



ENPA POSITION

CESR revised draft technical advice on possible implementing measures of the Transparency Directive - Dissemination

I - Introduction

ENPA – the European Newspaper Publishers' Association – would like to thank CESR for giving the opportunity to send comments on the second version of its advice on the Transparency Directive. ENPA will focus its comments on the dissemination of the regulated information.

ENPA welcomes the few changes that CESR has made in the draft advice. However, after having examined this new draft advice of CESR and following the explanations given by CESR at the hearing, ENPA considers that some major issues are still a source of incoherence and create great concerns to our sector. In this respect, ENPA continues to question seriously the workability of CESR advice in general and in particular with the proposed model based on operator.

In the scope of this second consultation, ENPA would therefore like to highlight some important issues:

II – Essential issues for ENPA to be respected by CESR

1) The important role of newspapers to publish the regulated information

In its response to CESR 1st consultation, ENPA has drawn CESR attention on the need to preserve the essential role of newspapers for informing all type of investors (professional and individual) on financial information without discrimination and for providing further transparency to the market.

From a general point of view, ENPA welcomes the reference that CESR has made to the newspapers, as one of the important media to consider for the dissemination of information.

However, in the light of the arguments presented in ENPA 1st response to CESR 1st draft advice, CESR should ensure that investors are still able to receive the regulated information in the newspapers, in both their printed and digital versions.

ENPA would like to stress in particular that the publication of financial information in printed newspapers is essential in some Member States, considering notably the very low penetration of the Internet and the democratic role of newspapers in informing the public without discrimination. We therefore still recommend CESR members to refer to ENPA response of 28 January to CESR first consultation paper.

ENPA recommendation: CESR should still recommend to Member States and issuers to publish the regulated information in the newspapers in those countries where it is already the case.

2) CESR advice should not prejudice the publication of advertising on regulated information in the newspapers and national legislation requiring issuers to publish such information in the newspapers

Newspapers play an important role in publishing some regulated information from issuers in the form of advertising and also in some countries where national law requires issuers to publish such information in the newspapers. This reflects a social and cultural necessity in these Member States. In this respect, it is important that CESR advice does not prejudice this actual situation. Otherwise, CESR will penalise the investors who will not be able to receive the information from the newspapers and it will prevent newspapers from publishing such information.

ENPA Recommendation: CESR should ensure that the model proposed for dissemination does not affect the actual situation in different Member States where there is an obligation under the law to publish some information in the newspapers or where newspapers publish advertising on the regulated information.

3) Connections with media

ENPA welcomes the recognition by CESR on the role of newspapers as an important media for disseminating the regulated information in the different Member States. ENPA has notably observed that CESR requires that the issuer's responsibilities are only met when the information reaches the media. However, ENPA considers that CESR should go further in order to fulfil the Directive objectives as Article 21§1 requires the information needs to be disclosed by the issuer and effectively disseminated to the public. If investors want to have access to the information and if the Directive main objective is to give more transparency to the market, therefore CESR should ensure that investors adequately receive the information in conformity with Article 21.

It is therefore not sufficient if the issuer or the operator only provides the regulated information to the media. CESR should ensure that the information is published in important media. Otherwise, it is obvious that a “Black-Hole-Problem” will occur because the media cannot publish most of the information.

ENPA recommendation: To achieve an adequate level of transparency and to respect the Directive objectives, CESR should ensure that the information is not only sent to the media but is also published in important media in order to comply with the objectives of the Directive and ensure that investors are informed.

Response to Question 1:

ENPA supports that CESR proposes mandatory connections with the key European and national newspapers, as suggested in §18. ENPA also asks CESR to consider the above recommendation.

Response to Question 2:

ENPA considers that newspapers should be mandated, as they are essential media for informing all type of investors and the public at large, notably with the combination of their printed and electronic versions and also with the advantage of publishers' professional expertise and long experience in the management and dissemination of the regulated information.

4) CESR should not promote the operator system:

CESR should not promote the use of operator in its advice and should not insist on it. CESR has just to establish standards for dissemination but it should not go further than this task and should not add another level of dissemination with the creation of operators. Furthermore, this is not a practice currently existing in a majority of the Member States and the Directive does not require it. Therefore, there is absolutely no reason for operator to appear in CESR advice.

Furthermore, in some Member States, the regulated information is already accessible via official public system such as “Sophie” in France or the database of the CBFA in Belgium.

The “operator-system” will bring one more player between issuers and media. This will be more complicated and lead to higher costs in comparison to a system where the issuer directly uses media.

It could also lower the dissemination process as it adds another level in the communication channel between the issuers and the media. This could prevent a fast access to the information by the investors.

Furthermore, there is a risk to create a monopoly of operators which will be in a dominant position by receiving the regulated information and being in a privileged position on the market.

ENPA recommendation: ENPA calls on CESR to respect the Transparency Directive and to limit its intervention to the establishment of minimum standards of dissemination. In this respect, there is no justification and no legal basis for CESR to refer specifically to operator in its paper and to establish a special framework for them.

5) Separation of functions/conflict of interests

ENPA welcomes the recognition by CESR on the need to establish a distinction between the function of service providers/operators and other services that are also proposed by the media, including the newspapers.

Furthermore, as ENPA underlined to CESR (see our comment questioning the need for operators), service providers/operators cumulating various functions, like those of the media, could lead to a monopoly situation or dominant position in the market of the different Member States, which could directly affect newspapers' activities in publishing financial information.

In this field, the Directive indicates in recital 25 that the issuers should benefit from free competition when choosing the media or operators for disseminating information under the Directive.

However, ENPA considers that the simple separation of functions as proposed by CESR is not sufficient: operators will still be in a privileged position as they will be the first to receive the regulated information and they will have the role of distributing it to the media. Therefore, they can represent an obstacle for the direct dissemination of the information to the media, which could lower the dissemination process and increase dissemination cost for the issuer. It will be an obstacle for the media to receive the information and could prevent competition.

ENPA recommendation: In order to ensure free flow of information from the issuer to the media and an easy of access for the media to the regulated information, CESR should ensure that there is no obstacle between the issuer and the media. As we mentioned earlier, CESR should not refer in its advice to operators. Furthermore, CESR should not allow that these operators cumulate other functions as those of the media as it could prevent the media from receiving the information.

Response to question 9:

ENPA agrees with the need to distinguish the task of the operator/service provider. However, ENPA does not see the need for CESR to refer to the operators at all in its advice as this is not justified by the requirements of the Directive and by its mandate. Furthermore, as there is a clear risk of monopoly from operators in the market, the separation of their functions to avoid conflict of interests is not sufficient; CESR should clearly indicate that these functions are incompatible.

6) Charges

ENPA also supports the proposal of CESR indicating that media should not be required to pay the service provider to gain access to regulated information. However, ENPA would like that this condition also applies when media receives the information **from the issuer or from any other sources of information.**

If the operators will not pay the issuer to receive the regulated information, ENPA does not see any reason why the media would not receive the information for free as well from an issuer if this issuer decides to go directly to the media instead of asking the service of an operator. Otherwise, this will give a competitive advantage to the operator compared to the media and this will create monopoly or abuse of dominant position on the market: operators will be paid by issuers to disseminate the information but the media will have to pay the issuer if they want to receive the information directly from issuers. **Such incoherence therefore proves that CESR system based on operator is not workable and will advantage operators at the expense of media.**

If the media have to pay for receiving the regulated information, this will also be an obstacle for informing the public and the investors. Regulated information is to be made available to the public free of charge and “issuers cannot charge investors any specific cost for providing the information” as the Directive says in Article 21§1.

ENPA recommendation: in order to ensure that investors are adequately informed by the media about the regulated information, the media should not be charged at all for receiving the information from any sources, including service providers/operators and issuers. Otherwise, this will prevent the free flow of information in the EU and will not enable transparency; this could also advantage operators compared to the media.

Response to question 12:

ENPA agrees that media should not be charged not only by the service providers/operators but also by the issuers and any other sources of information.

Response to question 13:

ENPA considers that CESR should mandate that media should receive the regulated information for free from service providers, issuers and any other sources of information.

7) Approval of service providers

ENPA reiterates that it does not see the need for CESR to mandate the approval of service providers/operators or to require a document from service providers. As we underlined in this paper, the purpose of CESR advice is to establish minimum dissemination standards and not to officialise the role of operators, which do not exist in many Member states. Furthermore, this could create monopoly situation and this will not enable the issuer to have a free choice between operators and the media: issuers will feel obliged to use an operator, although the Directive does not require it.

ENPA Recommendation: ENPA opposes any form of approval of service providers/operators at EU or national level.

Response to question 14

CESR should not require a document from service providers showing how they meet the dissemination standards and requirements as this will be a form of approval of service providers and will be against competition on the market.

Response to question 15

Considering our response to question 14, ENPA does not support CESR work on level 3 to undertake future work on how to address the concerns raised on how approval of operators is to work, even if approval is not mandatory.

III – Comments on the text of the advice reflecting the above principles:

- fast access to regulated information: CESR should not indicate that fast access is best achieved through the use of electronic dissemination methods as it will not respect media neutrality as required by the Directive. In this respect, ENPA had explained that adding operator in the communication channel and between the issuer and the media would not enable fast access to the regulated information.

- access on a non-discriminatory basis: if the issuer must ensure that the selected dissemination method is capable of allowing investors generally to receive the regulated information, rather than specific categories of investors, therefore CESR should consider that newspapers are one of the most reliable media to achieve this objective.

- effective dissemination throughout the EU: the combination of newspapers website and their paper version can fulfil this objective.

- no charge on investors for receiving the information: in order to achieve this objective, no charge should be imposed on the media for receiving the regulated information, neither by the operator/service provider, nor by the issuer or other source of information.

- connections with media: **ENPA welcomes that CESR considers that these connections should include mandatory connections with at least the key national and European newspapers.**

However, to achieve the level of transparency required by the Directive, it would not be sufficient for CESR to require issuer to just send the information to the media as it is not enough to ensure that the public is informed. In order to achieve this objective, CESR should ensure that the regulated information is not only sent to the media but it is also published by the media.

Furthermore, ENPA welcomes that CESR expects all interested media to receive access on a non-discriminatory basis to all regulated information. To ensure this situation, it is necessary that media receives the information for free from any sources, including operators/service providers and issuers.

- freedom of the issuer for dissemination method: if issuers should benefit from free competition when choosing the method of dissemination and if CESR task is to establish minimum standards for such dissemination, then the reference in CESR advice to operators is not justified.

- definition of service provider (§56): as we just stressed, the reference of CESR to service provider/operator is not justified.

- §57: if the responsibilities of the issuers are only met when the information reaches the media, it will not achieve the Directive's objectives of transparency. It is therefore not sufficient if the issuer or the operator only provides the regulated information to the media. CESR should ensure that the information is published in important media. Otherwise, it is obvious that a "Black-Hole-Problem" will occur because the media cannot publish most of the information.

- output §62: the media should not only receive the information by the service provider but also directly from the issuer.

- dissemination by media §68: it would not be sufficient for CESR to require issuer to just send the information to the media as it is not enough to ensure that the public is informed. In order to achieve this objective, CESR should ensure that the regulated information is not only sent to the media **but it is also published in important media.**

CESR also mentions that "in practice, some media currently publish all information they receive from service providers unedited, for commercial reasons, without the need for regulation. CESR has no reason to believe that this will change going forward".

However, ENPA has underlined to CESR that in some Member States, such as Germany, Greece, Belgium and the Netherlands, national legislation requires that issuers publish some regulated information in the newspapers. ENPA therefore asks CESR to ensure that its advice reflects this situation and does not change the actual situation.

- separation of functions of service providers (H): it is not sufficient for ENPA that functions are only separated when service providers provide other services such as media. **CESR advice should go further in stating that other functions of a service provider/operator such as those of a media are incompatible with the functions of service providers.**

- charges (I):

§73 - media should not only receive the information for free from service providers to gain access to regulated information but also from the issuers and other sources of regulated information.

§74 – as stated above, the separation of fees between the different functions of the service provider/operator is not sufficient to avoid conflict of interests with other functions, such as media, of this service provider/operator. CESR should therefore stresses that the functions of the service providers are incompatible with other functions as those of the media.

§76 – CESR should not give preference to service provider/operator in this paragraph. It also should not make a distinction between certain information that should disseminated through a certain mean and other type of information that should be disseminated by other means as CESR should respect media neutrality and non-discrimination among the media to be used.

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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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