Secrétariat

Committee of European Securities Regulators
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Notre référence	Votre référence	Date	Page
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Concern: Comments from the Luxembourg Stock Exchange on CESR/04-511 Consultation paper October 2004 Part 1 on dissemination and storage of regulated information

Dear Mr. Demarigny,

The Luxembourg Stock Exchange is a major listing centre of international bonds, equities and investment funds. On 31 December 2004, 33,022 different securities were listed on the Luxembourg Stock Exchange with more than 4,100 issuers from about 100 jurisdictions. 56% of these are not European issuers (1% from Canada, 15% from USA, 11% from Asia, 14% from Central America and 4% from South America). This provides evidence that the Luxembourg Stock Exchange has one of the most relevant experiences in the listing activities related to third countries issuers on a EU regulated market, notably in the field of supervision. Like in half of EU Member states, the Luxembourg Stock Exchange is currently the competent authority for approving prospectuses and supervising compliance of issuers listing obligations.

As a preamble, we hope that CESR will consider at a latter stage to undergo a cost and benefit analysis and a proportionality test before the adoption of its advice by its members. This wish is in line with European Parliament and European Securities Committee reiterated demands when adopting level 2 measures. We consider that it is not useful, time consuming and confusing to propose an advice to the European Commission if its contents might not fulfill these two tests.

We welcome the opportunity to comment on CESR consultation document related to the important issue of dissemination and storage of regulated information. However, we have the feeling that the different options are only presented in order to demonstrate that CESR has only one preferred solution for dissemination proposed to issuers and to the different market participants. Our feeling is illustrated by the use of terminology like PIP or SIP without any definition in the document (Cf. Page 40 paragraph 49 and page 57 paragraph 166). These acronyms have a definition in only one Member State, namely the United Kingdom. This feeling is reinforced by the indication in the issue n° 8 of LIST -

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December 2004 in one of the UK FSA publications that " CESR proposes that Member States adopt a dissemination model already familiar to the UK…" (Cf. page 11).

The Luxembourg Stock Exchange is in favor of market led approach and could agree if the new and recent UK model for dissemination is extended to all Member States, as long as it is consistent with the Transparency Directive. However, we have some concerns in form and in substance. It is paradoxical that CESR seems to be not transparent when organizing a consultation with various options and not indicating at the same time, it intends to promote the existing UK model. We do not disagree with bottom-up approach as long as it is combined with a real analytical top down analysis. Furthermore, it would be interesting to have a clear view on the costs paid by issuers subject to this national model. It could be the starting point for a real cost and benefit analysis at EU level. Second, it raises issues on competition when CESR advocates the use of the services of few companies with already adapted software and resources for this national model. We hope that CESR will definitively adopt a neutral approach on these issues when drafting its final advice to the European Commission and keep in mind that their proposed solutions should not be tailored made for only one Member State.

Comments on the introduction:

Basically, we share the main thoughts as expressed in the introduction, and would like to seize the opportunity to welcome more particularly the commitment of CESR towards free competition in the field of dissemination and accessibility of regulated information, the mention of the importance of the regulated information as a key factor for any price formation process, as well as the open attitude for the discussion on the efforts pursued towards more integration on the way to the single market. The latter can be achieved in various way and we appreciate the openness of the views as expressed without focusing on a single solution, which although rather optimal may be indeed hard to achieve.

We share the views on the key concepts of dissemination and storage of information as laid down in the consultation paper. We subscribe more particularly to the push approach as taken for granting an active dissemination of regulated information which may not resume in an auto-publication on the sole website of the issuer without any intervention of a third, neutral and independent party which may stand for effective delivery and which contributes to the fact the any regulated information to be disseminated by any issuer not only is published, but is published in and organized and regulatory environment helping to ensure that the information is accurate, and not merely published without any public control. The fact of disseminating the kind of information as currently discussed is a very important action that should not be at the sole discretion of the issuer ('s website, without any other control be it as simple as acknowledging receipt of the information to be published).

Paragraph 3:

We have a different understanding from CESR on the scope of the new mandate from the Commission related to the issues mentioned in paragraph 1. The implementing measures related to the electronic filing with the competent authorities and the role of the officially appointed mechanism for storage need to be addressed anyway but the setting up of a European electronic network of information about issuers is only a possibility (not mandatory and in any event only after the end of the transposition period).

Paragraph 19:

We have some doubts that this definition is in line with the Transparency Directive requirement in Article 21 (1): i.e. to make available to the public the regulated information. It seems to be restrictive to one particular type of dissemination and do not envisage that regulated information might be made available to the public directly.

Paragraph 20:

We cannot support CESR interpretation of the Market Abuse Directive. This interpretation is too far reaching. Our understanding of the second subparagraph of Article 6 (1) is that web posting is mandatory but should be accompanied with an alternative dissemination tool. Article 1 (2) point c of the same Directive clearly states that Internet is a way to disseminate information through the media. Furthermore, Web-posting of prospectus is recognized in Community legislation as an acceptable mean for making information available to the public, even on an exclusive basis. Prospectuses contain at least the regulated information required in the Transparency Directive and the most recent information must be included in such document. Therefore, publication of a prospectus will be often the first occasion of making available to public some new regulated information. We do not understand why press is only mentioned in paragraph 21 and not web posting or the other models of dissemination.

Paragraph 22:

We consider that CESR interpretation of the scope of the publication requirements in the Market Abuse and in the Prospectus Directives is too summarized. First, dissemination to the public is required also in Article 6(1) of the MAD and in Article 14(1) of the prospectus Directive, though without mention of pan European basis. Second, the publication of a prospectus will occur in all Member States where the offer of securities to the public is done and in all Member States where the securities are admitted to trading on a regulated market. For the MAD, there is no indication where the information should be made available to the public. However, this silence does not mean that this issue was not tackled during the negotiations of this Directive. In fact, this issue was raised but Member States agreed not to find a solution on this issue. Therefore, this issue will depend on the national transpositions of the MAD irrespective of any level 2 or 3

measures that cannot overrule the freedom of transposition left to Member States on this issue.

Paragraph 23:

We also share the views under this item and would suggest that they tend to indicate that in future the whole regulated information will change the channel of dissemination and will put some pressure on especially the newspaper environment. As this may have wider repercussions on some printing media, we wonder whether it would be useful to expressly consult with this industry.

Paragraph 26:

We share the view that media are not under an obligation to disseminate information received by issuers, notably if it is a long document, or information sent by a company with small notoriety. However, we would like to received indication on how an issuer is deemed to have made public the regulated information to be disclosed and thus will fulfill its legal obligation if an information is not effectively disseminated through media.

Paragraph 27:

We understand that media are not under an obligation to disseminate all the information received by issuer and could possibly publish only part of it. Therefore, we think that no solution is provided for solving the dilemma that an issuer has to make public through media all the information to be disclosed and not part of it (as indicated in paragraph 41). We hope that CESR will reflect on this issue, which is crucial for issuers.

We are also of the opinion that company news obligations should be kept separate from the disclosure provisions under the regulated information scheme. Any more concrete integration with regard to the further integration to both sets of data should if ever be undertaken under a more longer term approach.

Hereunder, we will comment on the various questions as raised in the consultation document mentioned here above.

B. Consultation Paper on Dissemination of Regulated Information by Issuers and on Conditions for Keeping Periodic Financial Reports Available

Comments on section 1:

General comment of the timing for making public information:

Even though, the Luxembourg Stock Exchange shares the view that price sensitive information should be disclosed without delay, we consider, for legal reasons, that CESR should stick to the Community terminology and not impose different requirements from the Community level one.

First, the terminology for the different timing requirements is consistent in the three Directives (Article 6 (1) of MAD: as soon as possible; Article 5 (1) of TOD: as soon as possible and Article 14 (1): as soon as practicable).

Second, 'as soon as possible' cannot be defined or interpreted as 'without delay', not because of the difference of wording, rather because the words 'without delay' were not adopted and rejected in two out of three of the mentioned Directives. The words 'without delay' in the Commission proposal for the Prospectus Directive were rejected and modified with the words 'as soon as practicable' less demanding. During a meeting on the feasibility study for the TOD based on a questionnaire, representatives of Member States rejected the words 'without delay' and the Commission changed its mind with a proposal using the 'as soon as possible' terminology as agreed for the MAD (terminology coming from Directive 79/279/EC now repealed).

Furthermore, the TOD implicitly indicates that it is possible to delay the information but maximum deadlines for publication of financial statements and thresholds on major holdings are imposed.

The same problem of confusing terminology occurs with the use of the terms "price sensitive regulated information" which are not defined and might be confused with the definition of inside information in the MAD (if it has the same meaning as it seems to be indicated in paragraph 5, we encourage CESR to stick to Community terminology in order to avoid any ambiguities).

We are also concerned on the division between price sensitive regulated information and non-price sensitive regulated information made by CESR (page 22). A document to be disclosed might contain at the same time both price sensitive information and non-price sensitive information, and in practice will be considered as inside information as a whole. This is particularly true for financial statements and financial reports. There is already case law in Europe indicating that internal drafts of financial statements are to be considered as inside information. We think it is essential to have very clear explanations on this division otherwise issuers will not be in a position to understand the difference of timing proposed by CESR between the two concepts and at the end, the forthcoming advice might be not operational at all.

Question 1: What are your views on the minimum standards for dissemination? Are there any other standards that CESR should consider?

Although we may basically agree on the different minimum standards as described in the consultation paper, we think that for pure legal reasons the use of the terms without delay is not suited.

On a longer term view, especially with regard to price sensitive information, we might support the dissemination to happen without delay and hence strengthening the constraints for issuers in order to keep the investment community informed, not only on this kind of information, but on any information of a regulatory nature. This amelioration on the timeframe to comply with for making the information public to each and any investor should be applauded. It is a matter of fact that the compliance with this new, more rapid definition of dissemination does make appeal to new channels for dissemination, and hence electronic dissemination might become a natural way in order to proceed and to comply with the minimum standard under 5. a). This approach should nevertheless as previously discussed not be introduced through level 2, but preferably be enshrined at level 1 of the new European legislative Procedure under the Lamfalussy process.

We wonder if CESR is in fact proposing an additional obligation for the place of publication of regulated information by imposing a duplication of place of publication (the place of listing and the place of registered office). For instance, in case of a company listed only in one Member State, the publication should be done in the Member State of origin defined according to the Transparency Directive or in the host Member State if the issuer is not listed in its home Member State (see Article 21 (3)). It seems there is an inconsistency with the level one Directives (MAD, Prospectus and TOD) and a possible new requirement going beyond what was agreed by European Parliament and Council.

Under paragraph 5. c), we are not sure whether the approach chosen is due to ensure an efficient functioning of the market. If dissemination throughout the different Member States is an aim that should surely be attained, we wonder nevertheless whether the moment of reception by investors on different Member States should not be streamlined in order to achieve a real dissemination without any kind of difference of the moment at which regulated information may be received by investors abroad. There should be a kind of European level playing field for any investors in Europe deemed not only to receive the information, but also to receive within the same timeframe as investors based in the issuer's home Member State.

We would like to have further indications on paragraph 6 point b, page 15. It is unclear what it is the difference between unedited and edited text if there is no explanation. There is no reference on what are the different industry standard formats or the type of local formats. The understanding of a unique announcement identification number is unclear

for people, which are not familiar with the UK model (the word 'announcement' seems directly coming from the RNS system).

On the necessary output information fields, we would favor the inclusion of the ISIN code of the securities concerned because it is one of the most relevant field for market participants when processing information on listed issuers (requested in the implementing measures of the prospectus Directive).

Question 2: What are your views on the standards for dissemination by issuer? Are there any other standards or related issues that CESR should consider?

We don't have any particular comment to raise with regard to the proposed standards, would nevertheless stress that it seems to us that the issuer must be sure that what ever dissemination channel is used, that the regulated information should ideally be disseminated as foreseen under § 5 a) without delay (to be complied with by the issuer or operator in charge of dissemination). However, we wonder how this may be realised e.g. through the dissemination by newspapers, and hence we refer to our comments formulated here above pleading for the softer approach of dissemination or publication as soon as possible or practicable.

Question 3: Should an issuer be able to satisfy all of this Directive's requirements to disclose regulated information by sending this information only to an operator? Please explain reasons for your answer?

We acknowledge the importance of this point and we argue that this a matter of policy where the regulation should set the right scene in order to have the regulated information properly released. This should be done in a way where the issuer can be fully ensured that he has properly fulfilled its regulatory disclosure obligations. This might be only achievable if some more guidance is given with regard to the appropriate and eligible ways that may serve to this end. It should be avoided that issuers should have to bear any duplicative and onerous publication requirements relating to the same items of information.

Question 4: Do you agree with the structure set out in Figure 1? Are there other structures that would be in line with the Transparency Directive requirements? Please set out reasons for your answer.

Yes, we may agree with the structure set out in figure 1. We would suggest again that the obligation to disseminate "without delay" or better as soon as possible/practicable should be made more precisely with regard to a given intervening entity in the dissemination process. Is it sufficient that the issuer has transmitted the information without delay to his operator, or should the requirement with regard to the rapidity of disclosure not be

defined within the scope of the operator respectively with regard to the chosen media? Any guidance for some more clarification would be helpful.

Question 5: Should operators be subject to approval and ongoing monitoring by competent authorities or not? Please set out reasons for your answer.

We do not favor the approval of each operator, notably for legal and competition reasons. First, being an operator for the dissemination of regulated information is not a service mentioned in the ISD or in the MIFID nor in the Transparency Directive. Therefore, Community legislation does not foresee supervisory functions from securities competent authorities on these entities. Second, some existing operators are not at all investment firms. Third, such approval would anyway not remove the responsibility assigned to the issuer by the Transparency Directive to them. Fourth, it would create unfair competition for EU operators compared to non-EU operators because they won't be subject to such approval and issuers might hire their services.

Therefore, we favor the solution proposed in paragraph 16 and consider that the arrangements between an issuer and an operator should be established on a purely contractual basis.

Question 6: What are your views on the proposed minimum standards to be satisfied by operators? Are there any other standards that CESR should consider?

Question 7: Should issuers be required to use the services of an operator for the dissemination of regulated information?

We support the approach as chosen with regard to minimum standards to be complied with by operators.

For efficiency reasons, and in order to help to create a kind of level playing filed in the domain of dissemination of regulated information, we think that it might be appropriate to require the use of the services of an operator in order to be discharged from their obligations to disclose any regulated information. However, there should be no transfer of responsibility with regard to the provisions as formulated by article 7 of the TOD.

We have some point of concern with regard to the standard that any regulated information should be released without delay, as in reading the complete document it might sometime be understood that this timing provision only applies to price sensitive information (cf. e.g. § 25 c)), where as in § 5 a) this provision seems to be made applicable to any regulated information as defined by article 2.1. k) of the TOD. We refer again to our general comments made here above on the timing of making public regulated information.

We would also be happy to receive additional information on the embargo system because it might be source of confusion and risk for the operator (authorized in some Member States and forbidden in others). Notably we are seeking solutions for issuers listed in several places including non-EU exchanges when they are subject to divergent rules (at the same time they have not the possibility to disclose information during the trading hours and oblige to disclose the information during the trading hours for instance). Furthermore, we wonder if it is compatible with the CESR proposed regime of publication without delay.

On regulated information received in a non-electronic format, we would be happy to have a confirmation that an operator is not obliged to accept to work with these types of format due to the contractual arrangements established with an issuer and can perform its activities only on the basis of documents and information received in an electronic format.

Extensive clarification would also be welcome in order to understand the new concept of 'urgent priority' regulated information proposed by CESR.

Question 8:	What are your views concerning the role of competent authorities in disseminating regulated information as operators? Please set out reasons for your answer.

For obvious non-discrimination and competition reasons, we consider that competent authorities disseminating regulated information should be subject to identical minimum standards than those to be satisfied by private companies acting as an operator. Furthermore, these activities should be segregated in order to identify the real cost occurred and not funded through taxes or other type of levies. This issue is also related to question 5 on approval of operators and their monitoring. If such an option was retained, the national competent authorities in question should also seek an approval and should be under permanent monitoring, in order to avoid any discrimination and unfair competition.

Question 9:	Do you consider it necessary to attempt to address the risk that regulated information may not reach every actual and potential investor throughout the EU? Please set out reasons for your answer.
Question 10:	Which of the options presented above would, in your view, minimise this risk? Please set out reasons for your answer.

First of all, we would like to stress that we appreciate the fact that stock exchanges or market operators are eligible for assuming the role of an operator and to offer operator services, as recognized in several EU Directives. We believe that this solution might

indeed be efficient for time and cost reasons, avoiding duplication of transmissions of regulated information and allow quick sharing of information especially for the market as organized by a stock exchange or market operator.

Yes, we thing that it would be appropriate to consider the risk as raised in question 9. Addressing this risk seems to result quite naturally from the European perspective the dissemination of regulated information should take.

Question 10 seems not only to refer to the risk of non equal disclosure on a pan European basis, but also with the full dissemination by media versus edited versions in a shortened way of the same information, or even no publication at all by same media. Thus, there are two different problems with regard to reaching investors throughout Europe, as even if full disclosure is ensured by media, this does not automatically mean that full disclosure on a European scale has been attained. Anyway, we are tempted to qualify solution c) as being an appropriate mean to ensure best possible dissemination of regulated information, as it would allow for realising economies of scale within one and the same mechanism. On the other side, we wonder whether this solution is in line with the general distinction which is done in the introduction of the consultation paper between dissemination of information and the storage of the same information, as the central storage mechanism is to be understood as performing especially services with regard to storage and retrieval of information, made available on a longer term through the channels of the CSM.

Question 11: Do you consider there to be other methods of dissemination that would satisfy the minimum standards for dissemination? If so, please provide a description of such dissemination methods, and how they would work.

We would welcome some explanation on why certain type of regulated information (i.e. annual reports and accounts) could be exempted from the Directive requirement for an issuer to make public its financial statements and sent them only to its shareholders. We wonder if such proposal is still compliant with the Directive and will be sufficient. Furthermore, we do not understand why an issuer will be deemed to have made available to the public certain type of regulated information (with an uncertain and unclear frontier) with a simple notification when the issuer is required to make available the whole text. In addition, CESR seems also to have problems with its own proposal by dividing regulated information in price sensitive and non-price sensitive information. As indicated above, this is non practicable and legally questionable (last paragraph of our general comments on the timing for making public regulated information).

Question 12: Do you agree with this draft Level 2 advice?

Basically yes. However as mentioned in our above comments, we favor the following amendments and clarifications.

We are not in a position to support the reference to the terms 'without delay' in paragraph 1 point a), as it is not quite clear to us whether only price sensitive information should be made available without delay, or any regulated information should be dealt under this same time constraint (cf. point 1 a). We would not object to apply the time criteria especially to the type of information as organized under the MAD Directive 2003/6/EC, as foreseen under point 3 of the draft advice; but for the reasons as set put in our general comments on the timing of making public regulated information, we would prefer a solution requesting the dissemination as soon as possible or practicable.

Point b) should differentiate for securities with an individual denomination of at least 50 000 Euro because there are aimed at wholesale investors and not to retail investors and have a specific regime in the Directive itself (like in the prospectus Directive).

Point d) should be precised by adding with the words 'by issuers' in line with the Directive itself (Article 21(1)). We propose also to add a time limit in order to avoid confusion with the storage function because fees could be charged (for instance, retrieval of information is not free on US Edgar).

We would favor clarification in point f) on what could be a sufficient number of connections with media and proposes that CESR asks to each national competent authorities which are acceptable media for their Member State and discloses these names of press agencies, newspapers and websites dedicated to financial matters for each Member State. It is not obvious to know which media are well known in some Member States. Otherwise, monitoring of the issuer obligations will occur on unclear rules adding to the legal uncertainty.

On point g), the first sentence seems not adapted for a legal advice and is not justified with facts. We are still wondering which are the acceptable industry standard formats (PDF, windows word, html, XBRL ?). We have no more information on local formats (hard copy?). Furthermore, we do not understand this differentiation on use for regulated information at national level. This is not self evident to understand the purpose of such sentence.

On the necessary output information fields, we would favor the inclusion of the ISIN code for the securities concerned because it is one of the most relevant field for market participants when processing information on listed issuers. Furthermore, an issuer might have different competent authorities due to the definition in the Directive itself.

For operational hours (point b), we would favor to have a clarification on the extent of the wording at least. Is it possible to release the information at one a.m. for instance because it was received by the operator at midnight? Could we have precise information on the range of trading hours of all EU regulated markets?

In point c), we favor detailed rules on embargo for legal certainty reasons.

Comments on section 2:

Question 13:	Do you agree with CESR's advice in relation to this mandate? Please give reasons.
Question 14:	Do you consider that it is necessary for CESR to establish a minimum time period for which all regulated information should be made accessible to end-users. If so, please indicate: (a) what you consider this time period should be and (b) why; and whether or not you consider this time period should apply to all regulated information or only certain types. If only to certain types please specify what they are.

Yes, we may agree with the advice delivered with regard to section 2 of the consultation paper.

It is not quite clear to our mind what is meant by accessibility time frame criteria. Should this be linked to the time period foreseen under articles 4.1. and 5.1., we do think that this period of time should be applied to the CSM. We could understand that the period could be reduced to 3 years, but as the text of the directive does foresee a period of 5 years, this debate seems to be rather theoretical.

Basically, we would not object to make a difference between certain types of regulated information and to make this time period only applicable to certain information. On the other side, we may also share the views that information of a more ephemeral character could be stored during the same time period as it could allow investors to have an opinion on the handling by a given issuer of all disclosure obligations under the various EU directives.

C. Progress Report on the Role of the Officially Appointed Mechanism (Article 21 1a) and the Setting up a European Electronic Network of Information about Issuers (Article 22) and Electronic Filing (Article 19 4a)

Comments on the progress report, executive summary:

Section 1:

As mentioned above, we have some concerns on the proposed division between price sensitive regulated information and non-price sensitive regulated information made by CESR (pages 22 and page 31 paragraph 8). A document to be disclosed might contain at the same time both inside information and non-price sensitive information, and in practice will be considered as inside information as a whole. This is particularly true for financial statements and financial reports. There is already case law in Europe indicating that internal drafts of financial statements are to be considered as inside information. We think it is essential to have very clear explanations on this division otherwise issuers will not be in a position to understand the difference of timing proposed by CESR between the two concepts and at the end, the forthcoming advice might be not operational at all.

Furthermore, we do not support the use of the use of a new wording (as quickly as possible) instead of as soon as possible mentioned in the Directives.

Introduction (page 34):

General comment:

We have a different view compared to CESR of the understanding of the provisions included in Article 18.

First, it is up to each national competent authority to draw its own appropriate guidelines in order to facilitate the convergence of networks for better public access to regulated information. CESR has not a mandate to propose common guidelines and could only do a fact finding exercise of the existing situation in Member States at a moment they have not yet started to reflect on their transposition. It is even arguable that CESR could receive a mandate from the European Commission on this issue because the European Commission has not yet decided to exercise the option provided for in Article 18 (2). Our view is that the European Commission has not the right to exercise such option granted by European Parliament and Council before beginning 2007. Therefore, we consider that a large part of the discussion presented by CESR is premature and not suited for level 2, rather for level 3, as mentioned in the Commission letter sent to CESR on Article 18.

Second, the Directive does not mandate the establishment of an electronic network at national between different authorities nor the establishment of a pan European network or a platform of national networks. It is only a possibility depending on the decision of the Commission after end 2006 to propose such a solution. Furthermore, it is important to note that the institutional balance and the legal context for adopting such implementing measures might be different because of the possible ratification of the new Constitution at that time.

Therefore, most of the following questions are not yet relevant because answers will depend on the choice made by member States during the transposition according to their legislative procedure.

SECTION 1: CENTRAL STORAGE MECHANISM OPTIONS (ARTICLE 21.1/21.1a)

QUESTION 1: Do you agree with CESR's interpretation of the requirement of Article 21.1.a that central storage does not necessitate physical storage in one place? Please give reasons.

Yes, we may agree with CESR's interpretation on article 21.1.. This interpretation may help to take due consideration of existing situation in various Member States where regulated information, or different kinds of regulated information may be stored in different places that are not all located at the same physical place. This interpretation takes further into consideration the fact that CSM should probably start being organized on a national level in each Member State, before moving further on with the creation of a single European storage mechanism. The latter might well be the final aim to be attained, but it seems in our view very difficult to realize, to put into place, to keep funded and to keep under regulatory scrutiny.

QUESTION 2: Do you consider storage of regulated information by type to be a viable option? QUESTION 3: How do you consider the difficulties set out above could be overcome?

We consider this approach as a simple option, but not a viable one, as it creates fragmentation in the storage of regulated information, whereas this type of information is now newly defined in order to embrace all kind of information.

In our view the difficulties as raised in the consultation paper under point could be best overcome by starting to streamline the storage process in each Member State and to avoid fragmented storage of said information on a single national level. This would also be in line with the new requirements for any issuer to respond for regulatory purposes to the competent authorities of a given Home Member State, or to make available regulated information on a home member State approach.

QUESTION 4:	Are there any advantages or disadvantages to this option that have not been set out above. If so, please give details.

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QUESTION 5:	Do you consider a multiple storage mechanism regime to be a viable option? Please give reasons.

The answer to this question might take a different approach with regard to the size of the national economy of each Member State. In any way, should this approach gain some favour in the course of the consultation process, we would argue that such approach should be at the expense of over bureaucratic burdens for issuers, that should be able to deliver their obligations with regard to filing and storage of regulated information in an as easy way as possible and avoiding any duplication of transmissions of said information.

QUESTION 6:	Are there any advantages or disadvantages to this option that have not been set out above, that are necessary for CESR to consider? If so, please give details.

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QUESTION 7:	Do you consider having one central storage mechanism to be a viable option? Please give reasons.
QUESTION 8:	Are there any advantages or disadvantages to this option that have not been set out above that are necessary for CESR to consider. If so, please give details.

Yes, we think that having one CSM is a viable option, as it is in line with the approach chosen by the various directives adopted under FSAP. We are also of the opinion that this solution is the appropriate one for smaller member States. It would represent a user friendly solution with regard to investors who could rely on one and single infrastructure.

In a very general way, we think that the advantages of a single CSM per Member State clearly outweigh the disadvantages as raised under paragraph 59 of the consultation paper. We think that the arguments with regard to the commercial incentives to upgrade the added value rendered by the CSM should not only be discussed at a pure national level, but should be raised to a European level as there will anyway be competition between different CSM although located in different member States. But a CSM that would not keep pace with regard to the maintenance of its services, could well be out of

interest for issuers that may search for high quality for the delivery of its regulatory disclosure obligations without focusing on any given jurisdiction.

QUESTION 9: Which of the above options do you prefer? Please explain the reason(s) for your choice.
QUESTION 10: Do you consider there to be any disadvantages to regulated information being accessible through a Competent Authority's website. If so, please give details.

We think that the different options as described for having access to the regulated information are rather confusing, or even incomplete. Indeed, the third option may be realized more easily within option 2, as already well described in the consultation paper in point 68. We think that the disadvantage raised under paragraph 69 is one among many other points where regulatory intervention will have to be provided in order to choose whether there should be one or more CSM per Member State. We refer with regard hereto to our comments raised earlier here above. Hence the disadvantage of paragraph 69 could possibly be solved out through a regulatory solution to be adopted under this consultation process and that could possibly result in having only one CSM per Member State. Should the regulatory intervention adopt this approach we think that the main advantages would rely on the option as mentioned under paragraph 68.

With regard to question 10, as a Competent Authority does not act as a commercial entity in the processing of information for consumption by investors and therefore lacks commercial incentives, a Competent Authority that runs a central storage mechanism may not be able to maintain high standards of service or offer added value services to end users. This lack of commercial incentive may be offset by other incentives under national law that are particular to competent authorities.

We consider that, in any event, Article 19 (1) authorizes the home competent authorities to opt for giving public access to regulated information filed with them. However, for obvious non-discrimination and competition reasons, we consider that such competent authorities should be subject to identical minimum standards than those to be satisfied by private companies acting as an officially appointed mechanism for storage of regulated information. Furthermore, these activities should be segregated in order to identify the real cost occurred and these structural and operational costs should be at least charged. If such an option is retained by a member State, the national competent authorities in question should also seek an approval and should be under permanent supervision, in order to avoid any discrimination and unfair competition.

QUESTION 11:	Which of these options do you prefer? Please explain the reason(s) for your choice. Are options missing? Please explain which ones.
QUESTION 12:	Do you consider it necessary for CESR to prescribe one particular option? Please explain your reasons.

Yes, we think that it might be helpful that a regulatory intervention takes place at this stage in order to route the regulated information to a CSM.

We consider options 2 and 3 are not realistic in practice because there are no direct or indirect legal links (by law or even contractual) between the officially appointed mechanism for storage of regulated information and the all different media or 'document capture services' of the world. Options 2 and 3 will function only on best efforts and therefore cannot achieve the obligations set out in the Directive to store all regulated information (in full text).

We think that option 4 is the solution that should be preferred. The arguments expressed under this solution are self explaining.

Furthermore, we consider that there is possibly a confusion by introducing a reference to 'document capture services' entities which are no mentioned in the Directive and seems to perform other operational tasks not linked to the general principle of storage set out in the Directive. We would welcome if CESR deals with this issue in the format of the regulated information to be stored by the officially appointed mechanism.

In addition, we would like to raise again our general concern on the division between price sensitive and non-price sensitive information in our previous comments. We cannot support CESR view that the Directive authorizes the possibility to disclose and disseminate some information only through a notification and not the full text of the required information.

QUESTION 13:	When should an issuer's responsibilities to send information to a central storage mechanism be considered fulfilled? Please explain your reasons.

We tend to support the solution described under ii) of point D. of Section 1 of the consultation paper.

QUESTION 14:	Should all price sensitive information be made available in real-time by the central storage mechanism to moderate the affect of "black holes" resulting from the dissemination process?

Cf. response under questions 15 and 16.

QUESTION 15:	Do you agree that non-price sensitive regulated information does not need to be made accessible by a central storage mechanism to the same deadlines as price sensitive regulated information? Please explain your answer.
QUESTION 16:	To what time deadlines should a central storage mechanism be required to make regulated information available?

We do not support the difference of timing of public access in the officially appointed mechanism because of lack of consistency with the different Directives dealing with dissemination of information when there is no differentiated approach for the obligation to publish the information as soon as possible or practicable in the three texts. There is also a lack of legal certainty derived from the absence of clear-cut division between price sensitive and non-price sensitive regulated information. CESR has already acknowledged this issue in paragraph 26 (3). The future advice on this issue should be operational and not left this uncertainty under the responsibility attached to issuers.

We would also like to point out that any regulated information which by nature is not due to represent price sensitive information, but which incidentally might contain information of a price sensitive nature, should anyway fall under the regime of price sensitive regulated information (e.g. an annual report that contains price sensitive information).

QUESTION 17:	Which of the above options or combination of options do you consider to be most desirable? Please give reasons.
QUESTION 18:	Are there any other options that have not been identified above that you consider to be desirable? If so, please give details.

As a preamble, we favor market led solutions. We consider that CESR should not investigate on the funding of operating a central storage mechanism if held by private companies because it seems to be a feasibility study far from the Commission request of a progress report on a European Electronic network.

That said, we think that a CSM should not be run for free as it is based on important initial and on going work for creating a central data base and for keeping it up running throughout the life of the different issues that generate the regulated information to be made available to the investors. This approach would also be in line with the intellectual property rights which may be derived from the setting up of a database and more particularly the sui generis rights as defined in this area by the directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of

databases. We think that the funding of a CSM should not be borne from one single interested party, but that the funding scheme and the costs occurring with regard to the creation and the maintenance of the CSM should be borne by different constituencies. There are different combinations possible, and it seems to us that either a combination of the options described under point 115, 118 and 122 seems to be a desirable solution, to which may be added if applicable the option as explained under point 125.

A combination would also allow to mutualise the funding of the relevant costs associated with the creation and the running of a CSM.

QUESTION 19:	Which of the above do you consider to be the best option? Please give reasons for your answer.
QUESTION 20:	Do you consider there to be any other advantages or disadvantages to a Competent Authority or a commercial taking on the role of the central storage mechanism that have been discussed that are necessary for CESR to consider? If so, please give details.

We would like to recall once again that for non discrimination and competition reasons, we consider that competent authorities operating central storage mechanisms should be subject to identical minimum standards than those to be satisfied by private companies acting as CSM. Furthermore, these activities should be segregated in order to identify the real costs occurred and not funded through taxes or other type of levies. The national competent authorities in question should also seek an approval from a competent body and should be under permanent monitoring, in order to avoid any discrimination and unfair competition.

As a very general comment, we would like to support the very open views with regard to who should operate a CSM as expressed in the consultation paper, especially with regard to the appointment of a commercial entity. As a stock exchange an operator of a regulated market, we understand that this kind of entities are not excluded from the possibility to act as operator of a CSM. We would even be tempted to say that a stock exchange should be able to intervene both on the dissemination side and on the storage side with regard to regulated information. We think that such solution might offer economies of scale, might be efficient from both a viewpoint taking into consideration the time constraints for making information public and for keeping it publicly available, and also from a viewpoint taking into consideration the costs of running such CSM.

With regard to the options mentioned in the consultation paper, we would not object to leaving the choice of the operator to each member states in taking into consideration the actual structures that may exist, and leaving the regulatory intervention to the topic of networking of the different CSMs that may exist in each Member states and that may eventually function under various forms.

QUESTION 21: Which of the above options do you prefer? Please give reasons.
QUESTION 22: Do you think it is necessary to make the status of the stored information as reviewed or not reviewed by the regulator transparent in the storage mechanism? Please give reasons.

The interest of the issuers should be considered and the option taken should not in anyway affect their interests. The issuers' interests are principally to have certain information disclosed as rapidly as possible in order to keep the market informed and in order to avoid differences with regard to the level of information of various investors.

Their interest is to have at least information released or disseminated as soon as possible in order to be fit and proper with regard to their compliance obligations under the transparency rules. It is of their utmost interest to not bear any responsibility once they have transmitted the information to the operator, document captor service or other channel, in supposing that the information released is correct. The information of the price sensitive type should be disclosed as soon as possible and ex ante control might affect the proper functioning of the market. Hence, the system for allowing this kind of information should be built in such way that the pressure for granting that the information to be published is correct lies on the shoulders of the issuer, or the person representing the issuer. This should be largely ensured through the new disclosure rules under the MAD, which not only require issuers to release as soon as possible any information falling under the scope of article 6 of said directive, but do also provide for severe mechanisms of sanction where the information to be released would suffer with regard to their accurateness.

We consider that CESR interpretation of the Directive on supervision of the regulated information disclosed goes far beyond what is included in the Directive. We do not share the views expressed in Paragraph 142. Article 19 of the transparency Directive defines the minimum monitoring to be done by competent authorities and is limited to the effectiveness of the filling of the information required. Nothing else is required because it is left to national discretion and it will be up to each Member State when transposing the Directive to have possibly additional rules on this issue.

There is no requirement under the Directive for regulated information to have a pre clearance of the content of the information because it was simply not accepted in the MAD (even mandatory pre notification was removed compared to the repealed provisions of Directive 2001/34/EC) or not accepted in the Prospectus Directive for advertisement (pre notification was also included in the proposal for a Prospectus Directive because part of the acquis communautaire now repealed). Such pre clearance is only foreseen in the Prospectus Directive through the scrutiny and the formal approval of each prospectus.

Furthermore, it is worth noting that checking accuracy of information contained in the prospectus by competent authorities is not required (and heavily discussed in Council during the negotiations of the prospectus Directive). We consider that any discrimination imposing CSM to check accuracy of regulated information when Competent authorities are not subject to the same rule when checking the same information contained in a prospectus, is simply not suited and legally questionable.

On the specific questions 21 and 22, we consider that CESR future advice should only apply to those member States with legislation going beyond what is foreseen in Article 19 of the Prospectus Directive and notably requesting checking of regulated information. Therefore, it is difficult to have clear views on the different options at that moment but we would rather support option 3.

On the review, again, it will depend on the requirements in each transposition. Furthermore, there is no definition of the term review, which happens to be mentioned in the level one Directive for the half-yearly financial statements. We consider that CSM whatever their nature (for profit or non profit entities) will never be in a position to undergo reviews as proposed in Article 5 of the TOD. The cost to be supported by CSM would be considerable. It is also worth noting that such review is not mandatory but optional in the Directive.

QUESTION 23:	Do you consider that it is necessary for CESR to mandate the standard to which all regulated information should to be transmitted? Please give reasons.
QUESTION 24:	Do you consider that the standard to which all regulated information should to be transmitted is something that should be left to some point in the future, after the Directive has been implemented? Please give reasons.

We may agree on the necessity to set the standard fir regulatory reporting under the transparency directive, at a later stage.

QUESTION 25:	Do you agree that security measures relating to the processing of unpublished regulated information are better dealt within the standards set out for operators than standards set for central storage mechanisms? Please give reasons.

Yes, we may agree on this statement.

QUESTION 26:	Do you consider that a central storage mechanism should be obliged to ensure that the regulated information it holds is complete and unedited? Please give reasons.
QUESTION 27:	Are there any other issues relating to security that you think CESR should consider? Please give details.

Yes, we agree with the statement made under question 26.

Other security issues might relate to non repudiation of the information to be stored, in order to avoid creating confusion with regard to information that has been disseminated and stored, and that should only be removed or changed or corrected under well specified procedures and processes.

We would be happy to receive clarification on how it is possible to combine the requirement of integrity of stored regulated information (like the use of PDF format as required in the implementing measures of the Prospectus Directive) and the growing demand for HTML and XBRL formats?

QUESTION 28:	Do you believe that a central storage mechanism should be obliged to ensure that the regulated information it receives is from an authentic source? Please give reasons.

Yes, we may share this opinion, as authenticity is one of the basic features to get evidence in a digital process of transmission of regulated information.

We would like to highlight that the number of sources should be as little as possible in order to rationalize of the work to be performed by CSM. They should also act on behalf on the issuer, which is the sole responsible for providing the regulated information to the CSM as indicated in Article 21 (1) of the Transparency Directive.

QUESTION 29:	Do you believe that a central storage mechanism should be obliged to record the date and time on which it receives regulated information in order that its performance may be measured? Please give reasons.

Yes, we share the views as expressed considering that a CSM should be obliged to record date and time op reception of regulated information. We think that this information is a valuable service rendered to the issuers who is interested to get this type of information.

QUESTION 30:	Do you believe that a central storage mechanism should be obliged to record the date and time on which it receives regulated information for the purposes of investors? Please give reasons.

We are of the opinion that the question as raised does not correspond at all with the text of the consultation paper under § 173 – 175., especially with the wording of § 175. Do we have to consider to respond that it matters above all that the date and time of reception by the CSM of regulated information has to be recorded, or on the other hand should the CSM record the date and time at which the regulated information it receives was previously published via an operator's mechanism.

QUESTION 31:	Do you believe that a central storage mechanism should be obliged to hold all regulated information in an electronic format? Please give reason.

Yes, we may share this view, but have to express also some concern with regard to the timeliness of this "push" approach of an electronic format. Cost reduction should not be the only factor to be considered. There are on the contrary other aspects that should not be neglected such as measures due to allow access by those that do not yet have access to the web. There should not be a creation of a de facto situation of unequal access to regulated information that is due to be of interest to each and any investor. On the other side, it might be argued that anyway any investor may have access to the regulated information through its banking relation.

QUESTION 32:	Do you believe that a central storage mechanism should be obliged to record all the above reference data for each piece of regulated information? Please give reasons.

Yes, we believe that this statement should receive support, as it allows adding value and hence the operator of the CSM could use this type of service in order to recover the costs for managing the CSM.

We would propose to add the inclusion of the ISIN code of the securities concerned because it is one of the most relevant field for market participants when processing information on listed issuers (requested in the implementing measures of the prospectus Directive).

QUESTION 33:	Do you believe a central storage mechanism should be obliged to offer its internet based services in all native languages of every Member State? Please give reasons.

Again the text of the consultation paper with regard to the language regime of the regulated information and the solution mentioned under § 187 are two different topics. With regard to § 187, we may agree on the proposal as suggested. This solution should not be considered with regard to the language regime of the directive for regulated information.

QUESTION 34:	Do you consider a central storage mechanism should be obliged to offer its services on a continuous basis 24 hours a day 7 days a week? Please give reasons.

Yes, we agree on this proposal.

QUESTION 35:	Should central storage mechanisms and/or Document Capture Services be obliged to have systems in place to confirm the receipt of regulated information? Please give reasons for your reply

Yes, we think this solution is highly recommendable in a digital world, and some evidence with regard to reception of the regulated information by a DCS or a CSM adds value for issuers and investors.

QUESTION 36:	Do you believe issuers should be obliged to submit regulated information, in hard copy form, if the electronic services of a central storage mechanism or Document Capture Service for the receipt of regulated information are unavailable? Please give reasons for your reply
QUESTION 37:	Do you believe that a central storage mechanism should be obliged to provide access to regulated information in hard copy form if its electronic systems are unavailable? Please give reasons for your reply

Yes, this allows issuers to comply with the regulatory obligations under TOD and permits to decrease their responsibility with regard to make regulated information available to the public.

Question 37 should also receive a positive answer in order to give full satisfaction to issuers, which are obviously anxious to get discharged from their regulatory obligations.

QUESTION 38:	Do you believe that a central storage mechanism should be obliged to provide technical and customer care service support helpdesks? Please give reasons for your reply

Yes, we think that a customer support service should be welcomed for the reasons as set out under point 197.

QUESTION 39:	Do you believe that a central storage mechanism should be obliged to clearly distinguish regulated information from other types of information it may hold? Please give reasons for your reply.

Yes, we may agree on this distinction, as it permits to create a proper filing and storing of regulated information as newly qualified under the TOD.

QUESTION 40:	Do you believe that a central storage mechanism should be obliged to make the amount of its fees transparent to investors? Please give reasons for your reply.

Yes.

SECTION 2: REQUIREMENT FOR AN ELECTRONIC NETWORK (ARTICLE 18)

QUESTION 41:	Do you agree with CESR's interpretation of the first aim of this guideline? Please give reasons.
QUESTION 42:	Do you agree with CESR's proposal to extend Article 17 to include information disclosable under the Prospectus Directive? Please give reasons.

Yes, we could agree on the interpretation mentioned under question 41. We would nevertheless favor an indication that the possible guidelines are aimed for possible level 3 measures and cannot be confused with an advice to the Commission because European Parliament and Council have not granted power to the Commission in this area before beginning 2007.

Yes.

QUESTION 43:	In view of the proposals set out for central storage mechanisms, do you consider it either necessary or desirable that electronic links are created between national securities regulators and operators of the regulated market? Please give reasons.
QUESTION 44:	In what circumstances do you think that it is necessary or desirable to create such links? Please give reasons.

With regard to question 43, we consider that this link between a national regulator and operator of a regulated market should be welcomed, if there is a need for linking information that may be received by either a competent authority or an operator of a regulated market. The response here may not be the same for the different member states, as in certain member states there may already be a central storing system of whole or part of the regulated information as defined under the TOD.

Such link, if necessary, may help to create an environment of quasi central storage of regulated information and may render the consultation process more user friendly, although a single centralised database storing all of the concerned information should anyway be the ideal solution in the best interests of the investors.

QUESTION 45:	Do you consider that the overlap between types of information required by the directives justifies the creation of links between these two separate sources of information? Please give reasons.
QUESTION 46:	If you consider linkages between these two types of information to be justified, when do you think the creation of such links should be established? Please give reasons.

We share the views expressed under § 230 of the consultation paper, and think that suck kind of link should not be followed up with priority. Nevertheless, in order to avoid duplication of transmission of regulated information by publicly traded companies, it may be interesting to discharge listed companies from filing the same information twice. Company law information by listed issuers should only be filed once and stored in the CSM to be run in each Member State.

Possible linkages should be envisaged on a longer term basis.

QUESTION 47:	Do you agree that a small number of central storage mechanisms operating at a European level would benefit from economies of scale? Please give reasons.
QUESTION 48:	Do you agree that economies of scale would also be gained if multiple central storage mechanisms were operated commercially? Please give reasons.
QUESTION 49:	Do you agree that central storage mechanisms could, in part, be publicly funded? Please give reasons.

As a matter of principle, and as mentioned above in our general comments, we think that the discussion presented in pages 67 to 73 is premature and is not part of the tasks of CESR. Such 'brain storming' will only be operational after the knowledge of each national transposition to be performed by Member States.

Subsidiarily, we consider that although CESR undertakes to cover a CSM approach going beyond a pure national dimension, there is not yet any role attributed to CESR to this end. This being said, and as it may not be excluded that CESR will have to fix its position with regard to a pan European dimension of storage and access to European wide regulated information, we think that the questions as raised do not consider the developments undertaken in the consultation paper under 244 – 256.

We would certainly not object to take a more realistic approach that would be based on national CSM that have to be put into place under the new TOD, and then add a European dimension to the accessibility process of regulated information in linking the different national CSMs. This approach would also mean that the achievement of a true European data base should not be underestimated both in terms of work and costs, and that the same result may be achieved in building on the content of national CSM that could be made available through a network of local data bases.

Economies of scale could certainly be generated in reducing the number of CSMs on a pan European basis. But any solution going beyond a network of national CSMs seems for the time being not a realistic aim, an does not correspond to the spirit of the new European directives, that although pushing for further integration of the European financial markets, do not call upon neither a single European regulator, nor to single European technical infrastructures.

QUESTION 50:	Do you believe that central storage mechanisms, within a pan-European context, should be operated commercially or by a Competent Authority? Please give reasons?

QUESTION 51:	What risks do you consider are inherent to either option? Please give reasons.

We would like to recall that for non discrimination and competition reasons, we consider that competent authorities operating central storage mechanisms should be should also seek an approval from a competent body and should be under permanent monitoring, as the for profit entities. Furthermore, these activities should be segregated in order to identify the real costs and effectively charged.

We would not object to a solution operated on a commercial basis, but as mentioned here above, would give priority to any solution that would take into account national commercial CSM providers, that could be linked together to form a European network of CSMs. Such structure would also be less problematic with regard to supervision of the issuer's compliance with regard to the publication of their regulated information.

On the possible competence of CESR for giving approval to commercial CSM operating on a pan-European basis, we consider this is suitable for legal reasons. First, CESR is not a competent authority in the meaning of the transparency Directive (and in the other securities Directives). Second, such bodies should be of independent and of administrative nature. CESR cannot qualify currently to these two tests and it would require significant modification of its legal status. Third, it might create a conflict of interests if some competent authorities also operate at the same moment CSM.

The risks inherent to either option are well described in §s 277 and 280.

QUESTION 52:	Do you agree that the balance between competent authorities' needs and filers' needs is best achieved through the use of electronic sending methods, rather than non-electronic means, such as mailing of paper documents? Please give reasons.
QUESTION 53:	Do you agree that the e-filing mechanism should be introduced gradually and that it should allow parallel paper treatment for specific situations? Please provide examples of such specific situations.

Yes, we may agree on both statements made in relation with questions 52 and 53.

QUESTION 54:	Do you agree that it does not seem necessary to develop different requirements for occasional filers or small entities? If not, please provide suggestions to address their needs.
QUESTION 55:	Do you agree that it could be useful to provide specific solutions on the procedures of electronic filing according to the type of the addressed regulated information (i.e. specific templates text, etc.)? Please provide examples of different type of regulated information which need specific solution.

Yes, we may agree on comments made with regard to both question 54 and 55.

QUESTION 56:	Do you agree with the approach adopted with regards to proposed minimum standards or would you prefer to see more general proposals? In this case, please provide a list of general proposals.
QUESTION 57:	Do you agree with the minimum standards with which all the competent authorities would have to comply when they put in place the procedure to enable filing by electronic means? If you do not agree, what other standards would be more appropriate?
QUESTION 58:	What other issues, if any, should CESR take into account when responding to the Mandate concerning the "filing by electronic means with the competent authority of the home Member State"?

Yes, we may agree with the approach as suggested with regard to question 56 and 57.

Yours sincerely,

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