EALIC

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, 8 September 2005

Dear Mr. Docters van Leeuwen,

Re: Mandate to CESR regarding technical advice on possible implementing measures concerning the Transparency Directive : Storage of regulated information and filing of regulated information - Call for evidence

EALIC, the European Association for Listed Companies, aims to represent European listed companies and to promote their common interests on a European level. EALIC was incorporated in December 2002 as an international non-profit association. Through its current member-base of five national associations of listed companies and some sixty-five public companies from France, Belgium, The Netherlands, Italy, Portugal and Spain, EALIC represents to date hundreds of issuing companies. A document describing who is who in EALIC is enclosed for your convenience. (*Enclosure 1*)

EALIC would like to refer to CESR's Call for evidence CESR/05-493 dated July 2005 regarding possible implementing measures concerning the Transparency Directive and in particular the role of the Officially Appointed Mechanism (OAM) for the central storage and filing of regulated information. Article 21, paragraph 2, of Directive 2004/109 on Transparency requirements provides that the OAM should "*comply with minimum quality standards of security, certainty as to the information source, time recording and easy access by end users*". Views are being solicited on possible implementing measures concerning these minimum quality standards that should be met by the OAM.

EALIC fully supports adherence by OAM to a certain number of quality principles to enhance security of storage, authentication of information source, easy access by investors. It considers, however, that these principles should remain broad-based with a view not to constrain the development of storage mechanisms. EALIC is therefore of the view that it might be premature at this stage to mandate comprehensive and detailed standards.

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Attached hereto, you will find EALIC's detailed answer to the Call for evidence. (*Enclosure 2*)

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

Yours sincerely,

Dorien FRANSENS
Secretary General

Enclosures: 2

EALIC

European Association for Listed Companies

EALIC'S ANSWER
TO
CESR'S CALL FOR EVIDENCE

CESR/05-493 DATED JULY 2005

MANDATE TO CESR REGARDING TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING MEASURES CONCERNING THE TRANSPARENCY DIRECTIVE - STORAGE AND FILING OF REGULATED INFORMATION

DEADLINE : 31 AUGUST 2005

EALIC considers the development of a European network for storage of regulated corporate information a crucial step in the development of an efficient and integrated European capital market.

Following the invitation to submit views on what CESR should consider in its technical advice to the European Commission, EALIC takes the opportunity to provide some general comments on the results achieved so far since CESR Progress Report, ref. 05-150b and some specific indications on the issues highlighted in the 3rd mandate.

GENERAL ISSUES ON ACHIEVING INTEROPERABILITY

a) EALIC agrees with the Commission when it envisages a future European architecture for storage of regulated information based on an integrated network of national databases offering a one stop shop for end users. It thus becomes crucial to achieve an agreement on technical requirements to allow interoperability of the Officially Appointed Mechanism (OAMs), as well as to provide a governance solution to properly manage cooperatively ongoing changes of the agreement's content. Because of this, EALIC is sceptical that a system based on multiple OAM run by commercial entities would produce, through the competitive dynamics, a better service at a low cost and with a higher rate of innovation than an alternative system where the authorities directly take charge of the task. At best, the need of an agreement to ensure interoperability would help privately run OAM to reach a collusive equilibrium with lower innovation rate and higher cost for users. At worst, competing OAM operating in different countries may make interoperability even tougher to achieve to protect their home market.

b) The review of the existing system undertaken by CESR has revealed that about half of the member states have storage facilities in place. The obvious desire to avoid wasting any past significant investment made by member states on existing storage facilities should not, in

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EALIC's opinion, slow the development of an up to date, state of the art integrated European storage facilities. As CESR recognizes, some of these facilities cannot be networked and often they provide information in static formats, strongly discounting their value and usefulness for potential users. EALIC agrees that data must be received and stored in identical or at least compatible formats with all the references needed to simplify database queries, searching procedures, time series and cross section comparison of filings, and to perform complex evaluations to support financial analysis and decision making.

c) To this end EALIC feels that all effort should immediately be put in developing common technical standards for the storage of regulated information and for accessing and making use of it. This means to agree on the storage format of the information, on the technical features of the storage mechanism, on the structure under which information are organized and categorized in the storage mechanism and on a specialised search engine. Coordination on the medium to be used and the procedure to be followed to store the data is useful, but less urgent, to achieve interoperability across storage systems for end users even though the formal mandate to CESR, together with the minimum quality standards of easy access by the end users, asks about the minimum quality standards of security, of time of recording and of certainty as to the information source. Once appropriate standards have been developed, a request for proposal can be issued, inviting both IT companies and current storage mechanism to provide implementing solutions. A pilot phase can then be started with a pilot system opened for volunteers storing regulated information under the new standards and for some OMA to share this information on their newly developed network. The evaluation of the pilot experience may raise request for changes that must be addressed before moving to the operational phase.

d) EALIC believes that CESR should take the lead in managing this whole process organizing appropriate working group aimed to develop the needed common technical standards according to a predefined timetable and in full compliance with the new legal framework. Representatives of existing OAM, IT providers, issuers, investors, all divisions of market supervisory authorities dealing with issuers' regulated information and stock exchanges should participate in this working group. Before deriving their conclusion, this working group should run extensive consultation with all interested parties in the financial industry.
A similar panel of people, always under the sponsorship of CESR, should undertake the task to evaluate the pilot phase, supervise the beginning of the operational phase and, afterwards, periodically assess the performance of the system, suggesting any improvements the experience, changes in regulations or advances in technology will make worthwhile. EU funding should support the development of the new system.

MINIMUM QUALITY STANDARD OF SECURITY

EALIC believes the medium for storing regulated information should be a secured internet base technology. The storage facility should be based on a commercial off the shelf software platform able to ensure both 24/7 capture of transmitted information and 24/7 access by end users with minimum downtime and should be easy to use. Edgar experience suggests it is possible to aim at a 99.9% on line availability for filers and users, as well as at a success rate above 95% in the first time attempt to file any document. The SLA with the IT company providing the technical maintenance and assistance should make explicit mention of these target. The platform should run on server hosted by the same IT company whereas the back up facilities should be located at least 200 km away, be synchronized on a regular periodic scale and be potentially activated in just a few hours whenever an emergency situation arises. Hardship exemption form electronic filing obligation should also be regulated in detail.

MINIMUM QUALITY STANDARDS OF CERTAINTY AS TO THE INFORMATION SOURCE

In order to ensure a minimum quality standard of certainty as to the information source, EALIC believes that the following identification system should be established:

- the OAM should assign an ID to each issuer, a main password to the issuer's employee responsible for filing regulated information with the OAM and same secondary passwords to alternate representatives of the issuers. Whereas the main password allows full operational capacity in handling the relations with the OAM, the secondary passwords shall provide limited power whose boundaries are pre authorized by the person with the main responsibility;
- the issuer can also delegate the transmission task to a filing agent of its choice, retaining, however, full responsibility for ensuring that correct information is given. When filing on behalf of the issuer, the filing agent should first identify itself with its own username and password, then should input the username and password of the issuer. Full information on each one of the issuer's employees authorized to transmit regulated info and on the filing agent should be given to the OAM on an appropriate form.

MINIMUM QUALITY STANDARDS OF TIME RECORDING

a) EALIC agrees it is desirable to require issuers to use input standards and templates for regulated information as a condition for the filing of information with the OAM.

b) EALIC believes some sort of validation procedure should be in place before end users can access regulated information on the storage mechanism in order to preserve the reliability of the stored information for the public. The validation procedure should take as short as possible to maintain the possibility for end users to access regulated information in "almost" real time, especially should the information be price sensitive. Submission should be classified in three groups: accepts, rejects and suspend. EALIC, however, believes it is a waste of resources to duplicate the validation procedure because of the filing with the competent authority on one side and the storage at the OAM on the other side. It then urges CESR to consider the possibility to merge the two processes, filing and storage, in one much alike the experience of Edgar in the US.

c) EALIC believes an important issue for quality standard of time recording arises in connection with hardship exemption, both temporary and continuing, from electronic filing. The OAM must define procedures to allow issuer both to claim a temporary hardship exemption, should it experiences technical difficulties in electronically transmitting the data, and to ask permission for a continuing exemption, should the size of the document to be filed be such to make a timely electronic filing impossible. These procedures should ensure all possible security standards and provide for a proper adjustment of the filing date to be shown on the document stored. Similar issues in terms of quality standards of time recording, as well as of security, arise in case modular submission or segmented filing of regulated information are allowed.

MINIMUM QUALITY STANDARDS OF EASY ACCESS BY END USER

a) EALIC believes the minimum standards in terms of easy access by end users may diverge only between price sensitive information and non price sensitive information. The former should be accessible to everyone in the storage mechanism as close as possible to real time, also as a remedy for the black hole problem first discussed in CESR October consultation paper. For the latter the deadline may be somewhat less demanding. EALIC is surprised of the discussion made by CESR in recital 67, 68 and 69 of the CESR Progress Report, ref. 05-150b on the risk of the interdependency between the dissemination and the storage process should this be completed rapidly enough. EALIC sees no point in worrying about media losing incentive to reproduce information already made available through the central storage. First, as correctly stated in recital 70 EALIC believes it is paramount to remember that "in the interest of the investors is clearly unsuitable to artificially delay accessibility of information in the storage mechanism". Secondly, as already suggested in EALIC response to CESR October Consultation Paper, EALIC believes possible and valuable to collapse all three issuer's obligations (filing, dissemination and storage") in one reporting channel where, once checked by the competent authority, issuer information is considered to be disseminated to the public and remain stored. In recital 92 of the Progress Report, CESR recognize that " a further reduction (in the number of reporting channels issuers should address) would be possible if the competent authority were also responsible for dissemination." EALIC invites CESR to reconsider its decision that "as this depends on more fundamental decision, (we) focus on the second model which is bundling through the service providers". .

b) As far as the language regime of the access point for end users of interconnected OAMs is concerned, EALIC believes each OAM should offer internet access and capabilities (navigation, web search, queries, downloading, printing,…) in both the domestic language and in at least one other language customary to the world of international finance. Regulated information should be stored according the same rule given in recital 20 of the Transparency directive. In EALIC opinion, any additional regulatory language requirement, such as requiring internet access and capabilities to be offered in all official languages of the member States would represent an excessive and unmotivated burden imposed on OAMs since the regulatory information would be available only in the domestic language and in a language customary to the world of international finance. EALIC, however, suggests OAMs shall retain the choice to offer a richer set of language options to users as far as internet access and capabilities are concerned should they so believe. Translations of issuers' regulated information (either of the full text or of a summary of it) by the OAM, in EALIC opinion should not be permitted or, at least, if allowed, it should be made clear to any potential end users that such translations were not made by the issuer in compliance with a regulatory provision, but represent a value added service provided by the OAM on its own initiative. As better detailed below, EALIC is sceptical about the opportunity to allow a market infrastructure performing a regulatory function to provide any added value service.

c) In terms of technical accessibility to the OAM, EALIC agrees the type of technology used in the interface with the end user should be easily accessible and, possibly, based on commercial off the shelf software. While the on line access should be available on a 24/7 basis, with any downtime due to maintenance be confined to night hours and holidays and communicate in advance, personal service support should at a minimun be offered for a period covering all the business hours of regulated markets in the European Union. EALIC believes the format of the information stored has to be able to be read, downloaded and printed naturally as a document, as well as to show the additional capability of carrying and transmitting automatically to freely available analytical tools, quantitative data in standard structures. This, in turn, implies, it would be appropriate to require issuers to use input standards such as XBRL and templates for regulated information as a condition for filing with the OAM.

c) To provide comments on this point, EALIC borrows heavily on the EDGAR experience in the US. EDGAR is made up of three subsystems: receipt and acceptance, analysis and review and dissemination to both end user and information reseller. The dissemination subsystem transmits accepted submission of regulated information to a contractor acting as an agent for the government who cares about their dissemination. This subsystem is completely privately financed by the contractor which recovers it expenses through the “regulated” sale of the information to its direct feed subscribers, usually info reseller which complement the regulated information with added value services, while internet access to retail investors is provided for free. EALIC believes this model to be best applicable in Europe too.

ROLE OF COMPETENT AUTHORITIES

Should the OAM be run by a private commercial entity, there is no doubt competent authorities should be charged with supervising OAM compliance with quality standards.

EALIC, however, favour a model in which the authority operates the central storage mechanism either directly or through a private party acting under contract as an agent of the Authority.

In EALIC’s opinion the central storage should serve just as a storage of all regulated information filed with the authority. It should not be entering the market for providing added value service based on this information. While the storage function is a public good that is better produced under natural monopoly condition by a public infrastructure, value added value services based on regulated information are private goods whose production should be left to private, profit oriented companies operating in a competitive environment and purchasing, on equal terms, the regulated information from the central storage mechanism.

EALIC believes this segmentation to be optimal since to ensure innovation, service quality and cost efficiency governance and procurement solutions may be more effective than market forces among private competitors. Because of the public nature of the business of storing regulated information and because of the need of international coordination among many countries, the

pace of innovation and the quality of the service cannot be determined by the action of a purely invisible hand. On the contrary, it can be much more effective a model of governance based on:
- a continuing activity of users group engaged in an up to date business process analysis and in developing new requirements;
- the issuance of periodical request for proposal;
- the opportunity market users have to put forward program changes request;
- recompeting the contract for IT service every few years, exploiting at best the opportunities offered by performance based contracting.

Free marker forces can play at their best their function to promote innovation, ensuring high quality services at low cost in the production of private goods, i.e all the added value services financial players demand based on regulated information.

To let the OAM enter this arena precludes levelling the playing field among all competitors without costly and imperfect intervention by the regulators.

FILING OF REGULATED INFORMATION WITH THE COMPETENT AUTHORITIES

Rather than integrating downstream the storage function with the production of added value services, EALIC favours its integration upstream with the filing of regulated information with the competent authority. In EALIC opinion, bundling together regulatory filing and storage (and possibly dissemination) is beneficial on three account:
a) minimization of the issuer's regulatory burden;
b) faster access to a more reliable stored regulated information by end users;
c) improvement in the effectiveness of the regulatory oversight on issuers and market trading by market authority.

The benefit in terms of regulatory burden is apparent from the reading of 3rd mandate. Section 3.4 on the minimum standards for filing regulated information with the competent authority replicates parts of section 3.2 concerned with the minimum standard for filing with the OAM. Moreover, many processes requires strict coordination should filing with the authority be different from the filing with the OAM. This is the case of the hardship exemptions, for instance, since the issuer may find itself obliged to transmit the same documentation in two different forms (magnetic tape, paper or else) to two different recipients.

Then benefit in terms of faster and reliable access to stored regulated information is forthcoming from the possibility for the end users to know in almost real time the current status of the regulated information filed with the authority: accepted, suspend, modified. It also becomes easier to adjust filing errors (content, reference, header) uncovered after the filing has been accepted. Hypertext link to other documents in the filings or to other filings, would give a whole new meaning to the practice of "incorporation by reference".

In all the consultation material CESR has issued so far, no mention is made of the potential high value of an integrated electronic system of filing and storing regulated information for market authorities. Besides contributing to enhance the flow of corporate information to media and investors, such a system provides an invaluable tool to market authority to extract, analyze, compare corporate data both cross sectional and in time series. It also allows to automate selections of filings for regulatory review, to ease the identification of financially troubled companies, to assign corporate filings for review to staff in a matter of minutes or hours, to track down the current status of the corporate filings in any moment, to give a prompt feedback to the issuer concerning its filing, to compare original and amended filings to show if the issuer has undertaken a proper corrective action as suggested by staff authorities and to allow staff to upload the results of their review for future reference.

Because of the paramount relevance of the stored regulated information for market authority supervisory function on issuer and protection of market integrity, EALIC believes the competent authority should retain control of the storage mechanism. This is necessary both to nest the filing with the storing procedure and to avoid either duplicating the storage of the regulated information or purchasing back regulated information from the OAM.

EALIC

European Association for Listed Companies

WHO IS WHO IN EALIC ?[1]

I. MEMBERS

A. Listed companies

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

[1] Update 8 September 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 Genoia, Director
President Mediobanca

- Baron Hugo Vandamme, Director
Chairman Roularta and Chairman Kinepolis

- 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

- José Luis Amorim
Group Controller SONAE

- Robert Baconnier
Chairman and Managing Director ANSA

- Stephen Cowden
General Counsel and Company Secretary Reed Elsevier

- Jaap de Keijzer
General Secretary VEUO

- Carmine Di Noia
Deputy Director General and Head Capital Markets and Listed Companies Division Assonime

- Sven Dumoulin
Senior Legal Advisor Unilever

- Bernard Field
General Secretary Saint-Gobain

- Dorien Fransens
Secretary General EALIC

- Koen Geens
Partner Eubelius

- Philippe Lambrecht
General Secretary Federation of Belgian Enterprises

- Maria Luz Medrano
Director Financial and Mergers & Acquisitions Telefonica

- Christian Schricke
General Secretary Société Générale

- Alexandre Tessier
General Director AFEP

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