



THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Ref: CESR/08-66

Feedback Statement

Call for evidence on the possible CESR level 3
work on the Transparency Directive

February 2008



Background

1. On 13 July 2007, CESR published a call for evidence (Ref.: CESR/07-487) on its possible level three work on the Transparency Directive (TD). The consultation period closed on 14 September 2007 and CESR received 21 responses from various organisations. The list of respondents to this consultation, with an indication of their sector of activity is attached in the Appendix to this feedback statement.
2. The purpose of this document is to provide a summary of the most significant issues raised during the consultation and CESR's views on how to address them.
3. CESR invited interested parties to submit their views regarding the possible CESR Level 3 work it could undertake on the TD and its implementing measures, and in particular, asked the following questions:
 - Do you consider that CESR should start working in its Level 3 capacity in order to promote a consistent application of the TD and the Level 2 Directive?
 - If yes, which areas do you think CESR's work should cover? Could you prioritise them?
 - Do you think CESR's work to harmonise should be published in the form of a Q&A section of its website (in a similar way as CESR is currently doing in the prospectus area)?
 - Do you think CESR should facilitate the establishment of an EU network of national storage mechanisms?

Feedback on the possible CESR's work to promote a consistent application of the TD

4. Several respondents argued that any assessment on the concrete functioning of the TD seems to be premature. Therefore, they think CESR should not undertake at this stage any level 3 work. However, most respondents have identified practical problems that would require CESR's action in order to promote a consistent application of the Directive. In general, this latter group of market participants would like CESR to do the following:

A) Publication of information about the TD transposition

5. Several respondents have highlighted the lack of a central information source as a major obstacle to the operation of the Directive in practice, especially for internationally active investors and issuers. CESR should gather and publish information on how the TD has been implemented across different jurisdictions. For example, this information should include the notification thresholds, the reporting procedure, how to calculate the holdings, etc.

B) Publication of CESR common approaches on certain areas of the TD in order to promote a consistent application of the new regime

6. Below are listed the main specific issues that market participants consider could be appropriately addressed through level 3 measures. For the sake of transparency, the issues are quoted as raised by market participants, without CESR passing any judgement on them at this stage. Moreover, some of the suggested areas (i.e. disclosure deadlines) might pertain to level 1 or 2, and therefore could go beyond what CESR can achieve in its level 3 capacity.

1. Major shareholdings notifications

- Application of the notifications regime to stock lending and derivative products.



- Application of the regime to underwriters.
- Way to calculate the trading book exemption.
- Disclosure of aggregated group holdings.
- Treatment of financial instruments and holdings in UCITS.
- Disclosure deadlines.
- Procedures regarding exemptions and dis-aggregation.
- Several technical details related to the calculation and notification of the holdings.
- Method of communication.
- Standard forms for notification.
- Position of collateral takers.
- Disclosure of holdings that have fallen below disclosure thresholds.

2. Periodic financial information

- Principles to prepare interim management statements.

3. Other disclosure obligations

- Conflicts of competences between authorities as regards dissemination -article 21 of the TD-.
- Information requirements pursuant to articles 16-18 of the Directive, including clarification of the requirement to publish information of new loan issues.

4. Non-EEA issuers and investors

- Equivalence of periodic financial requirements and major shareholding notification regimes of third countries.
- Treatment of issuers guaranteed by non-EEA states or non-EEA public sector entities.
- Application of the trading book exemption to non-EEA investors.

5. Dissemination

- CESR should monitor its implementation in the Member States, in particular to avoid what some market participants view as burdensome practices in some Member States.
- CESR should monitor national disclosure practices by issuers and or regulatory authorities and stock exchanges in order to ensure a level playing field with news vendors.

Feedback on the possible format of CESR's future level 3 work to promote a consistent application of the TD

7. In general there is support for the Q&A format. Some respondents further pointed out that the format should depend on the issue concerned as in some cases recommendations may be a more appropriate way to ensure a consistent approach across Member States. CESR was encouraged by some associations to consult with stakeholders (this could be done by different means) before adopting any level 3 measures.

Feedback about the possible CESR's role to facilitate the establishment of an EU network of national storage mechanisms

8. There were split views on this issue. Several respondents were against the setting up of an EU network as information posted on their companies' websites is sufficient or because it is still premature. Other respondents claimed that CESR should not do anything in the absence of a binding legislative measure. Other market participants requested clarifications on the CESR's role and on the involvement of private entities to operate the network. Finally, a number of respondents were in favour of CESR's role facilitating the establishment of the EU network.



CESR's reaction to the consultation

9. Taking into account the feedback received from interested parties, CESR Chairmen decided on 15 October 2007 to start working on the TD in its level three capacity. To this end, they set up a Transparency Group of experts and appointed Mr Uldis Cerps, Chairman of the Latvian Financial and Capital Market Commission as Chairman of the group for a two year period. The European Commission participates in the group as an observer. According to its mandate, the group has started working in parallel with the following streams of work:

A) Mapping exercise, with the aim of publishing factual comparative information about implementation in Member States

10. One key concern raised by market participants is the lack of centralised and accurate information about how the Directive has been implemented across the EU. The difficulty in knowing the different requirements in the Member States arises partly because of the Directive's minimum harmonisation status and the implied possibility to prescribe additional transparency measures and the right of the Member States to choose between different options allowed by the Directive. Respondents to the call for evidence would like to be able to access this information about implementation.
11. This mapping will be closely coordinated with the European Commission in order to avoid overlaps with the work the Commission might undertake on more stringent requirements by Member States and other national measures adopted pursuant to different provisions of the TD. CESR's objective is to publish the centralised information about implementation during 2008.

B) Discussion of practical questions asked by market participants and regulators on the level one and level two directives, including dissemination issues

12. The CESR Transparency Experts group will discuss the issues previously put forward by the competent authorities and also those raised by respondents to the CESR call for evidence. The aim of the discussions will be to reach common approaches where possible and/or to exchange views about the different practices. This work cannot push for further harmonization than that agreed in the level one and two texts. Rather, the group's work will be limited to discussing the way the authorities are interpreting the provisions of the Directives, with the aim of promoting its consistent application. In order for the members to decide whether to limit themselves to an exchange of information about the local practices or whether to go further, trying to harmonize those practices, an important element will be to consider whether the different positions derive from the local laws or result only from authorities' regulation, guidance or accepted market practices.
13. CESR's intention is to publish regularly the outcome of the group's discussions, normally in a Q&A fashion.

C) Facilitate the establishment of an EU electronic network of the officially appointed national mechanisms for the storage of regulated information

14. The Commission's Recommendation on storage 2007/657/EC requests CESR to play this role. CESR would facilitate and provide support to Member States in executing the provisions of article 22.1 (b) of the Transparency Directive, the Commission's Recommendation on storage and the guidelines provided by CESR advice on storage (Ref.: CESR/06-292).



15. CESR has decided to set up the EU network of national storage mechanisms using the CESR Mifid database on shares admitted to trading on EU regulated markets that it is already running at its website.
16. In essence, by clicking on the shares' name or on the ISIN code, users would be linked to
 - The OAM of the country of incorporation of the issuer if there is only one OAM in that country. If the OAM is a company or organization that has other business lines different than the TD storage (i.e. a stock exchange or a competent authority), the link would be to the relevant part of its website where it stores the TD regulated information. Or to
 - Another CESR page, where all the OAMs of the relevant country are listed, in case there are more than one.
17. CESR acknowledges that only share issuers are included in the database and therefore in the network on storage, however the advantage of this solution is that it will allow the implementation in the short term of the CESR consensus about the design of the network (model C), at least for shares.

Any comments from interested parties to the above work programme may be submitted by email to jruiz@cesr.eu.



Annex

Responses to the call for evidence (Ref: CESR/07-487)

Banking	Bank and Insurance Division of the Austrian Federal Economic Chamber
Banking	British Bankers Association
Banking	European Banking Federation
Banking	European Savings Bank Group
Banking	ZKA
Insurance, pension & asset management	Association Française de la Gestion Financière (AFG)
Insurance, pension & asset management	Association of British Insurers
Insurance, pension & asset management	EFAMA - The European Fund and Asset Management Association
Insurance, pension & asset management	Investment Management Association
Investment services	Fidelity
Investment services	IDW
Investment services	SIFMA and ICMA
Issuers	EALIC
Issuers	Quoted Companies Alliance
Legal & Accountancy	ICAEW
Others	Bloomberg
Others	CNMV Advisory Committee
Press	Business Wire Europe
Regulated markets, exchanges and trading systems	Borsa Italiana
Regulated markets, exchanges and trading systems	FESE
Regulated markets, exchanges and trading systems	NYSE Euronext