



Rome, 27th May 2005

Mr. Fabrice Demarigny
Secretary General
CESR- The Committee of
European Securities
Regulators

Dear Mr. Demarigny,

Re: CESR's revised draft Technical Advice on Possible Implementing Measures of the Transparency Directive (Ref.: CESR/05-267)

In response to your invitation to submit observations and comments to the consultation document, this Association wishes to thank you for the opportunity afforded to it.

Assogestioni is the Italian national association for the investment management industry and its members, who manage assets valued at over 900 billion euro, are directly affected by the regulation under consultation.

Our comments mainly relate to the themes discussed in the following sections of Chapter II:

- Section 5: "The circumstances under which the shareholder, or the natural person or legal entity referred to in article 10, should have learned of the acquisition or disposal of shares to which voting rights are attached".
- Section 6: "The conditions of independence to be complied with by management companies, or by investment firms, and their parent undertakings to benefit from the exemptions in articles 11.3a and 11.3b".



SECTION 5

THE CIRCUMSTANCES UNDER WHICH THE SHAREHOLDER, OR THE NATURAL PERSON OR LEGAL ENTITY REFERRED TO IN ARTICLE 10, SHOULD HAVE LEARNED OF THE ACQUISITION OR DISPOSAL OF SHARES TO WHICH VOTING RIGHTS ARE ATTACHED.

Considering the level of diligence required of the natural or legal person burdened with the notification requirement, we appreciate CESR's choice for the second of the two options indicated in the preceding consultation document (cfr. Q14 ref. CESR/04-512c). This approach appears to be more in line with the way financial markets operate, particularly in relation to the timing of confirmations of executed transactions.

SECTION 6

THE CONDITIONS OF INDEPENDENCE TO BE COMPLIED WITH BY MANAGEMENT COMPANIES, OR BY INVESTMENT FIRMS, AND THEIR PARENT UNDERTAKINGS TO BENEFIT FROM THE EXEMPTIONS IN ARTICLES 11.3A AND 11.3B.

In general terms, we appreciate the draft proposed in this second consultation document. Compared to the previous draft, it presents a more specific and appropriate regulation of management companies and investment firms with regards to the duties set out by the Directive.

However, our opinion is that this proposed regulation could benefit from further improvement by referring to self-regulatory codes, already adopted at the national level. These codes are often in line with the best international practices and foster the independence of management companies and offer a viable framework of rules designed to promote such independence

Q19 Do you agree with this change in the content of the declaration that the parent undertaking has to make? Please explain.

We appreciate CESR's choice to adopt the second approach included in the previous consultation document. We agree that parent companies should disclose such information.

Q20 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?

Yes, it would be useful.



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

According to definition and its explanatory text, “direct instruction” seems to be considered both in terms of form and of content, and specifies how the voting right shall be exercised in particular cases.

The notion of “Indirect instruction” (as defined in the draft advice) seems to refer to the form only. It would be preferable that its content be also defined, as it’s the case for the implementing measures regarding investment advice of the MIFID. On that occasion, CESR proposed the following definition of implicit recommendation: “communications in which there is no explicit recommendation will still be recommendation for this purpose where, taking into consideration of all the relevant circumstances, an implicit recommendation is being made”. Therefore, along these lines, the same approach should be followed in the context of the transparency directive.

We would like to point out that, in any case, the definition of indirect instruction needs to be restricted so as to cover only instructions aimed at influencing the exercise of the voting rights. It should indeed be excluded that a general global voting policy (which is therefore not meeting or resolution specific) launched by the parent undertaking to maintain good corporate governance throughout the group should be seen as indirect instructions.

We are at your disposal for any further comment or clarification.

Best regards.

The Director General