affect the storage model and the access to that information⁹. Issuers should not be required to file themselves regulated information in an OAM.*

⁸ In model C there is a Central Access Point (CAP) containing a complete list of issuers with links to the OAM holding information on that issuer and the list is used by end users to access the OAMs that store information related to the selected issuer.

2.2. Access to regulated information stored by OAMs

In order to facilitate access to regulated information stored by OAMs, issuers accept a model with a single interface between a central website containing a list of all EU listed companies with a hyperlink to the relevant national OAMs.

In particular, while accepting a single EU CAP, issuers are not favourable to a model that would organise the storage of data at the CAP¹⁰ or, as mentioned in the External Study on the Transparency Directive, a direct Internet link to a compulsory and harmonised section of the issuers' website where the information would be stored.

2.3. Use of XBRL

- *Issuers do not believe that the potential benefits of XBRL would outweigh its disadvantages and justify any mandatory use of XBRL. Listed companies believe there is no need for public intervention and it should be left to their free choice to introduce and use XBRL on a voluntary basis. There is no widespread demand for XBRL in the market and if (and only if) XBRL proved to present more benefits than disadvantages, they would expect market forces to lead to a widespread voluntary implementation;*
- *One should therefore be extremely cautious to implement a standard which raises doubts on its acceptance in the market and its overall economic benefits;*
- *Under certain conditions, XBRL may facilitate the transmission of data and therefore reduce the time to access those data. However a key distinction should be made between the two possible uses of XBRL: use for the final conversion of data resulting from issuers' internal applications, on the one hand, and use in issuers' internal applications, on the other hand. The use of XBRL, including for filing purposes, should not be envisaged beyond the final conversion into XBRL and transmission of data resulting from internal applications. Using XBRL in companies' internal applications must remain a management decision only;*
- *Contrary to what is often suggested¹¹, a mandatory or wider use of XBRL, especially in internal applications, would be a major source of costs for issuers and would not simplify their business environment:*

. laborious processes and considerable cost effects:

- * *direct costs: it would imply providing an identifying tag for each individual item of data¹², using taxonomies (electronic dictionaries of data), which, separately for each reporting domain, determine the different concepts used and the hierarchical, presentation and calculation links between these concepts;*

⁹ as suggested in the executive summary (page 4, under "Option 2").

¹⁰ Mentioned in §§ 39 and 84 of the CESR consultation paper.

¹¹ E.g. European Commission staff working document Annex 15 - §§ 15.40 and 15.41.

¹² Each indicator/piece of data must be allocated a tag indicating its meaning (measured or described concept defined in a taxonomy), the unit in which it is expressed and the context to which it belongs (entity, date, etc.). The tag must be allocated manually using taxonomies, with the possibility of links being made, where applicable, between several taxonomies.

- * *collateral effects*: the use of XBRL in internal applications would have significant effects on the overall architecture of companies' IT systems, and not only on those systems that are related to financial reporting. As most companies' IT systems are composed of integrated applications fulfilling functionalities that do not use XBRL and are not covered by the XBRL solution, introducing XBRL for part of companies' IT systems would imply creating new connections between applications and overhauling all other applications and therefore would be very costly;
- * *implementation costs*: it is confusing to say that XBRL is already used/required in a number of cases or to suggest that XBRL is not costly, as it is an open standard, free of licences. In fact, this is so mainly if XBRL is considered as a final conversion tool. A use of XBRL in companies' internal applications would imply harmonisation of the methods of classifying and identifying information to store and require very significant direct or indirect implementation or switching costs (consultancy, tagging, servicing and overhauling costs).
- . *instability of the taxonomies and difficulties servicing the system / risks of errors*: ***as taxonomies are based on the laws, regulations and standards used in each reporting domain, the use of XBRL implies that they are stabilised and homogeneous***, as changes in concepts or links between concepts necessitate frequent and costly updates of the taxonomies, tags and interfaces with the other companies' applications and increase the risks of errors (e.g. tagging errors) in subsequent data processing and presentation. This is so for instance for ***IFRS financial statements***, where the ***standards and their underlying concepts change frequently and are far from being stabilised***. Those changes also raise a liability issue (see that point below);
- ***The limitations of XBRL should also be considered, in particular as regards the quality of information disclosed. Although one of the objectives is comparability, the information provided may be incomplete or inaccurate, and actually not comparable, as it may be dismembered or presented out of context:***
 - . ***inability to appropriately cope with non standardised or non quantitative information***: the numerous data that are not standardised or the numerous qualitative or narrative information (in financial statements, reports, prospectus,...), would either be inappropriately reflected or presented without change, which would represent costs without any added value;
 - . ***limited data comparability or lack of relevance: relevant automated comparisons could be envisaged only for data that are standardised*** and translated based on appropriate taxonomies - i.e. taxonomies that are established and updated rapidly -;
 - . ***lack of flexibility***: in any case, the use of XBRL, e.g. for IFRS financial statements, should not lead to excessive standardisation of data or a rule-based approach, which would render communication overly inflexible and not adapted to the specific characteristics of the company. In particular issuers have underlined the difficulty of disclosing additional information or explanatory notes on the elements presented on the face of the financial statements, which are essential to their proper understanding.
- ***Liability issue: in any event, the use and limitations of XBRL raise a liability issue. Issuers believe they cannot be held responsible for the consequences of using taxonomies that would prove unsuitable or using a language that ultimately would not reflect the substance of their disclosure (e.g. notes to their financial statements).***

The quality of companies' reporting should continue to be assessed based on the information resulting from companies' internal systems and processes, and not on XBRL information.

3. RESPONSES TO SPECIFIC QUESTIONS

Q1. What in your view is the reason for the apparent lack of widespread use of OAMs by end users?

No comment.

Q2. Do you agree that the visibility of OAMs could be enhanced through developing the search facilities at the level of OAMs and the OAM network?

The search facilities could be developed at the level of each OAM. However this should not imply the mandatory use of XBRL for companies' internal applications (see developments in paragraph 2.3. above).

Q3. Do you have any other proposals for improving the visibility and/or use of OAMs?

No.

Q4. Which of the search facilities in subsections 5.1.1 – 5.1.3 below would you consider important?

No comment.

Q5. Are there any additional search facilities that CESR should consider?

No comment.

Q6. Which standard would you prefer for industry / branch categorisation?

No comment.

Q7. Do you see need for mandating dynamic or chain searches at the OAM or CAP level?

No.

Q8. Would you consider it necessary to have common input formats and standards for any other type of regulated information than periodic financial information? If yes, which formats and standards and for which type of regulated information?

No. We question the use of common input formats and standards for periodic financial information as well.

We believe that the submission of regulated information to the storage mechanisms should not result in the mandatory use of XBRL (such as mandatory XBRL filing) in companies' internal applications (see details in § 2.3. above). Therefore:

- We disagree with step 3 of option 1, which introduces an integrated OAM network by imposing binding standards for OAMs (and, as mentioned in § 100, would be quite similar to option 2 if feed from national OAMs to the Central Access Point (CAP) were required);
- We question the proposals in steps 2 and 3 of option 1 – and more specifically the alternatives (i) and (ii) under step 3 - to use binding technical standards, store (more)(meta)data at the CAP and to harmonise search facilities at OAM level.

Q9. Do you agree with the proposed common list of types of regulated information presented in Annex 3?

Yes.

Q10. Do you have any proposals for further types of regulated information that should be included?

No.

Q11. What are your views on the interconnection of OAMs with business registers?

Like CESR, we consider that regulated information to be published under the different securities law directives already cover the information that is likely to affect the value of the listed securities. Therefore the interconnection between OAMs and business registers does not appear to be a priority.

Q12. What in your view would be the benefits of an integrated pan-European OAM network (with a central access point) for issuers or end users (retail investors, professional investors, analysts, other users of financial information)?

For the reasons set out in paragraph 2.1. above, we believe that a network of local OAMs with a Central Access Point may present benefits under certain conditions, in particular an easier access to financial information. However such a network should not result in additional costs, administrative burdens, quality and liability issues for issuers.

Q13. Do you see any specific pros and/or cons for option 1 or option 2?

Please refer to our response in paragraph 2.1. above.

Q14. Do you agree with CESR's analysis of the supervision of the network and the need for binding technical standards for OAMs?

Concerning supervision, we agree that the need to supervise filings locally remains, in view of the supervision model that is currently being put in place in the European Union.

We believe that there is no market demand for an other model than the current model (“Model C”), which has proved to have adequate functionalities with lower costs, and that the use of XBRL in companies’ internal applications should not be made mandatory. Therefore we do not see a need to develop binding technical standards for OAMs (see also our comments in § 1.1. above).