

AFEP

For the attention of the Secretary General

Dear Sir,

Please find attached issuer's comments in response to the consultation (CESR/05-267) launched by the CESR on 27 April 2005 regarding dissemination of financial information and other implementing measures for the Transparency Directive.

Issuers would like to make several comments relating to the dissemination of regulated information, including some which complement those made to the CESR during the previous consultation launched in October 2004. They relate to the parties involved (use of media by issuers and approval criteria for operators), dissemination methods (identification of people and conditions regarding the issuer's responsibility with respect to the dissemination requirement) and the powers given to the media.

In relation to half-yearly reports, given that the CESR is repeating its draft advice without any major changes, issuers would like to reiterate their main positions, which were sent to the CESR in response to the consultation it launched in December 2004.

Dissemination of regulated information

▪ The parties involved :

Do not require the issuer to make systematic use of several media other than his own site

Companies note with satisfaction that issuers are no longer required to use the services of an operator to disseminate regulated information. However, issuers believe that the systematic use of several media to disseminate the information, as envisaged by the CESR, would be excessive.

In addition to dissemination on their own sites, issuers, in fact, should be allowed, rather than required, to disseminate this regulated information through one or more channels of their choosing (financial web sites, electronic information providers, news agencies, the press, etc.).

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Establish criteria at European level relating to approval of operators by the relevant competent authorities

The selected operator should be subject to approval by a national competent authority, on the basis of criteria laid down at European level establishing minimum conditions for carrying out dissemination.

▪ ***Information dissemination methods :***

Supplement identification of the issuer with identification of the person responsible for communicating the regulated information

In order to take into account the fact that regulated information may be disseminated by persons other than the issuer (case of trading without the issuer's consent), companies recommend that the phrase "person responsible for communicating the regulated information" should be added to the CESR's draft advice, in addition to the phrase "identification of the issuer concerned".

Specify that the issuer has met his dissemination requirement by making the information available on line on his own web site or, if applicable, by sending the information to an operator or the media selected by the issuer

Companies would like this fundamental principle to be reiterated explicitly in the CESR's draft advice, since this states that issuers will only have met their information dissemination requirement when regulated information reaches the media.

▪ ***Capacity for editing information given to the media :***

Specify, if applicable, that the media must mention whether the regulated information they are disseminating is not complete or exhaustive

The capacity of the media for editing information could, in some cases, prejudice the quality of the regulated information published. Therefore, issuers recommend that the CESR specifies, if applicable, that the media must mention whether the regulated information they are disseminating is not complete or exhaustive.

Half-yearly reports :

Noting that the CESR is repeating its draft advice without any major changes, issuers would like to reiterate their main positions sent to the CESR during its consultation of December 2004.

In particular :

- Non-consolidated half-yearly financial statements should remain governed by the national law of the Member State,
- An issuer publishing consolidated half-yearly financial statements cannot be required to publish non-consolidated half-yearly statements,
- An issuer publishing non-consolidated half-yearly financial statements cannot be required to use the definition of related parties' transactions given by IAS 24.

Issuers would be pleased to enter into a further dialogue with the CESR regarding this subject matter.

Yours faithfully,



Alexandre TESSIER
Director General

CESR's revised draft Technical Advice on Possible Implementing Measures of the Transparency Directive
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Chapter I: Dissemination of regulated information by issuers

Firstly, the issuers note with satisfaction that in the introduction to Chapter I, in accordance with the position they had insisted upon in their response to the CESR's consultation of October 2004, the CESR is not requiring issuers to use the services of an operator to disseminate regulated information (§6: "issuers should be free to disseminate regulated information in the way they consider the best suited to their needs...."). As a result, the use of operators remains optional, whether they be commercial entities or competent authorities. Within this meaning, §56 of the CESR draft advice is acceptable to issuers, since it confirms that this decision is up to the issuers.

However:

- they do not share the CESR's analysis that issuers' responsibilities are only met when the information reaches the media,
- they are opposed to systematic recourse to media, as envisaged by the CESR, to disseminate regulated information.

We elaborate on these positions, particularly in response to question 1.

a) Dissemination standards***Q1 Do consultees agree with the above proposal?***

Of the various proposals issued by the CESR, the one that stands out is that dissemination of regulated information will occur only when it reaches entities that are able to distribute the information further and push it to the market (§12). Moreover, the CESR recognises that dissemination cannot provide every investor with all regulated information (§12). Finally, the CESR takes various positions concerning the role of the media (§12, 13, 15 and 18).

Except for the point that dissemination cannot provide every investor with all regulated information, the issuers do not share the CESR's positions concerning information dissemination and the role of the media.

Concerning the notion of information dissemination (§12)

The CESR considers that dissemination will occur when it reaches the entities that are able to distribute it further and push it to the market.

This point should be clarified in §57 of the CESR's draft advice which, at this stage, provides that the issuers' responsibilities, with regard to the dissemination of regulated information, will only be met when the information reaches the media.

According to the CESR, "media" should be understood as newspapers, news providers, news agencies and financial web sites.

For their part, the companies consider that:

- a) the issuers should not be required to make systematic and simultaneous use of entities that are able to reach the market, whether it be a competent authority, approved operator or media.
If the issuers choose to disseminate through a third party (competent authority, approved operator or media), its communication requirement must be met when the information is sent, this third party alone then being solely responsible for dissemination.
- b) if the issuer disseminates the information itself, its communication requirement must be met when the information is made available on line on its site, since most people across the Community could then have access to this information.
This on-line availability must take precedence over receipt of the regulated information by entities that are able to distribute this information further.

Concerning investors (§12):

Companies are favourable to the CESR's position that dissemination will not provide every investor with all regulated information and, as a result, they consider that a proper balance between practicability and the objective of dissemination must be achieved.

Concerning the role of the media (§12, 13, 15 and 18):

The CESR considers that:

- a) the issuer must disseminate regulated information by systematically going through the media (§12),
 - b) the media are under no obligation to make all of the regulated information they receive available (§13),
 - c) the dissemination requirements imposed on issuers by Article 21 of the Transparency Directive should mean simultaneous dissemination through various distribution channels, such as news agencies, newspapers with wide coverage and financial web sites (§15 and 18).
- a) Companies are opposed to issuers being required to go through the media systematically when they choose to disseminate regulated information themselves.

Companies are repeating their fundamental position that issuers must have the possibility of using their own web site only to disseminate regulated information directly, and to send this information to the media themselves.

If applicable, the issuer's site can provide all of the regulated and institutional information by itself and, as a result, provide a reliable, accurate and exhaustive source for investors and, in more general terms, any interested party.

In addition, issuers are recommending that §43 of the CESR's draft advice be amended accordingly so that the issuer's site can be considered an appropriate method of disseminating the regulated information.

- b) Issuers believe that giving the capacity of the media for editing information could, in some cases, prejudice the quality of the regulated information (periodic and ongoing information¹ within the meaning of Article 2-1-k of the Transparency Directive).

For example, it would be inconceivable to imagine a news agency or newspapers selecting a part of an annual report, accounts and so on, and paradoxical to ask issuers for exhaustive information, when the media could edit it without any objective criterion and without mentioning the fact that the information is incomplete.

Issuers consider that §68 of the CESR's draft advice should lay down that the media should mention whether the information is not complete or exhaustive.

- c) While recognising that, in accordance with Article 21.1 of the Transparency Directive, the media that the issuer can use must ensure effective dissemination, issuers consider that the simultaneous use of several media envisaged by the CESR for the dissemination of the information is excessive.

Besides disseminating it on their own sites, issuers, in fact should be allowed, rather than required, to disseminate this regulated information through one or more channels of their choosing (financial web sites, electronic information providers, news agencies, press, etc.).

In addition, issuers would like the second sentence of §47 of the CESR's draft advice to be amended in order to remove the mandatory nature of the multiple connections envisaged.

We propose that this sentence be amended as follows:

"CESR considers that these connections may include, at the choice of the issuer, connections with the key national and European newspapers, ..."

Q2 What distribution channels do consultees consider should be mandated? Please provide reasons for the answer.

The CESR considers that the issuer's dissemination requirements comply with the provisions of Article 21 of the Transparency Directive, provided that connections with the media include various mandatory connections with at least the main national and European newspapers, news agencies, web sites, etc.

Issuers are not favourable to these provisions as :

¹ periodic information: annual and half-yearly financial reports, quarterly information, interim management statements
ongoing information: information about major holdings, information aimed at security holders

- the issuer must be able to meet its dissemination requirements directly, either by using his own site or through dissemination to the media, or indirectly, through the competent authority or, if the issuer so chooses, a commercial entity,
- in accordance with our response to question 1, it is not desirable to make the various distribution channels described in §18 mandatory. In any event, the issuer should not have to disseminate simultaneously to “at least” various newspapers and, in particular, “specialist news providers”.

As a result, issuers are reiterating their position elaborated upon in response to question 1, and recommending that the wording of §47 of the CESR’s draft advice be amended.

Q3 Do consultees consider that CESR should mandate that the connections between issuers (either directly or through a service provider) and media be based on electronic systems, such as dedicated lines?

Q4 Do consultees consider that a specific method should be mandated? Which one? Please provide reasons for your answers.

The CESR is asking whether it should make it mandatory for the connections between issuers and media to be based on electronic systems, particularly dedicated lines.

In response to questions 3 and 4, issuers do not think it necessary to have any requirement concerning this connection, nor do it believe that any specific connection method should be laid down.

Q5 Do consultees agree with the approach of redrafting the required field of information, as proposed above?

Given that it is important to identify the issuer correctly, the CESR proposes replacing the “company name” with the more explicit “identification of the issuer”.

Issuers do not see any problem with this change, which should help to keep the public better informed.

However, they consider it necessary to supplement the identification of the issuer with the identification of the person responsible for the regulated information.

In fact, regulated information is defined in Article 2.1.k) as being any information that the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer’s consent, is required to disclose.

In order to take into account any cases of trading without the issuer’s consent, as mentioned in Article 2.1.k, companies suggest that the phrase “person responsible for communicating the regulated information” be added to §53 of the CESR’s draft advice, in addition to the phrase “identification of the issuer concerned”.

Q6 Do consultees consider that a specific method of issuer identification should, in addition, be mandated (such as the identification number in the companies register or the ISIN)? Which of these? Please provide reasons for the answer.

Q7 Do consultees consider that CESR should establish a method, or some sort of a code, by which there would be a single and unique number of identifying each announcement that an issuer makes, that is valid on a European basis and that could be used also for storage?

The CESR wishes to know whether a specific method should be imposed to identify the issuer (such as identification number in the companies registrar or the ISIN).

In response to questions 6 and 7, issuers do not consider such requirements to be necessary. It does not appear to be necessary to produce a method or code in this area when appropriate identification criteria already exist, such as company name or date of the publication.

Moreover, issuers consider the proposal outlined in question 7 to be unclear, since the methods are difficult to grasp and, probably, to implement, particularly on a European basis.

Q8 What methods do consultees suggest CESR should establish? Please provide reasons for the answer.

Cf. response to question 7: No method is necessary.

b) Dissemination methods

Q9 Do consultees agree with the above proposals? Please provide reasons for the answer.

The CESR wishes to find out the opinions of those concerned in relation to the dissemination methods chosen for dissemination carried out directly by issuers, or indirectly through operators.

Issuers deem it necessary to make a few observations about §25 of the consultation. Although stating that it does not wish to impose a dissemination method on issuers and that they are free to choose the model that best suits them, the CESR is, in reality, recommending two models. The first is comprised of “direct” dissemination of information by the issuer which, nevertheless, involves going through media. The second proposes “indirect” dissemination of information by the issuer, by going through an operator and the media.

Dissemination carried out directly by the issuers

Issuers are opposed to the approach considered by the CESR, which involves going through media to disseminate regulated information.

In fact, issuers deem it essential to be able to use their own web site to disseminate regulated information directly, without being required to send this information to the media themselves. The issuer’s site can, if necessary, provide all the regulated and institutional information alone and, as a result, provide a reliable, accurate and exhaustive source for investors and, in general, any interested party.

That aside, issuers consider that the standards proposed by CESR in §26 help to organise better dissemination of information to the markets and any interested party, and that it is right that these standards should apply both to operators and issuers.

Dissemination carried out indirectly, by going through operators

The second model recommended in particular by the CESR involves the issuer using the services of an operator.

In this case, issuers are repeating their position that operators should be approved (see response to question 15) and that, given the importance of financial communication, the standards proposed by the CESR and the minimum conditions for dissemination by service provider which apply to approved operators, should be supplemented by the following criteria:

- appropriate internal code of ethics,
- sufficient personnel.

Moreover, when the information is disseminated by approved operators, the CESR is requested to clarify how the addressees of this information and the responsibilities linked to this subject will be determined. In this respect, it seems fundamental that the approved operator should be responsible for the actual dissemination of the information, irrespective of the method used (Internet, media, etc.).

Q10 When the competent authority is acting as service provider, CESR considers that these competent authorities may not, as stated in the Directive, impede free competition by requiring issuers to make use of their services.

Do consultees agree with this approach? Please provide reasons for the answer.

The CESR considers that there is a risk of conflicts of interests when the operator is also responsible for other powers, such as the media or a competent authority could be. For example, the CESR considers that such an authority also acting as operator should not impede free competition by requiring issuers to make use of its services.

Companies would point out again that they are in favour of using the competent authority's site, if the issuer so wishes, to disseminate information.

Apart from the fact that it meets the qualifying criteria of confidentiality and security, this site also presents major advantages:

- it enables the public to carry out a "supervisory function", which is particularly useful in the area of permanent information,
- it is a guarantee of quality information intended for the broadest possible public.
- at the same time as alleviating information traceability constraints, it enables the regulator to directly ensure that the issuers meet their regulated information requirement.

Q11 When stock exchanges act as service providers, CESR considers that their admission to trading criteria on any of their markets can not mandate the use of their service as a service provider. Do consultees agree with this approach? Please provide reasons for the answer.

The CESR considers that there may be conflicts of interest if stock exchanges made admission to trading dependent on using their services as an operator.

Issuers are in favour of the CESR's position in §71 whereby a stock exchange should not make it mandatory to use its services as an operator at the time of admission to a market.

Q12 Do consultees agree that media should not be charged by service providers to receive regulated information to be disseminated by them? Please provide reasons for the answer.

Q13 Do consultees consider that it is possible, on a commercial basis, to mandate that media receive regulated information for free from service providers? Please provide reasons for the answer.

The CESR considers that media should not be charged as operators receiving regulated information that they have to disseminate by themselves. Moreover, the CESR wonders whether it is possible, on a commercial basis, to make it mandatory for media to receive regulated information for free from operators.

Not sharing the CESR's views (questions 12 and 13), issuers recommend that the costs be shared fairly between all those involved (issuers, media, operators).

When the information is disseminated by an approved operator, this operator must be able to invoice the costs to parties other than the issuer. In fact, the issuer can only bear some of this operator's dissemination costs.

Moreover, although "the issuer may not charge investors any specific cost for providing the information" (Article 21.1 of the directive), investors must bear the connection costs to the sites.

These clarifications should be added to §44 of the CESR's draft advice.

Q14 Do consultees consider it useful and practicable to require a document from service providers showing how they meet the dissemination standards and requirements? Please provide reasons for the answer.

The CESR wishes to find out the points of view of those concerned regarding the appropriateness of requiring a document from service providers/operators describing how they meet the dissemination standards and requirements.

Issuers are in favour of such a requirement. They believe that this information is important and necessary for issuers choosing, if applicable, to call on operators, in order to clarify their responsibility. It helps to reassure the issuer calling on their services, by making the role of operator more secure.

This document should both cover the general principles relating to the status of the operators and the operating rules specific to each of them, so making it possible to determine, for example, the methods whereby the addressees of the regulated information are identified.

Combined with the approval given by the competent authority (see response to question 15), this document enables the commitments of each party to be clarified.

Q15 Do consultees consider that CESR should undertake, at level 3, future work on how to address the concerns raised on how approval of operators is to work, even if approval is not mandatory? Please provide reasons for your answer.

The CESR considers that operators do not have to be approved and wonders about the appropriateness of dealing with approval criteria for operators at level 3.

Companies note that, under Article 21.1 of the Transparency Directive, the issuer has a dissemination requirement, and therefore a responsibility, on a European basis ("effective

dissemination to the public throughout the Community”). If the issuer chooses to disseminate his regulated information through operators, it is important to facilitate this choice and make it more secure.

In this context, issuers are repeating their position that the selected operator should be subject to approval by a competent national authority, based on criteria laid down at European level establishing minimum conditions for carrying out dissemination. Moreover, with transparency in mind, a list of approved operators should be published by the competent authorities and, in the context of permanent follow-up, updated at regular intervals (half-yearly/annually).

Chapter III: Half-yearly financial reports

Confirming its positions elaborated upon in the context of its consultation of December 2004, the CESR is considering, in particular, publication of non-consolidated financial statements drawn up by reference to IAS/IFRS standards for the half-yearly financial report. Moreover, it is confirming its positions concerning related parties’ transactions.

a) minimum content of the half-yearly financial report

Issuers wish to repeat the comments they made on this occasion with regard to the following points:

The consultation paper implies that the IAS/IFRS must be applied by all issuers publishing consolidated accounts:

- *Take into account the provisions adopted by the Member States with regard to non-consolidated financial statements*

In fact, it is not of general application for non-consolidated financial statements, which are governed by the national law of the Member State. With regard to such statements, even for those points subject to implementing measures (cf. Article 5.6 of the Transparency Directive), it is necessary to take into account the provisions adopted by the Member States in the context of the European Regulation on the application of IAS and of other Directives.

- *Dispense the parent company from publishing non-consolidated half-yearly financial statements*

Given that the non-consolidated financial statements of issuers required to draw up consolidated accounts are governed by the national law, it emerges from Article 5.3 of the Directive that the set of condensed half-yearly financial statements of such an issuer is prepared on a consolidated basis. The issuer cannot therefore be required to prepare a set of non-consolidated half-yearly financial statements as well. In other words, publication in consolidated form dispenses the parent company from publishing non-consolidated half-yearly financial statements.

- *As a result, mention explicitly that the advice, relating to non-consolidated half-yearly financial statements, only applies to an issuer that is not required to prepare consolidated accounts.*

According to Article 5.3, an issuer that is *not required* to prepare consolidated accounts follows the same principles for recognising and measuring as when preparing annual financial reports, which therefore applies mainly to its non-consolidated accounts. Therefore, within the meaning of Article 5.3, condensed half-yearly financial statements means the following:

- 1) For the issuer *not required* to prepare consolidated accounts, *non-consolidated* condensed financial statements prepared using the same principles for recognising and measuring as when preparing annual financial reports;
- 2) For the issuer *preparing consolidated accounts* in accordance with international accounting standards, *consolidated* condensed financial statements prepared in accordance with the international accounting standard applicable to the interim financial reporting.

It should be pointed out that a requirement relating to presentation formats and reporting applicable to *non-consolidated* half-yearly financial statements would not rely on any Community legal basis, could contradict the provisions laid down in accordance with the principle of subsidiarity and would have low added value since interim financial reporting is published on a consolidated basis.

As a result, it should be mentioned explicitly that the *draft CESR advice*, relating to non-consolidated half-yearly financial statements not prepared in accordance with international accounting standards, *can only be an obligation for an issuer not required* to prepare consolidated accounts.

b) related parties' transactions

Issuers wish to repeat the positions it elaborated on in response to the consultation of December 2004 on related parties' transactions.

It is possible to take European implementing measures only for the points laid down explicitly by the Transparency Directive, i.e., in this case, the condensed balance sheet and profit and loss accounts and explanatory notes on these accounts, where they are not prepared in accordance with international accounting standards.

Reporting on related parties, which is not referred to by the Directive, must therefore be excluded.