



For the attention of Mr Andres TRINK,
Chairman of CESR Expert Group on Transparency
Chairman of the Estonian Financial Supervision Authority

Subject: call for evidence on the European Commission's mandates on the Transparency Directive

Brussels, 23 July 2004

Dear Mr. Trink,

ENPA – the European Newspaper Publishers' Association – has been closely involved in the debate before the final adoption of the Transparency Directive. Following the discussions within the different institutions, in adopting the Directive in its current form, the EU has given a clear and symbolic sign to preserve the dissemination of financial information through the newspapers and therefore to ensure that all investors have access to the information on a non-discriminatory basis in all Member States.

Background

In the current version of the Directive, Recital 6a) preserves the right of the home Member State to request the issuer to publish, in addition, parts or all regulated information through newspapers. Furthermore, Art. 17§1 requires the home Member State to ensure that the issuer discloses the regulated information in a manner ensuring fast access to such information on a non discriminatory basis; the home Member State shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the EU. The home Member State may not impose an obligation to use only media whose operators are established in its territory.

In article 17§3a), the Directive stipulates that the Commission shall in particular specify “minimum standards for dissemination of regulated information, as referred to in §1”.

On this basis, the Commission has mandated CESR to formulate an advice on possible technical measures to implement in particular the dissemination of financial information. This will include advice on minimum standards for the dissemination of regulated information by issuers (Art. 17§1) and how issuers might make available periodic financial reports to the public (Art. 4§5 and 5§5).

In the formal mandate to CESR, point 3.2 defines the scope of CESR technical advice with regard to the publication of regulated information.

3.2 Publication of regulated information

3.2.1 Dissemination of regulated information by issuers (Art. 17§1)

CESR is requested to provide advice on possible implementing measures on minimum standards and should in particular consider how to ensure:

- a) fast access to regulated information for investors located not only in the issuer Home Member State, but in other Member States. In particular, CESR should consider changes to the current situation at Member States level;
- b) fast access to regulated information on a non discriminatory basis. In this respect, it would be useful assessing as to whether different solutions on the method of dissemination should be envisaged according (i) to the type of regulated information (ii) the type of issuer or the market segment where the issuer's securities are admitted to trading on a regulated market, or (iii) any other criteria.

ENPA analysis

Commissioner Bolkestein has underlined in the EP that “The compromise is neutral as regards the use of any technology, thus neither excluding newspapers nor electronic means. Furthermore, it would be made clear in a recital that a home Member State may always request publication of regulated information via newspapers, in addition to other measures of dissemination”.

The Prospectus Directive and its implementing measures, as well as the Directive 2003/58/E amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies, have also recognised and maintained the publication of the regulated information in the newspapers.

In inserting Recital 6a) in the text and in amending Art. 17§1, the EU has recognised that newspapers continue to play an essential role in the dissemination of financial information.

It has ensured that all investors, including small investors, have access to such information, which is a key-purpose of the Directive. To achieve this objective, ENPA underlines the importance of having a neutral approach with regard to the dissemination of information and to avoid favouring one particular system over another. Investors should be able to receive information from different sources and not only from the Internet, as reliability, security and accessibility are still questioned in this area.

In many Member States, a majority of investors regularly consult newspapers to find the regulated information from listed companies. Investors consider newspapers as a reliable source of information in this field. In this context, it is therefore necessary to ensure that all investors can still find in future such information in their preferred medium.

ENPA would like to emphasize that the interests of the investors and in particular of the small investors are at stake in this debate. One of the principal objectives of the Directive is to

ensure that all investors are adequately informed and therefore establish more confidence in order for them to invest.

Limiting the dissemination of information to the Internet and restricting it to a single source of supply will therefore be in contradiction with the objective to improve the information to the investors who will suffer from the implications of the unique use of the Internet for the dissemination of such information.

1° CESR should respect Recital 6a) of the Directive:

Recital 6a) ensured that the Directive “should not affect the home Member State’s right to request the issuer to publish, in addition, parts or all regulated information through the newspapers”.

ENPA therefore asks CESR to ensure that the scope of its mandate and its advice on minimum standards for the dissemination of regulated information by issuers do not affect or undermine the full application of this Recital of the Directive.

Recital 6a) applies on top of the obligations mentioned in Art. 17§1 and therefore does not establish a discrimination among the different media as it does not prevent the use of Internet. In consequence, neither the obligations mentioned in this Article, nor any future implementing measures of the Directive can prevent or restrict the right for a Home Member State to request publication of the regulated information in the newspapers.

2° CESR should ensure non-discrimination among investors and therefore among the media

CESR mandate regarding the dissemination of regulated information is based on Art. 17§1 of the Directive.

This article contains different requirements which are easily fulfilled by the newspapers:

- Newspapers are able to guarantee a fast access to regulated information in both their printed and digital forms; it is rapid as information is provided on a daily basis in the printed version and on a permanent basis via the newspaper’s Internet site.
- Newspapers can provide information on a non-discriminatory basis: it can ensure an access in both the printed and the digital newspapers; this can therefore ensure a wide coverage to the citizens who have the choice to get the information from their preferred medium.
- Newspapers are independent and reliable: they provide quality information and comprehensive reporting on the whole market; this aims to improve investors’ confidence.
- Newspapers are cost effective: the price of a newspaper remains the most democratic for the investors. To have access to the Internet is a much more burdensome expense, in particular for small investors.
- Newspapers enable all investors to have access to the regulated information from all type of companies, big or SMEs. It ensures a visibility of these companies by the public and that all

type of investors are adequately informed. A private centralised Internet site cannot provide such a visibility to the public.

- The dissemination of financial information in the newspapers is indispensable for the adequate information of small investors but also the business community, which consults them every day.
- Newspapers ensure a direct penetration of the information to the public, which is not the case for the Internet. Investors are naturally consulting the newspapers; a centralised site is not part of their habits. Internet is not the place where you receive the information.
- Newspapers can be relied on to ensure the effective dissemination of information to the public throughout the EU: both a printed and a digital newspaper are accessible all around the EU and outside the EU as well. In terms of public coverage, there is much more chance to effectively inform a majority of investors through the newspaper than by the Internet.
- According to recent statistics, newspapers are still the most consulted media by investors to receive information on quoted companies. The data showing consultation of Internet for such information are still very insignificant. CESR should therefore consider that investors are not ready to receive the regulated information only through the Internet.

One of the main principles of Art. 17§1 and of the Directive in general is to ensure to all investors access to the regulated information on a non-discriminatory basis.

Non-discrimination applies among the investors and among the media who disseminate such information. These 2 principles are inter-related: if however CESR favours a certain type of dissemination, such as Internet dissemination, it would *de facto* exclude many investors across the EU who used to find this information in a newspaper and have not necessarily access to Internet.

When a Member State has not required the publication of the regulated information in a newspaper, the Commission's technical measures should therefore avoid favouring one particular system over others and should ensure that information is disseminated both through the Internet and through the newspapers. This would respect the principle of non-discrimination contained in Art. 17§1. This also means that Internet should not be considered by CESR as the only means of disseminating information.

Limiting the dissemination to the use of the Internet has many disadvantages:

- Reliability is essential for the investors who receive the type of information regulated under the Directive. Security and technical feasibility are real obstacles within the Internet. The dissemination through the newspapers is not affected by such obstacles.
- Restricting the dissemination of information to the Internet would be counterproductive to achieve the objectives of the Directive, which is notably to ensure an optimal level of information to the investors. Other means of disseminating the information, and especially the newspapers which are closer to the EU citizens, need to be considered. The discrimination against other proven traditional information media is not necessary to achieve the Directive's goals. This will disadvantage small investors who used to get this type of information from the newspapers and who rely on them to receive this information.

- The access to information by all investors is at stake in this debate. Internet penetration is still very low and differs significantly from country to country. This is an obstacle to access to the information, especially for small shareholders. Accessibility is not questioned when the investor can easily find such information in the newspapers. Many people, including small shareholders, rely entirely on material published in the print media to obtain information. The Internet can be subsequently used for more detailed searches. Both systems should therefore be maintained.

- The quality of the information published is also essential in order to improve investors' confidence. This quality and comprehensive reporting on the whole market is provided by the newspapers, which provide complementary information to the investors. This contributes to a greater transparency of the market.

- If CESR sets criteria which would favour particular private Internet services such as Newswire, such a system would create a monopoly situation, which is not neutral and independent and where certain companies could be privileged over others. It would also create unfair competition and lead to a dominant position in the market. Issuers and investors will suffer from such a situation and independence, neutrality and transparency cannot be guaranteed.

- A centralised Internet system privately owned will not ensure an equal access to information to all investors. The Internet is not used as a favourite means of information.

- If such a scenario is envisaged by CESR, this will put an end to the financial press. In financial newspapers, not only can the investors be alerted every day on quoted companies' regulated information but they can also benefit from an analysis and explanation of the market situation. This is essential to ensure transparency to the public. This cannot be provided by the Internet alone where companies would be less exposed to the public; they would therefore be tempted to dissimulate their results via the Internet, where these results are less accessible. This is not the purpose of the Directive.

ENPA therefore recommends CESR to avoid discriminating among the media for the dissemination of the regulated information. If the criteria for dissemination are such that they favour the Internet, the principle of non-discrimination mentioned in Art. 17§1 will not be respected and many investors will not be able to access such information. ENPA therefore calls on CESR to ensure that in the criteria defined for the dissemination of information, both the Internet and the newspapers are adequately considered and treated equally.

3° The minimum standards for the dissemination of information should be neutral, adapted to and accepted by all the media involved

ENPA has observed that a Consultative Working Group of market participants has been appointed to provide technical advice to the Transparency Expert Group. It is mentioned on CESR website that market participants are experts drawn from across European Markets. They are not intended to represent national or specific firms' interest and to replace the important process of full consultation with all market participants.

An Internet business news company, PR Newswire, is part of this consultative group. This company provides information to investors through its internet services and has therefore a particular interest in the discussion within CESR on financial information.

ENPA seriously doubts that this expert is not intended to represent specific firms' interest, as it is mentioned on CESR website. Furthermore, ENPA questions the neutrality and the representativity of this consultative group if newspapers are not represented. Newspapers are also market participants and should therefore be present in this group. **ENPA therefore calls on CESR members to ensure that an expert from a newspaper company is represented in this group.**

CESR should avoid that the standards established for the dissemination of information only fit for Internet publication by companies such as Newswire and in consequence are not adapted to publication in the newspapers, online and in their printed form.

4° Analysis of the criteria mentioned in 3.2

- Criteria mentioned in point a)

- Fast access to regulated information:

Newspapers are fulfilling this criterion as they are able to publish rapidly the regulated information in both their printed version and on their Internet site.

Furthermore, many investors are used to consult newspapers on a daily basis for getting the regulated information. To fulfil the criteria of non-discrimination mentioned in Art. 17§1, it is necessary to ensure that the criteria defined by CESR to determine a fast access considers the publication in newspapers in a parallel and equal way to the Internet.

- For investors located not only in the issuer Home Member State, but in other Member States:

In this case also, the publication in both the printed and digital newspaper would fulfil these criteria and in the same time comply with the non-discrimination principle. A newspaper is effectively accessible by foreign investors in many other countries.

As we mentioned above, ENPA calls on CESR to ensure that the criteria determined for the dissemination of information should not discriminate against the publication in newspapers and considers the dissemination of financial information in Internet and in newspapers in parallel and equally.

- Changes to the current situation at Member States level:

ENPA would like to have further clarifications on this part of the mandate which does not find its justification in Art. 17§1.

One relevant example that we could give with regard to the changes of situation at Member States level is a decision of 16 June 2004 of the Belgian Conseil d'Etat. This High Court has declared discriminatory and therefore unconstitutional a law requiring that the official journal, Le Moniteur Belge, is only accessible through the Internet; in consequence, the Court has ruled that such publication should also be available in its printed version in order to guarantee an equal access to official texts for all citizens.

If it provides the justification of this criterion under Art. 17§1, CESR should therefore consider the decision mentioned above which clearly indicates that information that listed companies are obliged to publish should be accessible in both newspapers and on the Internet. Any decision favouring only the Internet could be discriminatory and infringe the basic fundamental rights of access to information, guaranteed in the Constitution of the different Member States. The Commission would therefore face the risk of the withdrawal by a Court in Belgium but also in other Member States of the measures implementing the Transparency Directive.

- Criteria mentioned in point b)

- Fast access to regulated information on a non-discriminatory basis:

ENPA calls on CESR to ensure the respect of the principle of non-discrimination among the media for the publication of the regulated information and of neutrality, which is inter-related to the principle of non-discrimination among all investors. This principle is contained in Art. 17§1 and cannot be overridden.

As we mentioned earlier, if CESR determines criteria which can only be fulfilled by the Internet but not by the printed newspapers, then it will create discrimination not only among the media but also among the investors, who do not necessarily have a permanent access to the Internet. This will therefore exclude some investors from the access to the regulated information, which will be against the purpose of the Directive and contrary to Art. 17§1.

ENPA is not against the use of Internet for the dissemination of the regulated information but supports that both dissemination in newspapers and on the Internet coexist for a non-discriminatory access by all investors. ENPA asks CESR to base its advice on this principle when determining the standards for dissemination. It could amend point b) as follows:

b) fast access to regulated information on a non discriminatory basis **between the Internet and the newspapers.**

- Assessing as to whether different solutions on the method of dissemination should be envisaged according i) to the type of regulated information, ii) the type of issuer or the market segment where the issuer's securities are admitted to trading on a regulated market, or iii) any other criteria

ENPA considers that CESR should avoid basing its reflection on setting criteria such as the type of regulated information, the type of issuer or the market segment and creating a different method of dissemination for this information. It implies a risk that certain information available on the Internet is not available in a printed newspaper; there will therefore be a gap in the adequate dissemination of all regulated information.

Art. 17§1 of the Directive requires the dissemination of information on a non-discriminatory basis and therefore does not make such distinction. The criteria mentioned in point 3.2b) of the mandate will go against this principle. If CESR decides that a certain type of information should be disseminated only through the Internet, then it will definitely cut the access to information for most investors.

CESR should understand that the dissemination of the regulated information in a newspaper aims to provide the information to all investors on many different companies at the same time and in a comprehensive manner. If such information is only published on the Internet, it will be impossible for the investors to know that this information is available.

An exclusive dissemination of information through a centralised system owned by a private company would not ensure equal access: not all the investors have access to the Internet as easily as a newspaper. Access to such system will be much more costly. The independence and the transparency of such system are not guaranteed if the dissemination through the newspapers is not maintained in parallel. The dissemination in the newspapers guarantees to the issuer that “the public”, as mentioned in Art. 17§1, has been informed; an Internet service provider website will not be able to cover all the “public” itself. Newspapers are still therefore indispensable in parallel.

All the information regulated in the Directive is currently published in newspapers in all Member States and is therefore consulted regularly by a lot of various investors.

It is important that CESR ensures that all investors, big and small, are still able to find all the regulated information in both newspapers and digital medium; CESR should therefore find criteria which maintain in a parallel and equal way the dissemination through the Internet and in the printed newspapers and should not retain those mentioned in i), ii) which will not comply with Art. 17§1.

ENPA proposes to withdraw the 2nd sentence in b). Instead, CESR advice should consider in b) how to ensure the equal access by all investors to all regulated information on a non discriminatory basis in both newspapers and on the Internet. This will therefore be in line with Art. 17§1 and with the spirit of the Directive.

3.2.2 Keeping periodic financial reports available by issuers (Art. 4§5 and 5§5)

In the mandate, CESR is invited to provide technical advice on possible implementing measures on the technical conditions under which a published annual financial report (including the audit report) and a published half-yearly financial report (including any audit report or any review) is to remain available to the public. In particular, CESR is invited to consider the possibility for the issuer to fulfil such obligation by providing the relevant information to the central storage mechanism referred to in Article 17(1)a of the level 1 Directive.

In our view, CESR should ensure that the establishment of these technical conditions, in particular the central storage mechanism, does not prevent the accessibility of the annual financial report and the half-yearly financial report in newspapers.

ENPA would also oppose that such a central storage mechanism is a privately owned company, which would in this case, not be neutral, independent and transparent, and which would therefore unfairly compete with newspapers.

Conclusion:

- ENPA believes that CESR mandate needs to be reviewed in the light of our remarks. It should consider that in the Transparency Directive and in other EU financial legislation, the EU institutions have explicitly recognised that all the regulated information needs to be disseminated also in newspapers in addition to the Internet.
- If Internet is favoured, the consequences would be dramatic not only for the financial press but also for all investors and issuers. Transparency, non-discrimination, access to information and competition are at stake in this debate.
- ENPA therefore calls on CESR to ensure that point 3.2 considers our views; in particular, it could change point b) of its mandate and insert the equal access by all investors to all regulated information on a non discriminatory basis in both newspapers and the Internet.

We trust that you shall take account of our concerns. We remain at your disposal for any complementary information you may require.

ENPA -The European Newspaper Publishers' Association - is a non-profit organisation currently representing some 3.200 daily, weekly and Sunday titles from 22 European countries. More than 91 million copies are sold each day and read by over 240 million people.

Yours sincerely,

Sophie SCRIVE
ENPA Deputy Director

ENPA
European Newspaper Publishers' Association
Rue des Pierres 29 bte 8
1000 Bruxelles
Belgique
Phone : 32 2 551 01 90
Fax : 32 2 551 01 99
e-mail : sophie.scrive@enpa.be