

CESR DRAFT ADVICE ON POSSIBLE IMPLEMENTING MEASURES OF THE TRANSPARENCY DIRECTIVE

Part 1: Dissemination and storage of regulated information

ENPA response to CESR consultation

ENPA – the European Newspaper Publisher's Association – welcomes CESR consultation on its draft advice on possible implementing measures of the Transparency Directive.

Newspaper publishers are strongly involved in the dissemination of financial information to the public and in particular of the information regulated under the Transparency Directive. During the adoption process of this text, ENPA has emphasized that the role of newspapers for providing to all shareholders a non-discriminatory access to financial information is essential and that the Internet alone is not sufficient to achieve the Directive's objectives, in particular due to the low internet penetration rate in the 25 Member States (see data in annex).

The Transparency Directive therefore reflects this need in presenting a neutral approach for the dissemination of the regulated information, "neither excluding newspapers, nor electronic means" as Commissioner Bolkestein confirmed to the European Parliament in March 2004.

However, in its draft advice, CESR generally favours the use of the Internet dissemination through operators and issuers. It notably proposed a system based on the provision of the information by the issuers to the operators and on the payment by the media and the investors to receive the information from various operators.

ENPA considers that a system based on operators as proposed by CESR has many disadvantages that we describe below and undermines the important role of newspapers. In order to remedy to these weaknesses, ENPA suggests solutions through a combination of printed newspapers and their websites, with the advantage of publishers' professional expertise and long experience in the management and dissemination of the regulated information.

a) the system based on operators proposed by CESR cannot fulfil the Directive objectives:

- the system will principally be based on Internet dissemination despite the fact that more than half of the EU population has no access to the Internet; the objective of the Directive of non-discrimination among investors is not achieved.
- the access to information by the newspapers and by the investors will not be free of charge; they would have to pay a fee to the operator; the objective of the Directive that any specific cost is charged to investors for providing the information cannot be respected.

- the use of electronic means is favoured for the dissemination of the information; however Internet is open to manipulation and cannot be secured; the Directive objective of reliability cannot be fulfilled if security is not ensured.

- if CESR considers that it is sufficient for an issuer to disseminate the information only via its own website, this will be contrary to the political will behind the Directive and contrary to the basis principle of transparency, as the issuer could easily hide the information.

b) the system proposed by CESR should not prevent traditional newspapers from publishing the regulated information and many investors from accessing the information

- If issuers have the choice between operators' services or their own website, this would eliminate the publication of the regulated information in the newspapers; CESR advice is therefore not media neutral despite the assertion of Commissioner Bolkestein and this was not the political will when the Directive was adopted.

- Newspapers will be dependent from different operators to whom they would have to pay for the information. In these conditions, operators will dictate the price and conditions for newspapers to receive the information. Newspapers would also have to provide personnel for the purpose of filtering out and evaluating relevant items of information. All these costs will inevitably have serious repercussions on newspapers and investors.

- Newspapers would therefore not be able to receive the information directly from the issuers; this would inevitably affect readerships and advertising revenues, which are the 2 main sources ensuring the viability of a newspaper.

- The publication of the regulated information also enables a newspaper to report on other subjects of interest for the investors. However, the model proposed by CESR could also represent a threat to publish in the newspaper other comprehensive reporting on the evolution of the financial market from professional journalists.

- If CESR does not sufficiently consider the role of newspapers, its advice could favour the creation of a monopoly situation where few Internet/operator companies are the only means for the investors to find the regulated information; such a situation must be avoided in accepting that different means of dissemination should be used.

- If a media is able to bear the considerable costs incurred on the interested parties, this would mean that in turn, the general public and investors would only have access to the regulated information if they are willing to pay considerable amounts of money for it. Only very few people would be willing to make payments of this kind. As a result, the regulated information would not longer be seen by the general public.

- If the dissemination in traditional newspapers is not maintained, this will create 2 categories of investors: those who receive the information as they have access to the Internet and are able to pay for the information and the other investors who will not receive the information as they do not have access to the Internet and cannot pay the price for receiving the information.

- A system based on different operators located in various Member States will scatter the publication of regulated information. In the future, a potential investor would no longer be

able to determine which operator is used by an issuer in which country and which media uses which operator.

- Different conditions would apply to different operators: cost and wage, security, cost of telecommunications services and differences in the interpretation of regulations by national authorities. In consequences, operators located in certain countries could work more cheaply in less secure and less regulated environments than in others. Less responsible issuers would be tempted to choose those cheap operators.

- the operator is an additional link in the communication chain leading from the issuer to the investor. This results in higher costs for the interested parties, a higher chance of errors, higher administrative costs and longer time for delivering the information to the media and ultimately to the investors.

In consequence, for many investors, in particular small investors, the model proposed by CESR based on the operators would affect the existing possibility enabling them to find the regulated information in other mediums than the Internet, and principally in newspapers. This would also have a detrimental impact on newspapers' activities and viability as it will decrease readership and advertising revenues. For many investors, the existing possibility for them to find the regulated information in other medium than the Internet, and principally in newspapers, would disappear. CESR should therefore consider that newspapers in their paper version have still an important role to play for the access to the regulated information.

ENPA recommendation:

In order to avoid that only a specific type of investor has access to the regulated information, ENPA recommends CESR to consider that printed newspapers are indispensable for reaching all kind of investors and the public without discrimination and for providing them with the regulated information.

Furthermore, considering this indispensable role of printed newspapers but also the negative impact that the system based on operators would have on newspapers activities, in particular on the viability of printed newspapers, ENPA urges CESR to insert in its draft advice a recommendation to Member States or to issuers to publish the regulated information in newspapers. This recommendation could be worded as follows:

“Referring to Recital 8 of the Transparency Directive¹ and considering the important role of the written press for reaching the public, CESR recommends Member States and issuers to disseminate the regulated information in national newspapers, in addition to the requirements established in Art. 21§1 of the Transparency Directive.”

c) the ideal combination of paper and digital newspapers

ENPA considers that to ensure a workable system of dissemination of the regulated information, the complementary role and the combination of the printed newspapers and of their websites are indispensable.

¹ We refer to the final version of the Directive, as published in OJ L390 of 31 December 2004, p. 38

This ideally contributes to the achievement of the objectives of the Transparency Directive and provides many advantages, compared to other systems:

- Reliability: newspapers already have a thorough experience and professionalism in the management and the dissemination of the regulated information, which is part of their daily activities. They therefore benefit from a great reliability, trust and credibility from both the issuers and the investors in all Member States. In France for instance, more than 90% of the investors are used to receiving financial information from the newspapers.
- Access on a non-discriminatory basis: newspapers in both their paper version and their website can directly reach the public, as requested by the Directive. All investors without discrimination have therefore access to the regulated information. Internet alone is not sufficient to enable this.
- Security: newspapers already have structures which enable them to secure content and data available on their website. In addition, as Internet is sometimes not secure enough, the paper version of a newspaper can be an additional legal security net for the publication of price sensitive information for instance or other type of information. Furthermore, newspapers are reliable as their activities are based on ethical rules and independence.
- Fact access: newspapers activities are used working under tight deadlines and under time pressure. They can therefore easily comply with the requirement of timely and fast access. However, adding the operators in the communication chain will stretch out the time for providing the information to the public. This leads to the question as to why the time tested system in which the issuer passes on the required information directly to the media should be replaced. Newspapers play an important role in upholding this time tested system in a number of EU Member States.
- Cost: the cost for issuers to publish in the newspapers is not significant (in some case, less than 1% of their annual communication budget). For investors, the information should be free of charge, although the consultation paper suggests the contrary. The regulated information is included in the purchase price of the printed newspaper: those who consult a newspaper, which are far more numerous than those who consult the Internet – buy the newspaper for the other news it contains anyway. In this context, the regulated information is a free additional service for the reader.
- Effective dissemination throughout the EU: newspapers are accessible on a European basis in the different Member States via their websites. In addition, within each Member State, their paper version enables to complete the required public penetration that Internet alone cannot have. In some Member States, newspapers have developed some structures to provide an easy, convenient and user friendly access to the regulated information for both issuers and investors.
- We regret that there is no representative of the newspaper publishing sector in CESR consultative panel. Such a person would be able to provide valuable information and make helpful contributions based on decades of experience with financial and investor interests as well as many years of experience with the Internet in this sector. The fact that the consultation paper explicitly mentions newspapers in a number of places would seem to underscore the need for this kind of expertise.

ENPA recommendation:

Considering the strong experience and professionalism of newspapers in the dissemination of regulated information, ENPA recommends CESR to consider the key-role of the combination of newspapers in their paper version and through their website to achieve the objectives of the Directive.

In order to help CESR in the functioning of an efficient and workable system, ENPA offers to CESR a working group of different newspapers' representatives in the EU specialised in this field, who can provide the necessary expertise for dealing with this issue.

d) The need for CESR to ensure that dissemination standards and requirements are not obstacles to newspapers' activities

CESR should ensure that the requirements and standards proposed in its draft advice do not constitute obstacles to the current activities of newspapers in the dissemination of the regulated information.

One main problem in these standards and requirements is the fact that newspapers would have to obtain the information from an operator or from various operators and they would have to pay for that. In our views, this dependence is not acceptable and also dangerous from an economic and competition point of view. It could favour operators at the expense of other media, such as newspapers. It could not guarantee media neutrality and transparency. CESR should therefore ensure that an issuer send the information directly to a newspaper and should not require that newspapers depend on the operators to receive the information.

CESR should also assess the aspects of costs, administrative burden and the level of security required by these standards and requirements and see whether the industry is able to implement them.

As suggested earlier, the group composed of our experts from newspapers' houses in this field could help CESR members in examining these difficulties.

ENPA recommendation:

CESR should avoid that newspapers are obliged to get the information from the operators and should ensure that issuers send the information directly to a newspaper.

CESR should also ensure that the requirements and standards proposed in its advice are not obstacles to newspapers' activities.

e) Central storage mechanisms and Electronic network

In our views, there is a great similarity in the purposes of having a central storage mechanisms and a European electronic network as both of them will aim to ensure that all the regulated information from different Member States is directly accessible in one central point by all investors and also by the media, including the newspapers, on an equal basis.

Making a distinction between these 2 systems could be too bureaucratic and costly, for the issuers, the investors and the media.

In any cases, ENPA believes that an EU centralised system of storage of the regulated information or a “one stop shop” for the filing and storage of this information must be non -commercial and publicly owned , in order to comply with the objectives of neutrality, non-discrimination and transparency of the Directive.

It already exists in some countries (e.g. in France, “Sophie” is a publicly owned system) and it enables to guarantee the independence and the transparency which are necessary in this field.

A private system cannot respond to these criteria. As we mentioned earlier, adding private operators to the communication chain will render the system more complicated and costly for all interested parties (issuers, investors and media). Furthermore, if a public centralised system storing all the information exists at EU level, private operators are therefore useless.

Furthermore, such a publicly owned system would ensure to get all the information in full text from a unique point in a Member State. This cannot be achieved with multiple private operators storing different type of information in different points: nobody would know how to get the information and from whom; it will also create a problem of costs and will not enable a simple access to the information by investors and by the media.

A central storage mechanism owned and managed by the public authority would guarantee an equal treatment of all interested parties and an equal access to information for all the media and the investors.

Brussels, 28 January 2005

Valtteri Niiranen, ENPA Director

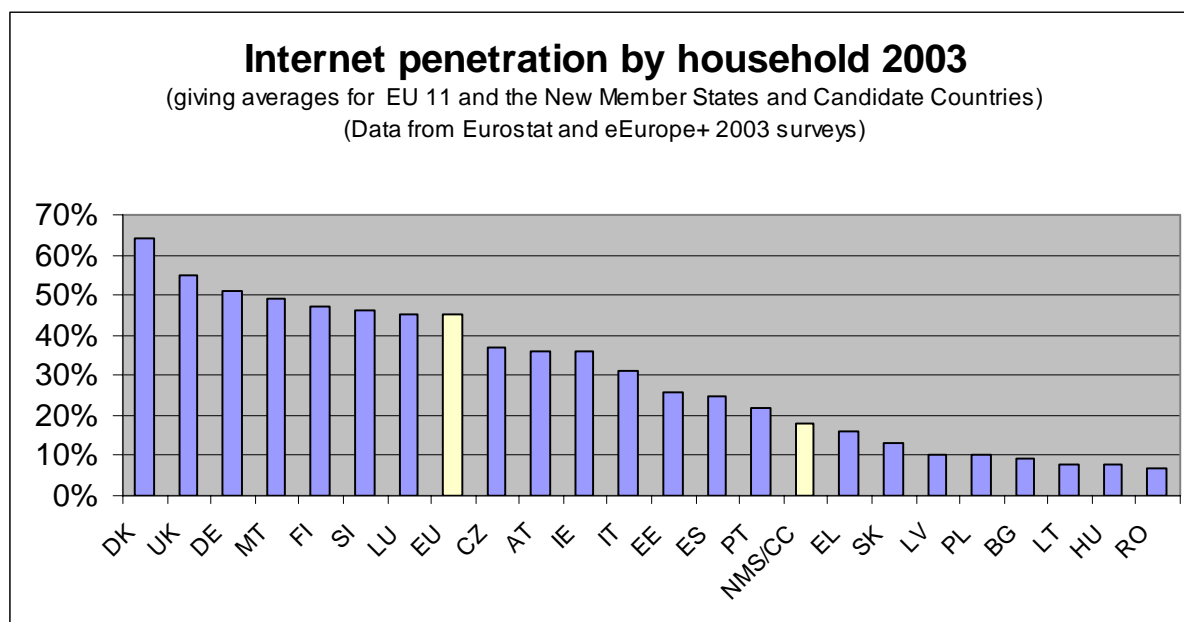
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ENPA -The European Newspaper Publishers' Association - is a non-profit organisation currently representing some 3.200 daily, weekly and Sunday titles from 22 European countries. More than 91 million copies are sold each day and read by over 240 million people.

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ANNEX I

Internet penetration in households (2003)



Source : Eurostat and eEurope survey, European Commission

ANNEX II

ENPA STATEMENT ON THE APPLICATION OF THE TRANSPARENCY DIRECTIVE

Newspapers' role to achieve transparency and non-discrimination towards the investors

ENPA – the European Newspaper Publishers' Association - would like to draw your attention to the debate that is currently taking place at European level in the field of financial information and which has direct implications on the future of newspapers in the media landscape and in the Information Society.

This question is currently raised in the scope of the Transparency Directive and the work of CESR – the Committee of European Securities Regulators- in this field. A similar situation is also observed in other areas of the EU policies where the viability and the future of newspapers are endangered by the idea that the Internet can be the unique source of information to the EU citizens.

During the EU debate preceding the adoption of the Transparency Directive, ENPA urgently requested the Commission, the Parliament and the Council that in order to achieve the objectives of transparency, non discrimination, neutrality and access by all investors to this information pursued by the Directive, **newspapers should remain one of the main sources for the investors** to receive the information coming from publicly traded companies.

In March 2004, Commissioner Bolkestein has underlined in the EP that, with regard to the Transparency Directive: **“The compromise is neutral as regards the use of any technology, thus neither excluding newspapers nor electronic means.** Furthermore, it would be made clear in a recital that a home Member State may always request publication of regulated information via newspapers, in addition to other measures of dissemination”.

The objectives of the Transparency Directive are clearly expressed and understandable: ensuring transparency of publicly traded companies and improving the confidence of all investors without discrimination. **Newspapers are without any doubt fulfilling this role and it is proved that the Internet alone is not sufficient to comply with these objectives.**

When applying the Transparency Directive, ENPA calls on CESR members, the Commission, the European Parliament and the Member States to respect the following points:

- **a non-discriminatory and transparent system where all investors will be able to find easily the regulated information in both the newspapers and the Internet should be established.**
- **a high recommendation that such information is published in newspapers could be a solution to achieve this objective.**
- **a monopoly situation where few Internet companies are the only means for the investors to find the regulated information must be avoided.**
- **newspapers' Internet sites in the different Member States are accessible on a European basis.**

ENPA therefore draws your attention on the following 10 key points which will inform you on the important role of newspapers in providing to all investors the information regulated under the Directive.

10 key-points for the publication of the regulated information in the newspapers

1 - Internet penetration is insufficient in all Member States.

Around 60% of EU citizens do not have access to the Internet at home and in the new Member States, this rate is much **higher** (an average of **75%** of the population). In this context, if only the Internet is favoured for publishing the regulated information and newspapers are excluded, it will deprive more than half of the EU citizens from access to this information.

2 - Investors are therefore not ready for a complete conversion to the Internet. The Internet penetration data clearly indicates that investors are not prepared for a unique source of information like the Internet. CESR should therefore ensure that investors are still able to find the same information also in sources other than the Internet, including the newspapers.

3 - Internet is open to manipulation. If the regulated information is only placed on the Internet, information could be easily hidden, manipulated, hacked, attacked by virus or subject to spamming. To ensure transparency, it is essential that all communicated information is correct, trustworthy and fraud proof. However, today, Internet cannot guarantee this and this might affect investors' confidence. There is therefore a risk that the effect obtained is the opposite to transparency. Newspapers are not affected by the obstacles of security and can provide information based on ethical rules and independence. They are able to make the regulated information public and visible to all investors.

4 - Newspapers provide quality information and contribute to the diversity of media and sources of financial information. In consulting newspapers on a regular basis, investors like to receive the regulated information but also other comprehensive reporting on the evolution of the financial market from professional journalists. If Internet becomes the only medium for the regulated information, some newspapers will not be able to survive. This will decrease advertising revenues and readerships; publishers will have to reduce or stop certain activities, and this will inevitably have repercussions on newspapers' employees. This will therefore create a monopolistic situation where only a few big Internet companies will provide such information and will dictate the price. Again, the investors will be deprived from accessing the information in other sources than the Internet.

5 - Newspaper publishers are in favour of the use of the Internet, as long as it is not a single source of information. Publishers have developed their Internet site to provide financial information and are in favour of the development of these new activities. What should be avoided is some rules tailored for the Internet which will *de facto* exclude traditional newspapers. The system should be such that the Internet **and** the newspapers coexist **equally**. One medium should not exclude another or make it completely disappear.

6 - Newspapers and the Internet are able together to reach all investors without discrimination. Considering the low Internet penetration in the EU, it is the only way to respect the objectives of the Transparency Directive, i.e. that all investors are adequately

informed without discrimination and that media neutrality is guaranteed. If the publication of the regulated information in newspapers is maintained, all investors, and in particular those who do not have access to the Internet will be able to receive a complete and equal access to information, achieving therefore the objectives of the Directive.

7 - The issuer's investment for publishing the regulated information in a newspaper is not significant. According to our assessment, publishing such information in a newspaper is a minor percentage of the overall communication budget of an issuer. In some cases, we have observed that it represents less than 1% of this budget.

8 - Any EU centralised system of storage of the regulated information should be non-commercial and publicly owned. In order to comply with the objectives of neutrality, non-discrimination and transparency of the Directive, ENPA believes that such a system should be public and non commercial. It already exists in some countries (e.g. in France, "Sophie" is a publicly owned system) and it enables to guarantee the independence and the transparency which are necessary in this field. A private system cannot respond to these criteria.

9 – Newspapers Internet sites are accessible across the EU. The current technology allows different newspapers to be accessible to investors located in other countries.

10- Newspapers easily reach the public and have a strong informative and democratic role. As Klaus-Heiner Lehne, one of the rapporteurs in the EP on this issue, underlined, "an Internet connection is in no way the same thing as the ability to use it. Accurately targeted searches are, moreover, required in order to obtain information on the Internet. Many people, especially small shareholders, have to rely entirely on material published in, for instance, print media, to gain a clear overall picture. They may subsequently use the Internet for other detailed research".

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