

**CALL FOR EVIDENCE ON MANDATE TO CESR REGARDING TECHNICAL
ADVICE ON POSSIBLE IMPLEMENTING MEASURES CONCERNING THE
TRANSPARENCY DIRECTIVE**

Borsa Italiana Group welcomes the opportunity to submit views on CESR's call for evidence.

We welcome the development of a European network for storage. This will enhance transparency of information across the EU and facilitate cross-border investments.

Our comments are expressed below.

Preliminarily, with regard to the letter from the Commission accompanying the mandate, we agree with the opinion thereby expressed that no formal change in the transposition date should be made.

Pending the adoption of the implementing measures on quality standards, Member States could decide to officially appoint, on an interim basis, their competent authorities or other entities running an existing storage mechanism as the officially appointed storage mechanism (OAM). In addition, two or more Member States could decide to officially appoint the same OAM for the central storage of regulated information. This will allow more recent members of the EU to timely comply with the Directive and it is in line with the spirit of the Directive and of the mandate given to CESR on the implementing measures¹. This pragmatic approach will improve cross-border synergies and contribute to cut costs.

3.1 PRELIMINARY ISSUES

Initially, we would like to underscore the complexity of the hypothesized construction, implementation and management of a global pan-European central database for regulated information. Such a project threats be extremely costly, complex and is likely to waste significant investments made by the Member States on the existing storage facilities. In addition, the different provisions of national law as well as differences in the language of the data stored in the databases will likely continue to require a segmentation of the information. Consequently more time is necessary to develop a careful analysis of costs and benefits for such a system, before any decision can be made.

As a result, in our previous consultations we argued that, at this stage, the only possible structure for the storage of regulated information should consist of some type of integrated network of national databases. Likewise, we agree with CESR's opinion

¹ In the case of a joint mechanism, CESR is asked to provide advice on the role of competent authorities in supervising OAM's compliance with quality standards.

(expressed in par. 3.1), that “*the future architecture for storage of regulated information is likely to consist of a type of integrated network of national databases allowing for sufficient flexibility and scalability, with the final objective of offering a one-stop-shop for end users*”.

The process that leads to the development of a more and more integrated network of national storage mechanisms, requires the early definition of more basic technical standards applicable to all national storage mechanisms. The adoption of common standards in the structure of the information collected and of the databases themselves will in turn allow the further development of a search engine or other additional features that will be designed. In the meantime, while such standards are defined, the only interoperability possible is the linkage of the several storage systems on the same EU web page as described above.

At this stage, we think that it would be feasible to develop a single access-page to the EU regulated information. The creation of a single web page where searchers would find several hyperlinks to all the national storage mechanisms, would represent an accessible first step in the development of a more integrated network. Moreover, since all investors should be able to access regulated information (regardless of where they are located), we believe that this single EU entry point should offer an access to the national mechanism in the native languages of every Member State (for example by means of instructions for navigation and search fields).

Later, in order to simplify access to the regulated information stored in each single national mechanism, it may be feasible to develop a specialised "search engine" (similar to that provided by internet services such as Google or Yahoo but also available in the USA, EDGAR main page <http://sec.gov/edgar/searchedgar/companysearch.html>).

The suggested solution does not prevent a further integration of the information pools at a later stage when all national storage mechanisms will be sufficiently harmonised and equally developed. At that point further interoperability, also through the integration of systems, will be feasible.

Therefore, we believe that the establishment of a fully integrated network of all the national OAMs is a long term goal which can be achieved by progressive steps.

(1) Agreement on interoperability

As stated above, the first step of this process (which leads to the development of a more integrated network of national storage mechanisms), should be the definition of common technical standards for the storage of regulated information. The definition and selection of the technical features and the structure of the storage mechanisms themselves should take place through a close consultation process to be opened with the existing OAMs.

Such consultation process could be facilitated through the establishment of an apposite consultation technical committee, maybe consisting of members of CESR (for the purpose of promoting and supervising over such a project, verifying ongoing its

compliance with the legal framework and with the defined timetable) as well as representative of the appointed national storage mechanisms.

Such Committee should set basic and minimum quality standards for national mechanisms in order to level the playing field among storage mechanisms: setting appropriate technical standards is the first step to achieve interoperability among systems. This committee of experts should develop such standards so that an interoperability of the systems may be later possible. We believe that setting these standards will require an in depth assessment of the state of the art and of the technological characteristics of each national mechanism. This group of experts, appointed and funded at EU level (public funding), will be in charge with solving these technical challenges. Security concerns should play vital roles in the architecture of the storage mechanisms.

As stated above, the possibility to search and access across national mechanisms necessitates an extensive harmonisation of the manner in which regulated information are organised and categorised as well as broad interface capabilities. The search feature will be developed at a later point in time.

The conclusions of such technical committee could be transfused into an agreement ‘on technical requirements’ which may be entered into by CESR, the existing OAMs and the competent authorities. This agreement which might be in the form of a memorandum of understanding, should clearly identify the respective roles in supervising national OAMs’ compliance with the standards specifically set for the smooth functioning of the European network: the national competent authorities should be responsible for oversight of their own storage mechanism and their respective link to the EU common entry point.

(2) Costs and funding

We believe that the central storage mechanism and the EU network should make their basic services available for free.

As stated above and in our previous comments to CESR’s past consultations on such issue, on a national level Borsa Italiana supports a regime of multiple competing national storage mechanisms while at the EU level a EU network mainframe should interface with the existing national storage mechanisms.

This solution allows for competition between national storage systems to keep costs of storage low and ensures that technological innovation and progress will be delivered promptly to end-users. Costs born by the storage mechanisms on a national level should be covered by the storage mechanisms themselves, which in turn should be able to cover their costs and earn from the offer of added value services rather than from providing basic access to regulated information.

With regard to the EU network, due to the positive externalities that a system for storage and data retrieval of regulated information will generate for the society as a whole, we are of the opinion that the costs associated to the creation and operation of

this European interface among national storage mechanisms should be covered exclusively by public funding.

3.2 ROLE OF THE OFFICIALLY APPOINTED MECHANISM FOR THE CENTRAL STORAGE OF REGULATED INFORMATION

(1) Minimum quality standards of security

We believe that the method of receiving and processing information in the central storage mechanism should be electronic and that an internet based systems should be required.

An electronic internet based storage mechanism would be necessary to ensure that investors are easily able to gain access to all regulated information on both national and pan-European basis.

The storage processes should be managed electronically.

The storage mechanism should ensure:

- *Industrial Software Platform*: the system needs to be based on an industrial software platform that can offer a clear assurance on the maintenance and support in order to have procedures that minimise the possible downtime of the service and assure constant access to media and investors; the use of an industrial software platform with specific ability to manage workflow and processes ensures the functionality of a fully automated process in terms of control steps and permission relationship between the information and the users that can interact with it.
- *Service Management*: with respect to media's and investor's physical location, servers will have to be hosted by the company which gives technical maintenance and assistance; the central storage mechanism has to be able to demonstrate availability of service management procedures in order to guarantee a continuous monitoring and management of the systems necessary to maintain the correct operation with high SLA (Service Level Agreement) over 99,8% not only from the hardware and network point of view but also regarding the application layer. These services must be active on a 24/7 basis.
- *Recovery provisions*: the central storage mechanism should have a secondary site located at least over 150 Km from the primary site. Data between the secondary and primary sites have to be synchronised in periodically. The secondary site can be activated in a few hours not only in a disaster situation like fires or earthquakes but also in all the emergency situations (e.g. hardware or software issues) that temporary cause an impossibility to use the primary site.

In addition, the storage mechanism should have systems in place to detect failures in the transmission of regulated information and subsequently raise error messages.

The storage mechanism should ask the re-transmission of any data that it fails to receive from the submitter.

The storage mechanism's physical location should be protected, with access monitoring devices. The staff and personnel should be qualified and of high professionalism.

If an electronic network of national OAMs at EU level is created also the links among the EU access point and the OAMs should be secure and locked in order to protect the whole architecture. It should be guaranteed that there is no risk of non-authorised interception and of data corruption. In particular, the safety of single databases should not be weakened.

(2) Minimum quality standards of certainty as to the information source.

The storage mechanism should receive the regulated information by the issuer or by the service provider appointed by the issuer for the dissemination.

In the first case, the source of the information should be identified by the storage mechanism for certain (for instance with the attribution of password and username, which the issuer might, upon its responsibility, give to outsourcers). If the information is received from the service provider appointed for the dissemination, this will ensure the certainty of source, because of the high level of security which the service provider has to guarantee.

From this perspective, we would like to remind our opinion expressed on CESR's revised draft technical advice of April 2005. We do not share such re-drafting. Each Member State Competent Authority should approve service providers on condition that they comply with the minimum standards. This formal approval is necessary because of the importance and delicacy of the interests involved (such as confidentiality of inside information, liability of issuer, etc).

(3) Minimum quality standards of time recording

a) We believe that it is necessary to set standards regarding the filing of information with storage mechanisms. Setting input standards improves the quality, accuracy and reliability of information entering a storage mechanism and enhances the information that can be included within analyses and reports on a routine basis.

Regulated information should be filed and stored in PDF format (modifiable by the end-user and printable).

We believe that the setting of standards such as XBRL and similar ones, although desirable, at this stage, may be premature.

b) If in the dissemination process pre-information to regulator and stock exchange is preserved the price sensitive information could be checked by the Competent Authority on an *ex-ante* basis. This review could be done before the dissemination and before the regulated information can be made available to the storage mechanisms. This may avoid to expose investors to misleading information.

We believe that regulated information should be made available by a storage mechanism as soon as received and, once reviewed by the Competent Authority, if there is a need for clarification, an additional announcement should be made to the storage mechanism. This announcement should be disclosed in replacement or in conjunction with the original information.

(4) Minimum quality standards of easy access by end users

a) and f) We believe that the main difference in processing price sensitive and non-price sensitive information should regard the timing. The mechanism should make all price sensitive information available as close to real time as possible to moderate the effects of “black holes” resulting from the dissemination process. Non price-sensitive information should be made available in the storage mechanism as soon as possible, and in any case not later than 1 hour by its dissemination. The system should offer the possibility to immediately publish a document, where necessary.

b) National mechanisms should be obliged to offer their internet functions in the national language and in another language commonly accepted in the financial sector throughout the EU. Highlights could be harmonised through the EU in order to facilitate the access to information. An imposition to offer their services in all European languages is likely to put excessive strain and costs upon storage mechanisms. With respect to the translation of the texts of the regulated information, problems of issuer’s validation will arise.

Insofar as “easy access” to all EU regulated information is concerned, we believe that the publicly available internet based services provided by the EU network, should be available in all the native languages of every Member State.

c) The central storage mechanism has to be able to receive regulated information 24 hours a day, seven days a week and make it available promptly.

The storage mechanism should be obliged to provide technical and customer care service support helpdesks active for questions and assistance 24 hours a day and 7 days a week.

d) End-users should be entitled to obtain from the OAM an electronic version which should be printable from internet.

(5) Role of Competent Authorities

Competent Authorities have a regulatory role in appointing and monitoring the storage mechanisms on a continuous basis, therefore ensuring that such appointed mechanisms are compliant with the minimum standards set at EU level.

If a joint mechanism is officially appointed by two or more Member States, each Competent Authority should be responsible for supervising OAM’s compliance with quality standards. Involved Competent Authorities may decide to sign a Memorandum of Understanding.

Those standards should be revised by CESR over time taking into consideration technical developments and the progressive evolution of the European network.

3.4 THE FILING OF REGULATED MEANS WITH THE COMPETENT AUTHORITY

Borsa Italiana Group reiterates the need to offer the issuer the possibility of relying on a straight through processing of regulated information. Once information has been sent to a service provider for dissemination, the issuer should be able to rely on an automatic execution of the other steps: filing to the competent authority and storage of the regulated information. With regard to non price-sensitive documents, the filing with the storage mechanism should be considered as compliant also with the filing obligation with the competent authority. Borsa Italiana Group opposes the possibility that issuers could be obliged to submit twice or three times the same regulatory information to satisfy the filing, dissemination and storage requirements.

Issuers should be left free to appoint a service provider which is able to disseminate/file and store on their behalf.

If issuers were required to disclose regulated information through three different channels, they would face unnecessary and burdensome costs. Meanwhile, there would be limited possibilities to exploit economies of scale.

We hope that CESR will find our comments useful and we remain at disposal for further explanations and details. Moreover we look forward to further cooperate.

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