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Roma, CESR (05_267) answers
May 26, 2004

Piazza di Spagna, 15

CESR
The Committee of European Securities Regulators
11-13 avenue de Friedland
75008 PARIS FRANCE

Kind attention : Mr. Andres Trink – Chairman of the Expert Group Transparency

Dear Andres,

Please find enclosed my comments about the revised draft Technical Advice dated April 2005 (CESR 05 – 267).

I hope that they could be helpful for the group further work.

Yours Sincerely

Stefano Vincenzi



All.

Prof. Stefano Vincenzi
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CESR The Committee of European Securities Regulators

***CESR's revised draft Technical Advice on Possible Implementing Measures
of the Transparency Directive***

CESR / 05-267

April 2005

May, 26 2005

Questions/Answers

Q1 Do consultees agree with the above proposal?

and

Q2 What distribution channels do consultees consider should be mandated? Please provide reasons for the answer.

- **I deem that connections with at least two news agencies (i.e. one national and another international) would be the best way to fulfil the requirements of Article 21.**

Q3 Do consultees consider that CESR should mandate that the connections between issuers (either directly or through a service provider) and the media be based on electronic systems, such as dedicated lines?

- **I agree that electronic connections would allow faster and safer processing, but I deem that if issuers are fully responsible for ensuring dissemination I do not think that a particular type of connection has to be mandated. Issuers have to be free to choose whichever method they like.**

Q4 Do consultees consider that a specific method should be mandated? Which one? Please provide reasons for your answers.

- **I do not deem that any specific method has to be mandated since the issuer is fully responsible for proper dissemination.**

Q5 Do consultees agree with the approach of redrafting the required field of information, as proposed above?

- **I agree with the proposed redrafting, I deem that the new field is more accurate.**

Q6 Do consultees consider that a specific method of issuer identification should, in addition, be mandated (such as the identification number in the companies register or the ISIN)? Which of these? Please provide reasons for the answer.

- **I deem that an identification number in addition to the issuer's company name would better achieve the identification purpose. The ISIN number, as well as the identification number in the companies register, could be a reasonable way which also is not burdensome for the issuer to fill in. I do not deem that any other kind of new code is necessary if an ISIN number already exists.**

Q7 Do consultees consider that CESR should establish a method, or some sort of a code, by which there would be a single and unique number of identifying each announcement that an issuer makes, that is valid on a European basis and that could also be used for storage?

- **I deem that a sort of a code identifying each announcement could be useful and really helpful, above all for up-to-date storage of the announcements in order to prevent a certain kind of problem.**

Q8 What methods do consultees suggest CESR should establish? Please provide reasons for the answer.

- **I deem a sort of code composed of a sequential numerical order, letters identifying the issuer's Home Member State and the year of the announcement (i.e.: XXXX/IT/05).**

Q9 Do consultees agree with the above proposals? Please provide reasons for the answer.

- **Yes, I agree with the proposal. A service provider that provides other services or performs other functions should keep activities clearly separate.**

Q10 When the competent authority is acting as service provider, CESR considers that these competent authorities may not, as stated in the Directive, impede free competition by requiring issuers to make use of their services. Do consultees agree with this approach? Please provide reasons for the answer.

- **I agree with the above mentioned statement proposed by CESR.**

Q11 When stock exchanges act as service providers, CESR considers that their admission to trading criteria on any of their markets can not mandate the use of their service as a service provider. Do consultees agree with this approach? Please provide reasons for the answer.

- **Yes, I agree with the proposed approach which states that admission to trading criteria does not have to ask for the mandatory use of stock exchange services as a service provider. I deem reasonable to take into consideration the already existing Network Information Systems operating throughout the European Union, but I deem useful to provide for implementing rules which do not result to be in favour to the creation of a monopoly, that is not in the Directive's aim.**

Q12 Do consultees agree that media should not be charged by service providers to receive regulated information to be disseminated by them? Please provide reasons for the answer.

and

Q13 Do consultees consider that it is possible, on a commercial basis, to mandate that media receive regulated information for free from service providers? Please provide reasons for the answer.

- **The directive does not state that the issuer must be charged the total amount of the cost, therefore following the requirements of article 21 I deem that:**
 - a. as usual the Media should pay a fee (i.e. an annual fee) to service provider in order to receive regulated information (and any other information);**
 - b. it could be useful to underline that the Directive states that “the issuer (...) may not charge investors any specific cost for providing the information”. So this could mean that if the issuer pays the service provider and media charge to the service provider a fee for receiving information, it could be reasonable that investors pay a certain amount of money in order to have regulated information.**

In this way the full cost of the dissemination process would be shared. At the moment I believe that on a commercial basis, the full cost plan coverage of the dissemination process is not clear.

Q14 Do consultees consider it useful and practicable to require a document from service providers showing how they meet the dissemination standards and requirements? Please provide reasons for the answer.

- **I believe that requiring a document from service providers could be practicable and useful for issuers, but I don't think that it has to be mandated.**

Q15 Do consultees consider that CESR should undertake, at level 3, future work on how to address the concerns raised on how approval of operators is to work, even if approval is not mandatory? Please provide reasons for your answer.

- **I deem that an operator authorized by a Competent Authority should be able to provide the service across the EU without any further approval from other Competent Authorities. But the use of an authorized operator should exempt the issuer from the responsibility of their own dissemination, now addressed to the authorized operator, as if the authorized operator was the media and the news agencies.**

Q16 Do you agree with this change? Please give reasons for your answer.

- **Yes, I agree with the change proposed and I deem it is reasonable to point out that there is a difference between financial rights and voting rights and that only voting rights can influence the issuer's management.**

Q17 Do you agree with this change? Please explain.

- **I deem that the original version of the statement should be more accurate in order to define and achieve the purpose of a clear separation. I would agree with the term “identified”, but I believe that is not sufficient, so the proposed change could be “need to be identified and kept separate”.**

Q18 Do you agree with the proposed changes to this advice? Please explain.

- **I deem it is advisable to make the declaration requirements clearer in circumstances where an investment firm intends to act as a market maker and I agree with the change proposed. Although concerning timing I deem that the notification has to be made at the time when the market maker’s activity starts. Therefore I don’t agree with letter c) and the limit proposed by article 12.2 (of at least 4 trading days) because this limit is not coherent with the market transparency aims of the directive.**

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

- **I have nothing to point out on this matter.**

Q20 Do you consider there to be any benefit by CESR retaining its original proposals and requiring a subsequent notification from the parent undertaking when it ceases to meet the test of independence?

- **I have nothing to point out on this matter.**

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

- **On the whole I agree and, on the basis of my experience, I believe that the “indirect instruction” referred to in the Art. 11 3a should be the same as those provided by the parent undertaking or by another controlled entity according to the codified rules of Governance regulating the above mentioned entities. However I deem that, irrespective of whether or not the instructions in question are direct or indirect, the management company or investment firm must not be able to benefit from this exemption if the parent undertaking instructs it.**

Q22 Do you agree with this approach in relation to Article 12(1)(d)? Please give reasons.

- **On the whole I agree with the new approach. In particular I believe that the shareholder has to notify the Authority when he exceeds the thresholds fixed by the directive, even if he is only acquiring or disposing of voting rights attached to the shares. In coherence with article 12.1.d the shareholder that disposes of its voting rights has to also notify the identity of the natural person or legal entity entitled to exercise voting rights on his behalf. This person or legal entity will notify in turn if he exceeds with the acquisition or disposal of relevant threshold.**

Q23 What do you think the resulting situation information disclosure should be when the notification is of a holding below that of the minimum threshold?

- **I deem that in situations where the shareholding falls below the minimum threshold the breaching of the limit has to be notified and any information concerning the resulting situation could be helpful for the competent authority and would not be burdensome for the issuer however, if this information is considered relevant it has to be provided in a 2nd level rule for all Member States.**

Q24 Should the standard form for all notification requirements include some form of issuer identification number? Please give your reasons.

and

Q25 Should CESR mandate what form this security identification should be in? If so, please state what the standard should be and why.

- **I deem that including the ISIN code in the standard form is a useful tool in order to achieve identification purposes. It is reasonable and not burdensome.**

Q26 Do you agree with these principles?

- **Yes I agree with the principles of the revised technical advice on equivalence concerning third countries issuers and I agree in pointing out that no exception should be given with regards to the time limits of transparency requirement set by the directive.**

Q27 Are you satisfied with the draft technical advice considering both the need for flexibility and the requirements of the text of the Directive?

- **I have nothing to point out on this matter.**

Q28 Do you agree with the proposal that an issuer should make a notification when it chooses its competent authority?

- **Yes I agree with the proposal that an issuer should make a notification when it chooses its competent authority.**