DEUTSCHES AKTIENINSTITUT

BDI Bundesverband der Deutschen Industrie

Joint of Response of Deutsches Akieninstitut (DAI) and Bundesverband der Deutschen Industrie (BDI) to CESR's Consultation Paper on Possible Implementing Measures Concerning the Transparency Directive – Storage of Regulated Information And Filing Of Regulated Information

Ref. CESR/06/025

31st March 2006

Introduction

Deutsches Aktieninstitut e.V. is the association of German exchange-listed stock corporations and other companies and institutions which are engaged in the capital markets development. Its most important tasks include supporting the relevant institutional and legal framework of the German capital market and the development of an harmonised European capital market, enhancing corporate financing in Germany and promoting the acceptance for equity among investors and companies.

The Bundesverband der Deutschen Industrie e.V. (BDI) is the umbrella organisation for a total of 35 industrial sector associations and groups of associations in Germany. It represents the interests of 107,000 enterprises employing 7.7 million people.

A. General Comments

DAI and BDI both welcome CESR's efforts on the current issues and the involvement of the market participants. Of course, it is a noble aim to provide appropriate and easily accessible broad information channels for investors.

DAI

Deutsches Aktieninstitut e.V.
Niedenau 13 -19 60325 Frankfurt am Main
Telefon 0 69 / 9 29 15-0 Telefax 0 69 / 9 29 15-11
E-Mail dai@dai.de Internet http://www.dai.de

Deutsches Aktieninstitut e.V.
31, rue du Commerce 1000 Bruxelles
Phone +32 2 290 89 90 Fax + 32 2 290 89 91
E-Mail europa@dai.de Internet http://www.dai.de

However, we fear that the establishment of Officially Appointed Mechanisms (OAM) might miss the ambitious target and will not create any surplus for the capital market. It is not unlikely that neither private nor institutional investors will use the service very intensely.

Private investors usually do not base their decision whether to invest or not on blank corporate data. A study on investor's informational habits concerning investment decisions shows that private investors mostly rely on the print media, reports on radio or television to get the relevant information on the issuer when considering an investment. (Study 29 of the Deutsches Aktieninstitut e.V., "Verhalten und Präferenzen deutscher Aktionäre"; The study is based on a mail questionnaire sent to 800.000 private investors of the Deutsche Post AG with a extraordinary return of about 88.000 questionnaires). Investors can also turn to analysts' websites that offer commented and evaluated data. They also can find most of the relevant information on the issuers' websites already. According to the Prospectus Directive 2003/71/EC issuers are obliged to publish a yearly document containing all relevant information published or made available to the public over the preceding 12 months, including information provided to the various reporting requirements laid down in other Community legislation. This includes most relevant information. The yearly document can be published on the website of the issuer and the viewing, printing an downloading will be for free while the use of the OAM will not necessarily for free.

Institutional investors are not dependent on an institution like the OAM, either, they get the relevant information by contact with the issuers or on roadshows.

Considering this, we recommend that costs of the establishment of OAMs should match their limited benefit and therefore be reduced to the necessary.

B. Detailed Comments

Chapter I : The Officially Appointed Mechanism for the Central Storage of regulated information (Art. 21.2 of the Transparency Directive)– Costs and funding

Q1: Do you agree that, taking into consideration the main purposes of the Directive in relation to the OAM, end users of the OAM will be investors seeking information on issuers and that the specific needs of particular investors or users should be tackled by the OAM itself and not require further and more burdensome requirements on issuers or on the OAM itself? Please provide reasons for your answer.

We agree that end users of the OAM are investors.

We believe that neither private nor institutional investors will use the service very intensely (see our general comment). Considering this, any further and more burdensome requirements for the issuers are to be avoided. Regarding special services offered by OAMs see our comment on question 2 below.

Q2: Do you agree that, taking into consideration the main purposes of the Directive in relation to the OAM, what needs to be stored and to be accessed in the OAM is just the regulated information, as produced and disseminated by the issuer or more than that? If so, please provide reasons for your answer and indicate what kind of facilities you would expect and indicate how to cover the costs of such value added facilities.

The Transparency Directive only deals with the storing of regulated information. So what needs to be stored is not more than that. Value added services are not taken into consideration by the directive and deserve no protection. By offering value added services the OAM will enter into a competing market. Being a factual monopolist for storage, for value added services full competition has to be guaranteed.

Issuers will probably use third parties for meeting their storage obligations like they will to meet their dissemination obligations. For dissemination the DG Working Document ESC 34/2005 stated in possible recital 15: "To maximise the benefits of choice and innovation, Member States should seek to ensure open and free competition among third party information providers involved in the dissemination of regulated information". There is no reason why this should be handled differently for the third parties in the case of storage. The OAM – especially when there is only a single national OAM – has the character of a monopolist in storing information. If it enters into the analyst or the market for dissemination of ad-hocs by offering similar value added services we see the danger that the OAM can take advantage of the monopoly in the face of its competitors.

So value added services have to be offered in competition and – before all – at a price that is not subsidised by the OAM and that has to be paid by the end users, not the issuers.

Q3: Do you agree with the views above or do you envisage a more ambitious approach to "easy access"? If so, please indicate what facilities you would like to see in place and detail the additional estimated costs of implementing them, how to cover those costs and explain the advantages of such an approach.

We basically agree with CESR's notion of an "easy access" and do not envisage a more ambitious approach.

Notwithstanding our general comment we see a small chance for a surplus for the market created by the OAMs if data is made available in a way that allows end users to automatically process the data and work with it. In our opinion, it is an open market of formats, not the OAM, that should determine which format will be used in the future. For this reason a system with open interfaces for future developments has to be guaranteed.

Q4: Do you agree with the views above or do you envisage a more developed approach for the network? If so, please detail what additional functionalities you would like to see and if possible, provide your opinion on the implications, namely in terms of costs, of setting up such a network. In considering the above, please take into account the alternative funding implications.

We basically agree with CESR's approach. Also see our comments to Q3.

Q5: Do you see alternative technical solutions to those envisaged in this consultative document and permitting to reach the same goal, both for the designing of OAM's and for creating an EU "one stop shop"? If yes, please describe those solutions and provide estimates of costs and indications on the best way to cover them.

We do not see alternative technical solutions concerning the network model. Concerning the data format, see our comments on Q3.

Q6: Do you agree with the above? If not, please provide reasons for your answer. (S. 16)

Yes, we basically agree. Concerning para. 52 we are of the opinion that OAMs should be in principle open for future developments, especially if straight through processing prevails as a standard.

Q7: Do you agree with the above? Please provide reasons for your answer. (S. 16)

We strongly agree that no proprietary standard is to be provided by the OAM. This would lead to additional costs for issuers and could affect the existent competitive market for financial news distribution.

Q8: Do you agree with the above minimum standards of security?

Issuers should not be liable for mistakes due to technical transfer. Also, OAMs will have to deal with a dimension of documents that makes it completely impossible to check every document if it is conform to the original. This leads to a very important issue that is not elaborated by CESR. Any remarks concerning liability are missing in this paper. Who is liable if a private investor bases his decision to invest on wrong data? There is no model of preventing mistakes of technical transfer available at costs that are proportionate to the benefit of the establishments of the OAM. There must be the possibility for

OAMs to add a disclaimer excluding liability for them and the issuer concerning technical transfer.

Q9: Are there any additional standards on security CESR should consider?

See our comments above.

Q10: Do you agree that there is no need for special or additional security standards if an electronic network of national OAMs at EU level is created? (p. 17)

Yes, we agree.

Q11: Do you agree with the above? Please provide reasons if you do not agree. (p. 18)

We agree that there is no need to define precisely which methods for issuer authentication to require and leave it up to each OAM to specify. CESR should point out, that it must be guaranteed that the authentication can also be generated by a third person (operator) that sends information to the system for the issuer.

Q12: Do you agree with the above? Please provide reasons for your answer if you do not agree. (p. 19)

Yes, we agree**.**

Q13: Are there any additional standards on time recording CESR should consider? (p. 19)

We are not aware of any.

Q14: Do you agree with the above? Please provide reasons for your answer. (p. 19)

We agree that basically no different minimum standards are required. It should be left to the market to determine the standards.

Q15: Would you require searching capabilities in the language of international finance to be able to have "easy access" to the information stored? (p. 20)

Yes.

Q16: Do you agree with the above standards in relation to technical accessibility? Please provide reasons for your answer if you do not agree. (p. 21)

Yes. The OAMs should have the possibility to take cost impact into consideration.

Q17: Do you agree with the above in relation to the format of information to be accessed by end users? Please provide reasons for your answer. (p. 22)

We agree that only a document in electronic format would meet the standard of "easy access".

If "interrogate" (para. 111) means that the possibility to search information is extended to the content of the information, we do not agree, as not every electronic format allows this kind of search functions but meets the requirement of being capable to be viewed, downloaded and printed, nevertheless.

If the identification of regulated information (para. 112) means that issuers have to label the judicial basis for the publication of the information, we do not agree, because the same information can be required to be published under several laws. This kind of obligation would be burdensome for issuers and could be confusing for end users.

We agree that OAMs should not be obliged to provide printed copies of regulated information, but that they can offer it.

Q18: Do you agree with the above? Please provide reasons if you do not agree (p. 23).

We agree that the use of the OAM does not have to be free of charge for end users to meet the requirement of "easy access".

We do not appreciate that there is no assessment of the costs in this point of time, while we are to consider the different network models. So a substantiated evaluation of the balance between the use and the cost of the system is not possible.

Although leaving up the funding to the national OAMs is problematic for the pan-european network, as this might lead to the situation that some information is offered for free, some information not, we agree that no harmonized rules are to be provided, as the establishment of the network has to be at low cost.

Chapter II : Preliminary Issues : (I) Agreement on Interoperability and (II) Cost and Funding

Q19: What are your views in relation to the issues being discussed above? (p. 44)

As already mentioned above, it is difficult to evaluate the different models presented by CESR without an examination of costs. While we believe that investors will not use the OAMs, because they don't need them, we think that

everyone will agree that they will not use it for sure when its use is uncomfortable. So, we believe that model D has nothing of a common network.

We prefer the establishment of Model C. It will probably generate costs for accurately maintaining the issuers' lists but not very high cost in establishing it. If this is no relevant option for CESR, we would choose Model A. Model B is probably the most costly system because the OAMs have to communicate with each other, not with only the CAP as presented in model A.

We do not agree that the internal machinery must not be visible to the end users (para. 133).

We also advise a system not too rigid as described in para. 135.

We agree that an interoperability agreement cover at least the points mentioned in para. 207, p. 38.

Chapter III: Role of the Competent Authority

Q20: Do you agree with the above approach? Please provide reasons for your answer if you do not agree.

Yes.

Q21: Do you agree with the above approach? Please provide reasons for your answer if you do not agree.

Yes.

Q22: Do you consider that a competent authority can, within the limits set out above, change the standards over time in case new technological evolutions occur?

It should not be the competent authority that changes the standards, but the market. The OAM must therefore consist of open interfaces.

Q23: Do you agree with the above approach? Please provide reasons for your answer if you do not agree.

Yes.

Chapter IV: The filing of regulated information by electronic means with the competent authorities (Art. 19.1 of the Transparency Directive)

Q24: Do you agree with the above interpretation of the purpose of filing and the conclusions made on basis of the interpretation? Please provide reasons for your answer. (p. 50)

We agree that electronic filing provides adequate means for competent authorities to perform their duties under the directive as, in fact stated in para. 285 it allows faster and easier reception, handling and storage, search and analysis of regulated information.

Standards for filing should be on general level as stated by CESR.

Q25: Do you agree with the above conclusion? Please provide reasons for your answer. (p. 50)

Yes, we do agree, that the prerequisites for electronic filing do not have to be all the same as for the OAMs. Issuers must have the possibility to transfer regulated information to the OAM in the same electronic format as to the OAM, though. It would be a burdensome additional effort to file it to the competent authority in another format. This provides that the competent authority can receive the same formats as the OAM is able to, security and authenticity must be ensured, too.

Q26: Do you agree with the above approach? Please provide reasons for your answer. (p. 51)

We strongly agree that the architecture for electronic filing implemented by the competent authority must ensure the use of non-proprietary software applications by the filers (para. 282).

We agree that electronic filing should be possible, as the issuers have to transfer regulated information to the OAM in electronic format anyway. Electronic filing should be optional, as b) (para. 286) states.

Q27: Do you agree with the above?

Q28: Is there a need for an additional level of detail? Please provide reasons for your answer.

We agree that security and authenticity must be ensured and that filing by use of third parties should be possible.

We do not see the need for an additional level of detail concerning this issue.

Q29: Do you agree with the above or do you envisage particular issues that need to be dealt in relation to the validation procedure and the time stamping of regulated information? Please provide reasons for your answer.

We agree that the validation procedure and time stamping is technical and does not involve any content checking.

Q30: Do you consider that CESR should require specific forms to be used to file regulated information with the competent authority? Please provide reasons for your answer.

Specific forms are not required by the Transparency Directive and can lead to bureaucracy. In particular cases is might be useful to use certain templates/forms, if it facilitates the process also for filers. In certain cases this might lead to legal certainty for filers. So OAMs should have the possibility to at least offer forms, that can be used by filers optionally.

Q31: Do you consider that CESR should require specific input standards to be used to file regulated information with competent authorities? Please provide reasons for your answer.

No. See our various comments concerning formats above.

Q32: Do you agree with the above concepts of "alignment"?

Q33: Are there additional ways of alignment CESR should consider?

We would appreciate it if there would be no dublicate requirements, especially if issuers can't use the same formats fulfilling both their storage and filing obligations. Additionally to the three concepts of alignment, the OAM could be interface to direct regulated information to competent authorities.

Q34 – Do you consider that CESR needs to expand this idea to properly address the mandate?

No.