

CESR's advice on possible implementing measures of the Transparency Directive

Part 1 : dissemination and storage of regulated information

Consultation paper
(REF CESR/04-511)

Reply of Euronext

Euronext is grateful for the opportunity to comment on CESR's advice on implementing measures of the Transparency Directive, which are important in the creation of a true European single financial market.

Euronext's reply to CESR's consultation focuses in particular on the way providers should be organised:

- As concerns the dissemination of regulated information by issuers, Euronext favours a system where issuers would transmit regulated information to competing private operators licensed and monitored by competent authorities and offering services discharging issuer's disclosure obligations under the Directive.
- With respect to the notion of central storage mechanism, Euronext believes that CESR's consultation is unclear as to the role of central storage mechanisms. Indeed CESR seems to consider central storage mechanisms not only as libraries (offering historical data) but also as newswires (delivering real-time data). Our understanding of the Directive is that such mechanisms should be libraries and we believe that competent authorities are best placed to discharge this function.

Please find more detailed comments below.

I. Dissemination of Regulated Information by issuers

Minimum standards

Q.6 What are your views on the proposed minimum standards to be satisfied by Operators? Are there any other standards or related issues that CESR should consider?
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Considering the list of minimum standards established by CESR to be fulfilled by Operators, Euronext is of the opinion that such standards reflect "best practices" and that Operators willing to offer dissemination services, should be required to satisfy those standards.

Approval and monitoring

Q.5 Should Operators be subject to approval and ongoing monitoring by competent authorities or not? Please explain
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Operators, offering dissemination services, should be subject to approval and monitoring by competent authorities in order to make sure they fulfil the standards proposed by CESR. With a view to ensure that approved Operators do not cease to comply with the minimum standards, competent authorities should carry out a monitoring process on an annual basis.

Moreover, Euronext believes that it would be appropriate to set up a sort of European passport enabling Operators to offer dissemination services through all Member States. We consider critical that an Operator should be able to offer its services to all European issuers once it has been approved in one Member State. Competent authorities should therefore establish the necessary cooperation arrangements to ensure that an Operator, offering dissemination services in different Member States, be monitored by only one competent authority.

An important issue will be to ensure cooperation aimed at verifying that the Operator provides adequate media coverage in all countries for which it is licensed to operate.

Dissemination model

Q.7 Should issuers be required to use the services of an Operator for the dissemination of RI?
Q.3 Should an issuer be able to satisfy all this Directive's requirements to disclose RI by sending this info only to an Operator? Please explain
Q.4 Do you agree with the structure set out in Annex1? Are there other structures that would be in line with the Transparency directive requirements? Please explain

Because of the constraints put on Operators (e.g. compliance with standards, approval and monitoring), we consider that issuers should be required to use the services of such Operators for the dissemination of regulated information. We therefore fully agree with the dissemination structure set out by CESR in its figure 1 of the consultation document.

Furthermore, Euronext is of the opinion that if several dissemination models were adopted, it would lead to fragmentation of the dissemination and make it less easy for investors or any interested person to access the information.

In that perspective, we also consider that making the use of Operators mandatory should enable issuers to satisfy all the transparency Directive requirements to disclose regulated information (i.e. dissemination of regulated information to investors on a pan-European basis, ensure regulated information is made available to a central storage mechanism, ensure regulated information is filed with a competent authority). Operators should therefore offer all services necessary to meet minimum requirements stated in the Directive.

Nonetheless, we would like to stress that we disagree with any transfer of responsibility, from the issuer to the Operator, concerning the content of the regulated information. Issuers have in all instances to remain responsible for the content of the information.

Euronext also points out the fact that issuers, when providing Operators with information, should be required to tag this information as regulated or promotional information (Operator could indeed act as a disseminator, central storage mechanism or any other information service). It is not the Operator's duty or competence to identify which kind of information it has received from the issuer.

Role of competent authorities and stock exchange

Q.8 What are your views concerning the role of competent authorities in disseminating RI as Operator? Please explain

Euronext believes that competent authorities should not act as Operators themselves. If this was the case, competent authorities would indeed have to approve and monitor competitors' activity, which would lead to conflicts of interest.

We agree with CESR that stock exchanges should be enabled to act as Operators provided they do not carry out supervisory functions in this respect.

Dissemination by media

Q.9 Do you consider it necessary to attempt to address the risk that RI may not reach every actual and potential investor throughout the EU? Please explain

Q.10 Which of the options presented above would, in your view, minimise the risk? Please explain

We favour the second option presented by CESR, i.e. that Operators should be required to publish all real-time regulated information on their web sites at no charge to investors. In that way, the risk that regulated information may not reach every actual and potential investor throughout the EU will not be very high. Retail investors, in particular, should be able to find the information they want on websites.

This may in theory create a certain fragmentation. However, fragmentation could be reduced by the concept of European passport expressed previously. This passport will encourage Operators to act on a pan-European basis and provide access, via a single website, to press releases from many issuers.

II. Central storage mechanism

Q. 5 Do you consider a multiple storage mechanism regime to be a viable option? Explain.

Euronext considers that the role of a central storage mechanism should be to provide a library service. It is our opinion that such service would be best discharged by competent authorities since they would obtain all information from issuers.

Moreover, in order to maintain the role of Operators as contact with the media and ensure appropriate dissemination, direct links between the issuer and the central storage mechanism should be avoided.

Issuers' responsibility

Q.13 When should an issuer's responsibilities to send information to a central storage mechanism be considered fulfilled? Explain

About the issuer's responsibility, it should be considered fulfilled at the point when the issuer receives confirmation from the competent authorities that the regulated information has been received by the central storage mechanism.

Time access to regulated information

Q.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?

Q.15 Do you agree that non-price sensitive RI does not need to be made accessible by a central storage mechanism to the same deadlines as price sensitive RI? Explain.

If central storage mechanisms were to act like national regulated information libraries, data available on their websites should be considered as historical ones and a disclosure before the end of the day should be sufficient to correctly inform investors searching for certain press release.

Moreover, if all price-sensitive information are posted real time on the website of the Operator, issuer or newswire (as explained under Q.9 and 10 about dissemination by media), the point about "black holes" seems less of an issue. We also believe that central storage mechanisms will be in a position to obtain price-sensitive information at the same time as the media and should be in a position to store them from that point in time.

Investors' access to central storage data

We agree with CESR comments that access for investors to the information stored in the central storage mechanism should not be free of charge in order to enhance quality services.

Role of the competent authority

Q.21 Which of the above options do you prefer? Explain.

In the perspective of the supervision of the content of the regulated information, we welcome CESR's approach that competent authorities should check and supervise the content of the regulated information ex-post. However, ex-ante control should be possible in case an issuer wants to ask for advice.

Indeed, due to the large volume of regulated information and in order to ensure fast access to this information for investors, we consider it more effective to make regulated information available by the Operator to the public (including central storage mechanisms, newswires, press agencies etc) as soon as received. If there is a need for clarification, the issuer should make an additional announcement, which should be disclosed in replacement or in conjunction with the initial information.

III. The electronic network

Euronext believes it is too early, at this stage, to boast or favour any particular model. It is more appropriate to solve the way the dissemination and central storage mechanisms would work before making any decision in this field.

