Direction

COMMITTEE OF EUROPEAN SECURITIES REGULATORS
Attn. : Monsieur Fabrice DEMARIGNY
Secrétaire général
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Subject: **Comments from the Luxembourg Stock Exchange on CESR consultation paper ref : CESR / 06-025 on possible implementing measures concerning the transparency Directive.**

Dear Mr Demarigny,

We are pleased to provide our comments on issues related to the storage of regulated information and filing of regulated information.

The Luxembourg Stock Exchange doubts that any of the proposed approaches in line with will bring the appropriate answers compared to the spirit of Community legislation on this issue. We think that CESR has underestimated the number of information to deal with and the difficulty to have a workable architecture with limited requests between the different databases. In our understanding, CESR should reflect on its adopted solution for transaction reporting in the context of Article 25 of the MiFID and use the same principles. We think it is essential to identify issuers and to link them with a particular competent authority. Therefore, it is necessary to create a unique code for each issuer and each competent authority (as defined in the transparency directive) should have the responsibility to maintain a list of issuers and code in order to permit the interoperability of OAMs. An approach differentiating between the different types of securities is also desirable. We think it is a precondition before any attempt to define the rest of the network.

Question 1 :

Yes, we broadly support the approach presented. However, we would welcome a clarification to be made in the legislation in the understanding of end users. The end users definition should be limited to the purpose of making investment decision and investment analysis or advice. News or data vendors copying information stored by OAM should not be considered as end users because there are services providers trying to sell information

at the highest possible price to end users with access to raw information at the lowest cost possible. They are users providing services to end-users.

Question 2:

Yes we believe that Community legislation covers only the storage and the access of raw information provided by issuers to OAM. This raw information is limited to regulated information as defined in the Directive. If an OAM decides to provide additional services, these services are not covered by Community legislation and should not be subject to level 2 measures. Each OAM will be free to determine its own business case for such services.

Question 3:

We do not support an ambitious approach for the words 'easy access'. Our understanding of the access is limited to the available means for accessing the stored regulation information.

Question 4:

For the time being, we think it is not realistic to reflect on an ambitious approach for the network at a moment where national OAMs are not yet been created or implemented at national level. As mentioned above, the Luxembourg Stock Exchange is concerned by the lack of organisation for indentifying the different issuers at Member States level

Question 5:

We are a bit surprised that ESC members have already taken the view that a European central OAM should be excluded because it might have money for all the market participants. Creating national OAMs will take time and it will be necessary to give them a sufficient period for the amortisation of the costs for their setting up. Therefore, it would have been interesting to further explore the idea of a European central OAM.

Question 6:

Yes, we strongly support CESR's proposed approach on these issues.

Question 7:

We agree on the format standard for the information sent to the OAM. However, we think that an OAM can impose proprietary software for filing information for security reasons. We think that if an OAM is imposed security standards, he should have the right to impose filing procedures in order to comply with its obligations.

Question 8:

Yes we agree. However, we think the addition of the term 'minimum' is inadequate in this question even if it is mentioned in the European Commission mandate. It is indeed important to clarify if the OAM can impose its own security standards in addition to the Community one. In paragraph 58, we think the term 'veracity' is inappropriate and should be replaced by the word 'integrity' as mentioned in the title. We favour also a clarification on the issue that an OAM should ensure that the completeness of the regulated information it holds (paragraph 58). We think an OAM can only have the obligation to store the information with an identical content compared to the information received.

Question 9:

No. However, there is an issue not raised by CESR on the data protection legislation.

Question 10:

We think that CESR should provide advice on how obtaining safeguards and safe harbour rules on compliance with data protection legislation when dealing with the issue of electronic network of national OAMs.

Question 11:

Yes we agree with the broad principles mentioned for quality standards of certainty as to the information source.

Question 12:

Yes we agree with the broad principles mentioned for quality standards of time recording.

However, we think there is a kind of contradiction on the format issue. Paragraphs 56 and 57 seem to promote certain flexibility for input standards when there is no flexibility for the consultation format. We would like also to highlight that paragraphs 82 and 83 are irrelevant in this context. We acknowledge that the European Commission's mandate makes reference to the issue of 'content checking' procedure. However, this 'content checking procedure' should not be confused with the one that might be done by securities competent authority. Our understanding is that standards proposed for filing regulated information could have accompanied with 'content checking procedure' at OAMs level (which are not a substitute to potential national procedures at securities regulators level.

Question 13:

No.

Question 14:

Yes. However, we would support the deletion of the words ‘and have the option of availing of additional value-added services if required’ because it is outside of the scope of the access to regulated information. If an OAM decides to provide additional services, these services are not covered by Community legislation and should not be subject to level 2 measures. Each OAM will be free to determine its own business case for such services. Therefore, we do not understand the addition of the words ‘if required’ because it is up to each OAM to define if he wants to offer additional services.

The last sentence of paragraph 88 could also be clarified. We wander if there is not a contradiction by asking a structured format for the availability of the information when the input format seems quite flexible.

Question 15:

Yes, we support the idea that English language (i.e. the current language in the sphere of international finance) is sufficient for accessing the regulated information on an OAM. We think that is not proportionate to impose searching functions with at least 20 different languages when the regulated information itself will be in English in case of a cross border issuer. We also think this approach should prevail at national level irrespective of the issue of an electronic network of OAMs.

Question 16:

Yes. However, it should be clear that the service support team could be present only during the working hours of the OAM.

Question 17:

Yes

Question 18:

We think it is difficult to take a position on this question because our understanding is that there is no proposal made and therefore nothing to agree or to disagree. We note that CESR decided to delay this issue of cost and funding. We understand this is not easy to deal with this issue. However, at the end of the day, the extent and the quality of the standards will directly be dependent on the level of financial resources at the disposal of an OAM.

Question 19:

On the issues linked to 'how to reach an agreement on interoperability', we do not support CESR's preferred approach be cause it creates too much financial and legal uncertainty for OAMs. These entities need to have a sufficient period of time where the technical standards are not going to be modified in order to amortise of the costs for complying with different requirements proposed by CESR. Moreover, CESR has not the legal status that permits a coordinated supervision of such network. Moreover supervision means day-to-day enforcement of principles to be designed by CESR itself. This is a case of confusion of powers where rule making and enforcement should be separated in accordance with basic democratic principles. There are no accountability rules and no evidence that CESR can impose its own views at national level on its own members. There is also legal uncertainty on the way CESR can impose something to a private entity not subject to its supervision.

Therefore, our preferred approach is the one with agreements between Member States for legal certainty reasons and protection of the rights of the OAMs.

On the choice between the possible networks, none of the four models proposed seems acceptable to us. As an alternative, we think that CESR should follow its proposed solution for transaction reporting in the context of the MiFID. If there are no other proposed solutions by CESR, we prefer model A for cost and efficiency reasons. We believe also this solution is in line with the spirit of the Directive it self. As a fall back position, if no agreement can be found on model A, we are not in favour of models B and C. We prefer that failure to find a solution should not lead to costly solutions without real added value.

On the issue of the content of the interoperability agreement, we think that it is not sufficient to have reference on the issuer and there is no international identifier for issuers for the time being. We think reference to securities is important because they already have an identifier. Moreover, for a large bank, we will receive thousand of different stored information from nearly all the different OAMs and in practice not relevant for the end user if there are no adequate searching criteria. At least, a reference to the type of securities could limit the number of queries (share, bonds, derivatives, UCITS…).

We have doubts that paragraph 228 is correctly describing that filing regime under the Transparency Directive in case of an issuer having at the same moment equity or low individual denomination debt plus debt with individual denomination above 50 000 Euro.

On the issue of costs and funding, it is too soon to give an opinion in the absence of the specific report to be prepared by CESR on this issue at a latter stage. However, we are interested to get some clarification on the scale of the interim period proposed by CESR. This is essential to have such information for estimating the time period for amortisation of costs supported by OAMs.

Question 20:

We do not agree. First, supervision does not mean unrestricted and free access to all regulated information to all regulated information stored by the OAMs. This interpretation is not in line with Community legislation. For instance, banks are under the supervision of national supervisors but there is no unrestricted and free access to all information on customers. This issue will be dealt at national level depending on the situation at national level.

In paragraph 261, it seems that there is confusion between the regulatory side (drafting regulation) and the supervisory side (checking compliance with regulation).

We think it is not desirable to mix at national level the regulatory and supervisory powers for obvious democratic principles applicable in Europe, notably on separation of powers. Moreover this issue is left to national discretion. This issue will even be more critical if the said competent authorities run themselves OAMs for conflict of interests' reasons. For profit activities are also subject to public procurement legislation.

We do not favour that the competent authority is involved in the appointment of the OAMs for several reasons. First, this prerogative is given to Member States and not competent authorities in the Directive. It could lead to breaches of public procurement legislation if the same person that will run the OAM influences the appointment.

Question 21:

No, we prefer an alternative approach in order to avoid overlapping legislation and duplication of supervision. We prefer the country of origin approach, which is at the heart of the Internal Market legislation and notably used in the Transparency Directive. Only one competent authority, the one of its registered office, should supervise an OAM.

Question 22:

No, OAMs need to have certainty on the standards to be applied. Therefore, we prefer binding solutions applicable at European level.

Question 23:

Yes subject to the evolution of the legal status of CESR and of its funding and functioning rules. Issues on conflict of interest with its members, independence vis à vis its members, accountability to European institutions and right of appeal of its decisions should be solved first.

Question 24:

Yes at the exception of one issue. We do not agree that national legislation on filing by electronic means may conflict with this legislation and therefore electronic filing should not be possible in all the EU Member States. Precisely, the Transparency Directive permits to avoid such conflict and always permits issuers to file regulated with electronic means in all the EU Member States. Therefore, it is important that a level 2 measures confirms the possibility of filing by electronic means by prescribing some technical details.

Question 25:

We believe that competent authorities should be subject the same rules as OAMs in order to avoid unfair discrimination and best practices.

Question 26:

We favour option a) because the Directive requires that there is always the possibility to make electronic filings in all Member States.

Questions 27 and 28:

Yes we agree. The standards should be identical with the ones adopted for OAMs.

Question 29:

Yes we agree

Question 30:

Yes, it would be desirable that CESR proposes specific forms in order to save time and money of issuers.

Question 31:

Our experience with frequent and numerous issuers is that it is less burdensome to impose common specific input standards compared to dealing with numerous standards.

Question 32:

Yes we agree with the above concepts of alignment. However, these alignments are to be decided at Member States in accordance with the Directive and not be decided by competent authorities.

Question 33:

No

Question 34:

No

Yours sincerely,

Société de la Bourse de Luxembourg
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