



European Association for Listed Companies

CESR

To Mr. Arthur Docters Van Leeuwen

Chairman

112-13 Avenue de Friedland

75008 Paris

FRANCE

Per e-mail to secretariat@cesr-eu.org

Brussels, 2 June 2005

Dear Mr. Docters van Leeuwen,

Re: CESR's second consultation dated 27 April 2005 (CESR/05-307) concerning dissemination of financial information and other implementing measures of the Transparency Directive

EALIC, the European Association for Listed Companies, aims to represent European listed companies and to promote their common interests on the European level. EALIC was incorporated in December 2002 as a non-profit association. Its membership is growing. Presently some sixty-five public companies are member. A membership list is attached for your convenience. (*Enclosure 1*)

EALIC refers to CESR's second consultation paper dated 27 April 2005 (CESR/05-307) concerning dissemination of financial information and other implementing measures of the Transparency Directive. Attached hereto is EALIC's response to CESR's questionnaire. (*Enclosure 2*)

EALIC apologizes for its late reply but hopes CESR will nevertheless be able to take EALIC's comments into account.

In addition to its present reply, EALIC wishes to bring again under CESR's attention the letter the former sent to CESR dated 28 January 2005 regarding the second part of CESR's advice on possible implementing measures of the Transparency Directive (CESR/04-511). It is attached hereto for your convenience. (*Enclosure 3*)

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

Yours sincerely,

Dorien FRANSENS
Secretary General

Enclosures: 3

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EALIC

European Association for Listed Companies

**Response to
CESR's second consultation paper dated 27 April 2005 (CESR/05-307) concerning dissemination
of financial information and other implementing measures of the
Transparency Directive**

2 June 2005

A. Connections requirements for information dissemination

“CESR intends to propose ... connections with media should include mandatory connections with at least the key national and European newspapers, specialist news providers, news agencies with national and European coverage and financial websites accessible to investors.” (§ 47 of the draft technical advice).

Q.1. Do consultees agree with the above proposal?

Q.2. What distribution channels should be mandated? Why?

EALIC would like to restate its position regarding the need for a single information filing system (managed by the competent authority, a market operator or a third party) that will concentrate the functions of filing, dissemination and storage (*See the letter EALIC sent to CESR dated 28 January 2005 regarding the second part of CESR's advice on possible implementing measures of the Transparency Directive (CESR/04-511)*).

In this regard, EALIC believes that CESR's technical advice should not deal with the relationship between issuers and media: it should rather focus on the need for appropriate links among distribution channels, so to support the set-up of the aforementioned single information filing system.

As specifically concerns dissemination, EALIC feels that an efficient system of dissemination should count on all of the three most relevant distribution channels: specialist news providers, news agencies with European coverage and websites. However, on the one hand, mandatory connections to newspapers seem to be redundant considering also that their speed of publication does not match the much faster pace of the market price movements. On the other hand, we believe that appropriate importance should be given to issuers' websites, which are called to play an important role under most Directives on financial services (see the Market Abuse and the Prospectus Directives).

Q.3. Should CESR mandate that the connections between issuers and media (either directly or through a service provider) be based on electronic systems such as dedicated lines?

Q.4. Should a specific methods of connections be mandated? Which one? Why?

EALIC welcomes the idea of a connection between issuers and media based on an electronic system of dedicated lines, because this will help the set-up of a single information filing system. It is,

however, doubtful of the possibility/opportunity of making it mandatory both because it would *de facto* force issuers to opt for dissemination operators' services and because it would involve *de facto* a regulation of the media.

B. Identification (issuer and announcement) requirements for information dissemination

“CESR agrees that correct identification of the issuer is important and has therefore redrafted ... the advice to refer to “identification of issuer”. CESR does not propose to set standards as to what means of identification should be used, as it will be for players involved to decide the adequate method of issuers identification.”

Q.5 Do you agree with the approach of redrafting the required field of information as proposed above?

EALIC agrees with the CESR approach of redrafting the required field of information, which would lead to better information to the market.

However, we believe it appropriate also to disclose the identification of the “person taking the initiative for giving the regulated information”, so to contemplate the case of admission to trading without the issuer’s consent. With respect to this, reference should be made to Article 2.1.k) of the Transparency Directive, under which “regulated information” includes 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. §53 of CESR’s draft advice should be integrated correspondently.

Q.6 Do consultees consider that a specific method of issuer identification should, in addition, be mandated (such as the identification number in the companies registrar or the ISIN)? Which of these? Why ?

In this area appropriate identification criteria already exist, such as company name or date of the publication. However, EALIC believes that ideally, the identification number for each issuer should contain characters that are issuer specific and characters that reveal which member state authority is responsible for its supervision.

Q.7 Should CESR 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 can be used also for storage?

Q.8 What method do you suggest CESR should establish? Please provide reasons.

EALIC believes CESR could 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 can be used for storage. Ideally the announcement identification number should contain the issuer identification number (if as above it would reveal also the supervising authority), the year of issuance and its related progressive number.

C. Additional minimum standards for dissemination service providers

“Whenever dissemination service providers provide other services or perform other functions (competent authorities, stock exchanges or the entity in charge of the central storage mechanism), service providers should keep these other services functions clearly separate from the one relating to the dissemination of regulated information”.

Q.9 Do you agree with the above proposal? Please provide reasons for the answer.

Q.10 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 you agree with this approach? Please provide reasons for this answer.

Q.11 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 you agree with this approach? Please provide reason.

EALIC recognizes the importance of levelling the playing field among potential dissemination service operators. As such, EALIC agrees with CESR on both accounts put forward in question 10 and 11.

Companies would like to stress again that they are in favour of using the competent authority’s website, if the issuer so wishes, to disseminate information, especially in the case where the single information filing system is managed by such competent authority. Such a website meets the qualifying criteria of confidentiality and security, and it also presents major advantages such as:

- it enables the public to carry out a “supervisory function”, which is particularly useful in the area of permanent information,
- it is a guarantee for quality information intended for the largest possible number of people;
- at the same time, it enables the regulator to directly ensure that the issuers meet their regulated information requirement.

Furthermore, issuers are in favour with CESR’s position that a stock exchange should not make it mandatory to use its services as an operator at the time of admission to a market (§71 of the technical advice).

D. Charges for dissemination services

Q.12 Do you agree the media should not be charged by service providers to receive regulated information to be disseminated by them? Please provide reasons for the answer.

Q.13 Do you consider 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.

EALIC worries that mandating free regulated information for media would have more impact on the wealth distribution among the actors involved in the dissemination process than on the availability of regulated information to the final investors. In fact, mandating free regulated information would mean forcing the issuer to bear the whole cost of the dissemination, while allowing the media to profit from selling information they didn’t pay for. EALIC would rather see market forces decide whether the media will either get regulated information for free or will pay for it. At least, market forces should decide on the way the information is delivered to them. In no case issuers should pay to send their regulated information to the media.

E. Regulatory approval of dissemination service providers

“CESR will not be mandating approval of operators. Notwithstanding this, competent authorities that wish to do so will be able to approve service providers. Issuers remain fully responsible for accomplishing dissemination of regulated information. CESR envisages that competent authorities may agree among themselves a procedure to deal with mutual acceptance of approved service providers.”

Q.14 Is it useful and practicable to require a document from the service providers showing how they meet the dissemination standards and requirements? Please provide reason.

EALIC welcomes the requirement of a document. This document should cover both 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.

Q.15 Should CESR 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 answer.

EALIC regrets that CESR is against a regulatory approval of dissemination service operators. Such an approval would not limit free provision of these services, since issuers are also allowed to organize the dissemination of regulated information by themselves.

Considering that, under Article 21.1 of the Transparency Directive, the responsibility for dissemination throughout the Community lies on issuers, they should be facilitated in the selection of operators. Therefore, selected operator should be subject to approval by a competent national authority, and such approval should be based on criteria laid down at European level establishing minimum conditions for carrying out dissemination. Moreover, a list of approved operators should be published by the competent authorities and updated at regular intervals (half-yearly/annually).

F. Market making exemption from shareholding notification

“CESR has decided that for the purposes of the exemption this non intervention in the management of the companies means that the market maker is not going to exercise any of the voting rights attached to the shares, nor to use shares to influence the management of the issuer concerned.”

Q. 16 Do you agree? Please give reason

EALIC agrees with CESR decision even though some additional details on the implementation of the principle would be welcome. For instance, can using shares to call for an extraordinary shareholder meeting be considered as “to use shares to influence the management of the issuer concerned”?

“For the purpose of this exemption, where the investment firm is conducting other activities in relation to the issuer in question, these different activities need to be identified. The firm will need

to be able to demonstrate upon request that market making and other activities are kept separate, but how this separation is achieved is a matter for the investment firms.”

Q. 17 Do you agree? Please give reason

Once again EALIC agrees with CESR’s desire to avoid creating further Chinese Walls inside financial intermediaries. However it would welcome some additional and more specific indications on the meaning of the need to be able to identify these different activities in order to avoid abuse.

“The market maker can make the declaration for claiming the notification exemption:

- a) at the start of the implementation of the Transparency directive;*
- b) whenever the market makers enters into a new contract whereby it will be performing market making activities;*
- c) at the latest within the time limit of Article 12.2, four trading days after the relevant threshold was crossed.”*

Q. 18 Do you agree? Please give reason

EALIC fully agrees with CESR as far as the declaration for claiming the notification exemption is concerned.

On the other hand, EALIC is doubtful on the content of recital 123 of the consultation paper stating: *“if a market maker wants to undertake any of the activities that is prohibited from undertaking in order to get the exemption it has to notify the competent authority accordingly. This will mean that the exemption no longer applies and the notification requirement provided for the transparency directive will apply.”* On the one hand the need of the double notification is questionable: disclosing the holding already implies that the investment company is giving up its own market making exemption. On the other hand, recital 123 is too benevolent towards investment companies: they would be able to build relevant shareholdings without notification and then, all of a sudden, make use of it provided a late disclosure of their holdings. EALIC believes it should be fair in these cases either to force the investment company to downsize any position in excess of the minimum trigger amount built under the market making exemption provision or to freeze the attached voting rights.

G. Shareholding aggregation exemption for undertaking controlling management companies

“Thus, the declaration (of independence) that needs to be submitted to the competent authority will need to include a reference of the name of the competent authority by which the different management companies that are not authorized under UCITS are supervised.”

Q.19 Do you agree?

EALIC fully agrees.

“If the parent undertaking (of the management company) decides it no longer qualifies (for exemption) then ...it will have to aggregate their holdings when making notification requirements, and, as such, it is not necessary to impose an additional administrative burden (notification of the end of the independence) on it.”

Q. 20 Do you consider there to be any benefit by CESR retaining its original proposal and requiring a subsequent notification from the parent undertaking when it ceases to meet the test of independence?

EALIC believes CESR should retain its original proposal as the independence of the management company regarding the voting rights of a company is a very sensitive issue for investors and for the market as a whole.

“Indirect instructions are any instructions, regardless of the form, even if general, that limits the discretion of the management company or investment firm in relation to the exercise of the voting rights in order to serve specific interests of the parent undertaking or another controlled undertaking of the parent undertaking.”

Q21 What are your views on this new definition of indirect instructions?

EALIC believes the notion of indirect instruction proposed by CESR properly deals with the concern.

H. Standard form to be used by an investor throughout the community when notifying the required information

“This means that for Article 12(1)(d) there is no need to apply an exemption to the general approach and that only those shareholders that have a 5% or more holding of voting rights need to be disclosed as well as the total number of proxies.”

Q.22 Do you agree with this approach?

EALIC agrees with CESR.

“Respondents to the consultation suggested that CESR should consider changing the “resulting situation” disclosure requirements when the notification falls below 5% to a simple notification of the fact that notifier’s interest is below 5%.”

Q. 23 What do you think the resulting situation information should be when the notification is of a holding below that of the minimum threshold?

EALIC believes CESR should change the “resulting situation” disclosure requirements when the notification falls below 5% to a simple notification of the fact that notifier’s interest is below 5%. There are indeed no reasons to treat a shareholder who has descended below 5 % differently from a shareholder who just achieved a 4.5% position in a company (no notification required regarding the exact amount of its shareholding).

Q.24 Should the standard form for all notification requirements include some form of issuer identification number? Please give your reason.

Q.25 Should CESR mandate what form this securities identification should be in? If so, please state what the standard should be and why.

EALIC believes that some sort of issuer identification is needed and that it should be standardised for all issuers.

WHO IS WHO IN EALIC ?¹

I. MEMBERS

A. Listed companies

Aegon	Marzotto
Alcatel	Mediobanca
Atos Origin	Michelin
Akzo Nobel	Océ
Assicurazioni Generali	OPG
Autostrade	Philips
Banca Nazionale del Lavoro	PSA Peugeot Citroen
BNP Paribas	RAS Riunione Adriatica di Sicurtà
Carbone Lorraine	Reed Elsevier
CIR	Royal Dutch Shell
CSM	Royal P & O Nedlloyd
DSM	Saint-Gobain
Enel	Sanofi Synthelabo
Eurotunnel	Sanpaolo IMI
Essilor International	SMI
Fiat	Solvay
Finmeccanica	Société Générale
France Telecom	Stork
Fortis	Telecom Italia
Fugro	Total
Hermès International	UCB
IHC Caland	Umicore
Inbev	Unicredito Italiano
Indesit Company	Unilever
Italcementi	Vallourec
Kas Bank	Veolia Environnement
Koninklijke Grolsch	Van der Moolen
Koninklijke Vopak	Vinci
L'Air Liquide	Vivendi Universal
L'Oreal	VNU
Lafarge	Wessanen
Lagardère	Wolters Kluwer

¹ Update 2 June 2005

B. Associations of listed companies

- Association Française des Entreprises Privées – (AFEP)
- Association Nationale des Sociétés par Actions (ANSA)
- Associazione fra le società italiane per azioni (ASSONIME)
- Association Belge des Sociétés Cotées (ASBL) - Belgische Vereniging van Beursgenoteerde Vennootschappen (VZW) – (ABSC – BVBV)
- Vereniging Effecten Uitgevende Ondernemingen (VEUO)

II. BOARD

- Alain Joly, Chairman
President Supervisory Board L'Air Liquide
- Cees van Lede, Vice Chairman
Supervisory Board Akzo Nobel
- Stefano Micossi, Vice Chairman
Director General Assonime
- Gabriele Galateri di Genoa, Director
President Mediobanca
- Baron Hugo Vandamme, Director
Chairman Roularta and Chairman Kinopolis
- Bertrand Collomb, Director
Chairman Lafarge
- Rob Pieterse, Director
Former Chairman Management Board Wolters Kluwer
- Dorien Fransens,
Secretary General EALIC
- Paul Cronheim, Vice Secretary General
Partner De Brauw Blackstone Westbroek
- Robert Baconnier, Vice Secretary General
Chairman and Managing Director ANSA

III. LEGAL COMMITTEE

- Paul Cronheim, Chairman

Partner De Brauw Blackstone Westbroek

- Robert Baconnier

Chairman and Managing Director ANSA

- Stephen Cowden

General Counsel and Company Secretary Reed Elsevier

- Carmine di Noia

Deputy Director General and Head Capital Markets and Listed Companies Division Assonime

- Sven Dumoulin

Senior Legal Advisor Unilever

- Sjoerd Eisma

General Secretary VEUO

- Bernard Field

General Secretary Saint-Gobain

- Dorien Fransens

Secretary General EALIC

- Koen Geens

Partner Eubelius

- Philippe Lambrecht

General Secretary Federation of Belgian Enterprises

- Christian Schricke

General Secretary Société Générale

- Alexandre Tessier

General Director AFEP

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Chairman
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75008 Paris
France

BY MAIL AND BY E-MAIL

Date 28 January 2005

Your ref. 04/562

Our ref. \276\20232217\b043-276.doc

Re. Second part of CESR's advice on possible implementing measures of the
Transparency Directive (CESR/04-511).

Dear Mr. Docters van Leeuwen,

Ealic, the European Association for Listed Companies, aims to represent European listed companies and to promote their common interests on the European level. Ealic was incorporated in December 2002 as a non-profit association. Its membership is growing. Presently sixty-five public companies are member. A membership list is attached for your convenience.

Ealic welcomes this open consultation regarding implementing measures of directive 2004/109/EC (the "**Directive**") and appreciates the level of detail of the document, which analyses carefully the implication of the Directive with respect to the consolidation of corporate information. Ealic is pleased to respond to the proposals set forth in the consultation document. In particular, Ealic would like to comment on the following issues:

(i) the need for a single information filing system

The Directive aims to allow investors to have an easy access to corporate information throughout Europe. The Directive distinguishes three cumulative disclosure obligations regarding corporate information. Firstly, issuers should file information with the competent authority (art. 19). Secondly, issuers should disclose information in a manner ensuring fast access to such information on a non-discriminatory basis. Finally, issuers have to make information available to an officially appointed mechanism for the central storage of regulated information. Issuers may not charge investors any specific cost for

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providing the information (art. 21). The competent authorities of the Member States should issue guidelines which aim to the creation both of a national electronic network among regulators, operators of regulated markets and national company registers and of a single electronic network or a platform of networks across Member States (art. 22).

The Directive differentiates among the three steps but does not necessarily oblige Member States to keep them separate. In fact, currently different rules apply in different jurisdictions. Ealic considers that a single action of issuers should suffice to ensure compliance with all three obligations. The issuer should be allowed to file the information with the competent authority through a single system (managed by the same competent authority, market operator or other) which stores it and, at the same time, makes it available to the entire market (or, quoting the Directive, to all its potential “end users” – art. 21, par. 2). This is already taking place in some jurisdictions.

If issuers would be required to disclose regulated information through three different channels, they would face unnecessary and burdensome costs in relation to the filing, dissemination and storage of information. Meanwhile, there would be limited possibilities to exploit economies of scale, which might not even benefit the issuer. For instance, economies of scale may enable operators providing dissemination services to also take care of the storage obligation at low costs while nonetheless charging full price for the service.

(ii) managing a single information filing system

In the event a single information filing system would apply, the question arises whether it should be managed by the competent authority, by the market operator or by others. An efficient “public” solution is the one applied in the US through EDGAR, the Electronic Data Gathering and Retrieval system, which is managed by the SEC. Issuers electronically submit their Exchange Act filings, which may be either accepted, rejected or suspended by the system. If accepted, they are stored and disseminated in a matter of minutes, if not seconds. EDGAR, in fact, is a bundle of three different subsystems: (i) receipt and acceptance; (ii) analysis and review, and (iii) dissemination. Consequently, EDGAR provides issuers with a “one stop shop” solution.

If an EDGAR-type solution would be applied in the EU, everyone, including issuers, should have free access to the system and to all the information contained therein. As a result, investors would have a reliable central information source where they can obtain at any time all financial information necessary to make investment decisions. Meanwhile, this solution would not create an obstacle to have corporate information vendors competing each other and selling the public information presented in different ways e.g. linked to other data or company profiles.

An alternative and equivalent solution could be the private one: that of the operator of the stock exchange (if it is a private entity) or of other entities, supervised by a



competent authority. The operator may be allowed to sell this information but under no circumstances should the issuer be required to pay to submit information to the system. Furthermore, the issuer should have free and unlimited access to all the information contained in the system. In light of the fact that issuers would be major suppliers of data, revenues if any should (partly) be rebated to the issuers.

(iii) concentrating filing, disseminating and storage functions

Finally, Ealic would like to point out that filing, disseminating and storage are all functions that are characterized by strong economies of scale and by strong network economies. In addition, fragmentation of places where information is available may hamper the aim of the Directive to facilitate investors in making well informed investment decisions. Therefore, Ealic considers that notwithstanding the benefits of a free market, in these circumstances efficiency may require a (natural) monopoly, as can be observed in the US.

Please find attached below Ealic's answers to the questionnaire, which offers a more detailed discussion of the issues referred to.

Sincerely,

P. Cronheim
General Secretary

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EALIC MEMBERS

Listed Companies

Aegon	Mediobanca
Alcatel	Michelin
Atos Origin	Océ
Akzo Nobel	OPG
Assicurazioni Generali	P & O Nedlloyd
Autostrade	Philips
Banca Nazionale del Lavoro	PSA Peugeot Citroen
BNP Paribas	RAS Riunione Adriatica di Sicurtà
Carbone Lorraine	Reed Elsevier
Carrefour	Royal Dutch Shell
CIR	Saint-Gobain
CSM	Sanofi Synthelabo
DSM	Sanpaolo IMI
Enel	SMI
Eurotunnel	Solvay
Essilor International	Société Générale
Fiat	Stork
Finmeccanica	Telecom Italia
France Telecom	Total Fina Elf
Fortis	UCB
Fugro	Umicore
Grolsch	Unicredito Italiano
Hermès International	Unilever
IHC Caland	Vallourec
Interbrew	Veolia Environnement
Italcementi	Van der Moolen
Kas Bank	Vinci
L'Air Liquide	Vivendi Universal
L'Oreal	VNU
Lafarge	Vopak
Lagardère	Wessanen
LVMH	Wolters Kluwer
Marzotto	

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Organisations of Listed Companies

- Association Française des Entreprises Privées – Association des Grandes Entreprises Françaises (AFEP)
- Association Nationale des Sociétés par Actions (ANSA)
- Assoziane fra le società italiane per azioni (ASSONIME)
- Association belge des sociétés cotées (ASBL) - Belgische vereniging van beursgenoteerde vennootschappen (VZW) – (ABSC – BVBV)
- Vereniging Effecten Uitgevende Ondernemingen (VEUO)

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Alain Joly, Chairman
President Supervisory Board L'Air Liquide

Morris Tabaksblat, Vice Chairman
Chairman Supervisory Board Reed Elsevier

Gabriele Galateri di Genola, Director
President Mediobanca

Baron Hugo Vandamme, Director
Chairman Roularta and Chairman Kinopolis

Bertrand Collomb, Director
Chairman Lafarge

Rob Pieterse, Director
Former Chairman Management Board Wolters Kluwer

Stefano Micossi, Director
Director General Assonime

Paul Cronheim, General Secretary
Partner De Brauw Blackstone Westbroek

Philippe Bissara, Vice General Secretary
Managing Director ANSA

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General Counsel and Company Secretary Reed Elsevier

Sjoerd Eisma
General Secretary VEVO

Bernard Field
General Secretary Saint-Gobain

Koen Geens
Partner Eubelius

Philippe Lambrecht
General Secretary Federation of Belgian Enterprises

Carmine di Noia
Head Capital Markets and Listed Companies Division Assonime

Christian Schricke
General Secretary Société Générale

Alexandre Tessier
Director AFEP-AGREF

Albert Verdam
Legal Advisor Royal Philips Electronics

Paul Cronheim
Partner De Brauw Blackstone Westbroek

Philippe Bissara
Managing Director ANSA

Ealic's position regarding the second part of CESR's advice on possible implementing measures of the Transparency Directive (CESR/04-511)

DISSEMINATION AND KEEPING OF FINANCIAL RECORDS

Question 1 & 2

EALIC agrees with CESR proposal.

Question 3

EALIC considers of vital importance that issuer is allowed to satisfy the obligations in terms of transparency, i.e. filing, dissemination and storage (recital 10, CESR Consultation Paper), sending all regulated information only once and to a single recipient charged with the task to ensure a "straight through processing" of the information received with respect to the competent Authority and to the markets.

EALIC has no clear preference, instead, regarding who should be designed as the initial recipient of the regulatory information sent by the issuer, in so far as the straight through processing of the information (filing, dissemination and storage) is ensured. Both a structure centred on a competing system of dissemination operators and one relying on the competent authority, acting either directly or through an outside contractor, are a viable solution for EALIC.

In EALIC opinion this second solution does not violate the directive where it states that *"the home member state may not impose an obligation to use only media whose operators are established on its territory"*. Since the directive does not define the concept of "dissemination operator", the term media should be intended as press or newswire agencies. CESR itself, in its consultation paper distinguishes "media" from "operators" (see figure 1 for instance) and states clearly that "issuer may undertake the dissemination of regulated information by themselves without using dissemination operators" (recital 7). This opinion finds further support in the article of the Directive that invites competent authorities to set guidelines aimed to establish an electronic network, at national level and across Member States, between securities regulators and operators of regulated markets in order to further facilitate public access to information. This article would, otherwise, largely be meaningless.

Since "CESR is not mandating that issuers use operators to disseminate regulated information" (recital 9 of the Consultation Paper), EALIC invites CESR to craft a system enabling a straight through processing of regulated information even for the issuers that decide not to use dissemination operators. Else, the part of recital 9 quoted above would be largely disattended.

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In short, EALIC agrees with CESR that an issuer should be able to satisfy all requirements to disclose regulated information by sending it only once, even though, in EALIC's opinion, this may happen not necessarily through "an operator".

Question 4

Figure 1 offers only a partial view of the structure of the complete cycle allowing the straight through processing of regulated information put forward in question 3. Three important aspects are missed:

- a) how the system would work should the issuer choose not to use a dissemination operator;
- b) how the filing works;
- c) how information flows with the central storage mechanism are handled.

With respect to point c), EALIC understands that the storage mechanism is discussed further in a subsequent part of the consultation paper. However, since issuers' basic interest is to avoid the risk of a burdensome and pointless replication of compliance acts, a more integrated graphical representation of the proposed system of the filing-dissemination-storage cycle is desirable.

Finally, figure 4 explicitly describes a pricing structure which needs a more careful analysis. The Directive does not imply that issuers should necessarily pay a fee to operators, given that they may charge a fee to media and/or raise money from other sources (advertising, ...): issuers should not pay additional costs to disseminate information which by the way they have to put also on their web site. The general criteria of Figure 4 (see the upwards direction of the "fee arrows") are that media and investors pay the above entity for information received: the full coherent application of these criteria should imply that operators should eventually pay issuers for information that they will then resell.

Question 5

EALIC agrees that operators should be subject to approval and monitoring by competent authorities. As a consequence of it, however, issuers should be considered, whenever possible, to have fully satisfied their regulatory obligations concerning filing, dissemination and storage right upon receipt of the regulated information by the operators they choose ("one stop shop" principle). Doing otherwise considerably weakens the case for setting up and running a system of approval and monitoring of dissemination operators.

Question 6

EALIC agrees on the minimum standards proposed.

Question 7

The principal concern of EALIC is to ensure a straight through processing of regulated information at the lowest possible cost both for the issuer (information producer) and for the investor (information consumer).

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In EALIC opinion, if issuers are required to use the services of an operator, the latter should be approved and monitored by the competent authority which should approve its hypothetical fees; the issuer should be considered to have fulfilled the filing and the storage obligation, as well as the dissemination obligation, upon receipt of the information by the operator.

In no other case, EALIC believes it could be justified to require issuers to use the service of an operator for dissemination of regulated information.

Question 8

EALIC believe that recital 21 of the Consultation Paper needs further consideration. Competent authorities should be let free, as some of them currently do, either to act as full fledged operator, maybe outsourcing some activities to outside contractors, or competing with other operators for dissemination. EALIC is concerned neither by the risk of weakened commercial incentive for other operators to provide alternative dissemination services in that particular competent authority's jurisdiction, nor by the conflict of interest issues that may arise where a competent authority both acts as a dissemination operator and approves other operators.

EALIC believes that the industry of handling the filing, dissemination and storage of regulated information shows, as a whole, many of the typical traits of a natural monopoly. Many benefit in terms of cost saving and fast access on an equal basis to regulated information for all investors may only be obtained through vertical integration and consolidation.

EALIC also recognizes there is some merit in the opposite view held by CESR that competing dissemination operator may foster innovation and quality of service. However, so far no hard evidence has been produced showing those benefits outweigh the previous one.

Under these conditions, EALIC considers appropriate to allow each Member State to opt for the regulatory model of filing, dissemination and storage of information which is felt most appropriate for its national jurisdiction, being it based either on a system of competing dissemination operators or on the competent authority acting directly as a dissemination operator, as well as receiver of the filing and central storage mechanism, maybe outsourcing some of the required activities to third party contractors making use of performance based contract provisions.

In 2001, the UK opted for a regulatory information dissemination structure based on a system of competing operator only after having carefully considered also the options of a single regulatory news service handled alternatively by the FSA, the London Stock Exchange or by a third entity on a commercial basis.

EALIC believes to be appropriate to let other jurisdictions to carry out the same cost/benefit analysis among these alternatives and choose the one that fit best their needs and peculiarities. At least some of them are fully compatible with the high level principles set forth by the relevant articles of the Transparency Directive.

EALIC is concerned that a competing system of dissemination operators may determine both lower benefits for investors and higher costs for the issuer in monetary and non

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monetary terms compared to other alternatives currently available in some member countries.

According to simple preliminary calculations, based on the UK experience, the system of competing operator may turn out to be much less beneficial than expected, especially considering that over the last three years technological advances have drastically reduced the cost of setting up and running the system.

In order to undertake more informed decisions, however, EALIC invites CESR to investigate more in detail the cost/benefit of the different solutions, either comparing different national experience or through a backward analysis of the UK experience.

Question 9 – 10

EALIC considers actual and relevant the risk that regulated information may not reach every investor throughout the EU and agrees on the need to address it properly. Among the three possibilities to address this issue suggested by the consultation paper, EALIC preference goes to the third one (the central storage mechanism could make regulated information available within a reasonable time frame) believed to be the most cost effective, the most easily accessible by the investors, the one that avoids the risk of fragmentation implied by the other proposed solutions.

EALIC believes this fact strengthens the case for a vertically integrated and nationally (or European) consolidated system of filing-dissemination-storage of regulated information vis-à-vis a system of competing dissemination operators.

Question 11

As already discussed, while EALIC agrees with CESR that “it is highly desirable that issuers employ one method of dissemination”, EALIC does not share the absolute faith on the superior quality of a system of competing dissemination operators and separate central storage mechanism.

The alternative solution based on a vertically integrated and national consolidated system of filing-dissemination-storage activities seems more promising in terms of cost and quality of the service (fast and potentially equal access by the investors to a consolidated data base of regulatory information).

On the other hand, its shortcomings in terms of slower adaptation over time to technological innovation and attention to service are hard to prove and, even if present, may be largely mitigated through appropriate governance and/or contractual solutions. Issuers, investors and media have all a direct stake in preserving a highly efficient process of filing, dissemination and storage of regulatory information and may work together with the competent authority to ensure that the system adopted evolves according to the most advanced information technology available. Performance based contract provision may also be fruitfully used.

Question 12

Please, see previous answer.

Question 13

EALIC agrees with CESR advice for the reasons set forth in the consultation paper.

Question 14

This question refers to “regulated information” as annual and half yearly financial report, while the directive uses the same wording to include also inside information due to the market abuse directive.

EALIC agrees on establishing a minimum time period (below the 5 year threshold) for which these reports should be made accessible on central storage mechanism to end users. The issuers could choose to use the storage mechanism for the remaining period (up to the fifth year) or use their website. Central storage mechanism should in any case provide for a technical device to maintain for five years these reports.

With respect to inside information, a cost/benefit analysis should be undertaken, given the different amount of information to store: an appropriate mix of central storage mechanism and issuer’s website should be set.

CENTRAL STORAGE MECHANISM

Question 1

EALIC agrees with CESR interpretation

Question 2 – 3 - 4

EALIC does not consider storage of regulated information by type to be a viable option since it would both determine a pointless duplication of costs and slow the access to information for investors. Please, also refer to our answers to the questions of the previous section.

Question 5 – 6

No, EALIC does not consider a multiple competing national mechanism for storing regulated information to be a viable option for the same reasons given above: it would add an unnecessary burden on issuers and entail higher access costs to investors.

Moreover, having multiple competing mechanisms seems to EALIC incompatible with the key qualification the Directive specifies for the storage mechanism: central. Either there is one central storage mechanism, or there are many competing mechanism.

Question 7 - 8

EALIC believes that having only one storage mechanism nationally is not just a viable solution, it is the best solution.

While EALIC fully agrees on the plus of this solution underlined by CESR in its consultation paper, EALIC does not worry about any of the potential disadvantages CESR also suggests in recital 59 of its consultation paper:

- a) the lack of commercial incentive to continually provide high standards to investors and upgrade its systems should not be a cause of concern due to the competition among different national financial centres and may be further mitigated by the choice of a proper governance model leveraging on the direct interest that investors, issuers and media share in relying on an efficient storage mechanism;
- b) the lack of services offering value added should not be feared since nothing prevents the operator of the central storage mechanism to offer both a basic access to its data, maybe for free, and a premium access tailored to any particular investment needs in exchange for a fee. Else it may allow business media to purchase its data and resell it properly repackaged to meet any type of investors' needs as done by the SEC with Edgar dissemination subsystem;
- c) the risk of higher charges on issuer in order to provide access to all regulated information to investors for free is nil since the equivalent system available in the US (Edgar) is able to fund itself just through the fees collected selling data to the media agencies, while allowing retail investors to access for free the entire database. Moreover, the directive does not prevent a central storage mechanism to charge retail investors for accessing its data. Recital 25 states that access may be offered at an affordable price.

Question 9- 10

EALIC believes that access to regulated information through a competent authority website is a superior option only if a system of multiple national central storage mechanism is established for the reasons discussed by CESR in its consultation paper. Should a single central storage mechanism exists nationally, it would not make much difference to access regulated information through the competent authority website or tapping directly in the storage. In this case, EALIC sees neither relevant benefit nor relevant cost in differentiating the access: basic services through the competent authority website; value added services offered directly by the central storage mechanism. The central storage may easily handle directly both a free channel of access for investors requiring just the basic services and a paid channel of access for investors interested in value added services. Else, investors may purchase value added services through external media services which tap in the storage database for a fee. Even though only one central storage mechanism is active nationally, it is worthwhile to establish cross hyperlinks between the competent authority's website and the central storage website.

Question 11-12

EALIC reiterates the need to offer the issuer the possibility of relying on a straight through processing of regulated information. Once the information has been filed with the authority or sent to an operator for dissemination, the issuer should be able to rely on an automatic execution of the two other steps: dissemination and storage in the first case; filing and storage in the second one. EALIC opposes the possibility that issuers can be obliged to submit twice or three times the same regulatory information to satisfy the filing, dissemination and storage requirements.

Question 13

EALIC considers that, should the straight through processing of regulated information be ensured, the question would become irrelevant.

In the unfortunate case this solution is not pursued and the question becomes relevant, EALIC considers the first option to be the fairest to the issuer, even though, the second option may be the one that optimize the trade off between “the issuer’s needs” and “the investor protection need”.

Question 14

Yes, EALIC believes all price sensitive information should be made available in real time by the central storage mechanism to moderate the effect of “black holes” resulting from the dissemination process. As discussed also in the answer to question 9-10 of the previous section concerning information dissemination, this fact strengthens the case for establishing a system allowing a straight through processing of regulatory information.

Question 15 and 16

EALIC agrees that it is less urgent for the central storage mechanism to make accessible non price sensitive information compared to the price sensitive one. However, a system of straight trough processing of regulatory information offering a “one stop shop” for the issuer would make this question less relevant. After the filing, all the information would become immediately available for storage.

Question 17 - 18

EALIC considers that commercial entities accessing regulated information in the central storage mechanism should be charged for the service. In the US, those charges are so relevant to fund entirely the cost of running the subsystem of EDGAR used for data retrieval while offering access for free to retail investors.

Even though recital 25 of the directive allows central storage mechanisms in EU Member States to charge affordable prices even to retail investors, EALIC supports the possibility to offer retail investors free access to basic services in order to foster shareholder mentality and education among the general public.

This should not prevent the central storage mechanism from charging investors on contractual basis for any additional value services, if any, they may ask for.

As for issuers, it should be considered that they already pay regulatory fees to the competent authority and listing fees to the regulated market trading its shares. Where the central storage mechanism is run by either the competent authority or by the regulated market, issuers fund the storage mechanism through part of these fees.

Should the central storage mechanism be run by a third for-profit party, funding should derive by media or other sources even if issuers may have to sustain part of the costs of running the mechanism paying separately for the storage service according to a “pay as you go” formula.

Overall, it seems a secondary matter to define if and eventually how the issuers have to pay for the straight through processing of their regulated information (filing-storage-

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dissemination): eventually, it could be either according a pay as you go formula; a flat periodical fee for the service; the annual contribution to the competent authority.

Since an informationally efficient stock market generates relevant positive externalities for the society as a whole, EALIC also considers appropriate to cover part of the costs of operating a central storage mechanism with funds belonging to the general budget of the financial market authority. In the end, such mechanism performs a public notary function.

Question 19 - 20

In EALIC's view, the central storage would be best managed by the competent authority as it basically relates to a public notary function. EALIC supports this solution also because the competent authority may facilitate the realization of a straight through processing of the information from its filing to its storage.

EALIC is not convinced by the potential shortcomings of this option suggested in the CESR consultation paper.

As for the risk of a less likely offer of any value added service, the simplest solution is to let the central storage mechanism to offer the basic services only, while allowing other business media to access the database in exchange for a fee in order to assemble and sell value added services to the investors.

As for the risk of a low level of service due to the plurality of objectives pursued by the competent authority, a simple solution may be outsourcing to a third party some of the more technical function required by the management of the central storage mechanism, as done by the SEC in the United States with respect to the retrieval subsystem of Edgar. Performance based contract provisions can be used.

As for the cost and benefits considerations determined by the formation of a monopoly over access to regulated information, the latter appears to outweigh the former (natural monopoly situation) due to the potential cost savings and to the benefits associated with consolidation and straight through processing of regulated information, especially if the system is not run for profit.

Question 21-22

EALIC considers that a differentiated approach according to the type of regulatory information may be a valid solution in order to better manage the trade off between the need to ensure that issuers are meeting their regulatory obligations and the need to allow fast access to the information for investors. Ex post options should be favoured. Such considerations strengthen the case for a system allowing a "one stop shop" for the issuer with respect to its filing, dissemination and storage requirements: a straight through processing of the regulatory information optimizes the terms of this trade off.

Question 23-24

EALIC believes that a joint effort of issuers, exchanges and authorities should lead to standards in an acceptable time frame. However, EALIC believes that an indication of suggested input standards may be useful even at this stage and it should be provided.

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Questions 25

In EALIC opinion security measures relating to the processing of unpublished regulated information should be dealt within the standards set out for the initial transmission by the issuer to either operators, central storage mechanism or competent authority for filing, whichever comes first. If the “one stop shop principle” is implemented, a straight through processing of the information would then follow.

Question 26-27

EALIC agrees that a central storage mechanism must ensure that the regulated information it holds is complete and unedited since the basic services it is called to provide to the investors’ community is essentially a notary function. Any additional manipulation of the data it performs should be seen as a value added service, whose production and distribution may be left to private business media on commercial terms.

Question 28

EALIC believes that a central storage mechanism should be only obliged to ensure that regulated information it receives is from an authentic sources, as it is the issuer which is liable for the released information. Should a “one stop shop solution for issuer” be implemented allowing the straight through processing of regulated information, the burden imposed would be irrelevant.

Question 29 - 30

EALIC believes that a central storage mechanism should be obliged to record date and time on which it receives regulated information, as well as the time of storage both for performance be measured and for the benefit of investors.

Question 31 - 32

EALIC agrees with CESR position both on holding all regulated information in an electronic format and on the recording of the given list of reference data for each piece of regulated information.

Question 33

EALIC does not believes that central storage mechanism should be obliged to offer its internet based services (namely instructions for navigation and search fields) in all Member States languages. Since issuers is required to publish the information in the language accepted by its member state authority and, if admitted on another market also in a language customary in the sphere of international finance, it does not seems particularly useful to help a Greek investor to navigate in the Italian central storage mechanism looking at instructions written in Greek if the document it is going to retrieve and consult is written in Italian and English.

Question 34

EALIC believes the central storage mechanism should be obliged to offer its basic services according to the 24/7 rule. Value added services, however, if offered, should

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be made available according to pure business considerations. Essential maintenance or upgrade of the system should be planned to take place, as much as possible, when trading and business activity is suspended in all member states (nights and bank holidays common to all Member States).

This requirement becomes important should the central storage mechanism serve also as initial feed of the dissemination process in a structure of a straight through processing organized as follows: filing-storage-dissemination. It is also important should the central storage mechanism serve to mitigate the risk of potential black holes in the dissemination process, as suggested by CESR.

Question 35

It depends on how the straight through processing of the regulated information sent by the issuer is organized. In principle, EALIC agrees that for certainty reasons the system must be able to detect in any moment in time where the information is currently available. A procedure set to provide confirmation of the receipt of the information is, therefore, useful.

Question 36-37

EALIC believes issuers must be obliged to submit regulated information in hard copy form if the electronic service used to access the integrated straight through processing system of regulated information is unavailable.

Question 37-38

EALIC believes the central storage mechanism may offer at a cost a customer service support and helpdesk services on the basis of purely business considerations. It should be obliged to perform these activities only if they are considered vital to ensure a reasonable easy access to the stored information (i.e. in case of partial system breakdown).

Question 39

EALIC agrees with CESR's position that a demarcation of regulated information is needed.

Question 40

EALIC believes the central storage mechanism should make its basic services available to investors for free, charging only media accessing information to repackage it and sell premium services (and/or charging for premium services sold directly to investors).

Due to the positive externalities the central storage mechanism may generate for society as a whole, EALIC believes that part of its cost should be covered by public funding.

Question 41-42

EALIC agrees with CESR interpretation and proposal.

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Question 43-44

EALIC does not agree that bodies other than national securities regulators or operators of regulated markets should necessarily become the primary actor in the receipt, processing and publication for regulated information.

EALIC therefore questions recital 222 of the consultation paper stating that “CESR questions the necessity or desirability, for the purpose of market transparency, of creating links between national securities regulators and operators of regulated markets”.

In EALIC’s views, none of the basic principles set forth by the Transparency Directive requires to establish a fragmented and competitive system of dissemination operators and central storage mechanisms. Other solutions are also viable.

EALIC believes each member state should be free to choose the alternative it feels more appropriate in so far as the basic principles established by the directive are held up. Establishing links between securities regulators and operators of regulated markets may then become appropriate.

Question 45-46

EALIC considers beneficial for investors to create a single access point to all information concerning companies (statutory information, financial reporting, market information, market quotes, ...) and beneficial for the issuers to remove the need to duplicate information required by different regulations

Question 47-48-50-51

EALIC believes the central storage mechanism to be a good example of a natural monopoly situation. It would then welcome as a long term goal the establishment of a single European mechanism. EALIC understands that the transition phase will take time and welcome efforts useful to shorten it.

EALIC does not agree that economies of scale would also be gained in case of multiple central storage mechanisms operated commercially.

EALIC believes that central storage mechanism should be operated by the competent authority which, much alike what happens in the United States for the dissemination subsystem of EDGAR, transmits accepted information submissions to an external contractor who then transmit them to its direct-feed subscribers.

Question 49

EALIC believes that the positive externalities associated with the central storage mechanism justify a partial public funding of its operations. Based on Edgar experience, however, it appears there would be a minimal need of such extra funding. In the US public funding is used to support the filing and the analysis of issuers’ information. The cost of the retrieval subsystem is covered entirely by the fee negotiated with the contractor that recovers them charging large scale direct feed subscribers.

Questions 52-57

EALIC agrees with CESR suggestions and opinions.
