

**Cesr's consultation paper on possible implementing measures
concerning the Transparency Directive**

Storage and filing of regulated information

Borsa Italiana Group welcomes the current consultation launched by CESR on storage and filing of regulated information. Our answers to the questionnaire are expressed below.

Answers to the Questions

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

We totally agree with such a framework.
Pursuant to the directive, the access to regulated information should be fast and easy. The storage mechanisms should grant simple access to all regulated information to potential end-users. The development and supply of services tailored to the different needs of any potential user should be let to the discretion and skills of the storage mechanisms, as added value services.

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

We totally agree with such a statement

Storage mechanisms have to ensure access to the regulated information as it is disseminated by the issuers. Any additional information/categorisation should be let to the discretion of storage mechanisms, as added value services.

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

We totally agree with CESR’s views. Requiring the translation of regulated information by the OAM would be in contrast with the level 1 language regime, burdensome for private entities involved in the service (that could be discouraged from entering). Moreover, problems of issuer’s validation may arise. The translation of the information provided by the issuer could be in the range of added-value services that can be developed by the OAM. The more ambitious approach to “easy access” will be pursued by the European network.

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

We strongly agree with CESR’s realistic approach. We would like to underscore the complexity of the hypothesised construction, implementation and management of a global pan-European network for regulated information. Such a project threats be extremely costly, complex and is likely to waste significant investments made by the Member States on the existing storage facilities. In addition, the different provisions of national law as well as differences in the language of the data stored in the databases will likely continue to require a segmentation of the information. Consequently a lot of time is necessary to develop a careful analysis of costs and benefits for such a system, before any decision can be made. Afterwards, initially, this European network could offer simple, easy and fast access to regulated information, as required by the directive. Depending on the tested need of the users of such a new system, services and searching capabilities could be further developed.

The process that leads to the development of a more and more integrated network of national storage mechanisms should be based on a rigorous on going assessment in order to build a system that is really useful for the community.

CESR defines a network as a set of computers connected in order to share data and stresses that the level of complexity of the network as well as the objective of sharing information or making it available can vary. We are not certain what CESR has in mind when the distinction between “sharing” and “making available” is made. We understand that there is a difference between actions required while sharing and making data available. “Sharing” requires an active “push” of information while “making available” does not impose such a requirement on OAMs. We believe that OAMs and the European network should only be obliged to make data available. Moreover, only this last concept is in line with the directive.

- Q6: Do you agree with the above? If not please provide reasons for your answers

We totally agree with CESR's standard: the storage of regulated information should be managed via internet: filing with the OAM, processing and access to regulated information should be wholly internet basis.

The management of the information by means of a full web solution allows automated workflow, time and staff conservation, business savings.

The availability of the information in internet will allow all investors (regardless of their location) to easily and quickly gain access to such information.

It is of vital importance to promote the automation of systems because the use of non electronic means, for instance, would slow down the process (because of the time needed to revise and edit the document), could increase the possibility of errors in transmission, and would not guarantee the certainty of source.

This is true, obviously, also for the dissemination issue.

In particular, we would like to draw CESR's attention to the fact that the expression "electronic means" does not have a commonly accepted meaning. We are particularly interested to know whether the use of fax or electronic fax (sending a fax message through a personal computer) is included in the category of "electronic means". We would argue that a message is sent by an electronic means only if it can be electronically processed further without manual intervention. Consequently, the fax would fall out of the definition of "electronic means".

From this perspective, we would like to stress that the definition of electronic means contained in the directive does not represent a legal constraint for excluding fax. In accordance with Article 2, paragraph 3, letter c) of the directive, the Commission shall establish an indicative list of means which are not to be considered as electronic means taking into account Annex V to directive 98/34/EC that covers information society services. Pursuant to Annex V, services provided via fax are considered as "services not provided by electronic means". This is an important systematic argument that can help the Commission in excluding fax from the definition of "electronic means"

Interned based systems should be imposed as minimum standard for OAMs.

Straight through processing should be strongly recommended bearing in mind also the other requirements set by the Transparency directive. In order to avoid overburdening issuers and rationalize the set of legal requirements, STP would better meet the need for inexpensive and rational processes serving to comply with the legal requirements and provide issuers with a one-stop shop system for the filing, dissemination and storage of regulated information.

We believe that it should be encouraged the possibility to allow a single transmission to a service provider that would have allowed issuers to consider that they had simultaneously fulfilled the dissemination, storage and filing obligations having the same content not only towards the competent authorities but also, in case, towards the stock exchanges.

- Q7: Do you agree with the above? If not please provide reasons for your answers

We agree with the necessity that an OAM should offer more than one format in which regulated information may be sent in. This in order to not overburden issuers/service providers in charge of dissemination. However we do not share a requirement that any OAM be prepared to accept all possible formats, depending on the issuers' choices. This solution would create additional and unnecessary costs and numerous maintenance difficulties on OAM. Moreover, it would cause for end users problems in downloading documents.

We believe that CESR should indicate "generally accepted" formats and clarify that these would mean non-proprietary format(s) as well as some proprietary ones which are in common use.

In any case, the final choice of the range of formats should be let to the OAMs' discretion.

- Q8: Do you agree with the above minimum standards of security?
- Q9: Are there any additional standards on security CESR should consider?
- Q10: Do you agree that there is no need for special or additional security standards if an electronic network of national OAMs at EU level is created?

We fully agree with the security standards set by CESR. Those standards ensure a right balance between security and flexibility for OAMs.

However, we note that no reference is made to the system capability to support a high number of contacts. This technical standard is of vital importance in order to provide easy access to end-users.

Moreover, Cesr requires that the OAM should ensure "that regulated information is not editable while stored". We believe that this requirement means that the infrastructure is secure, not accessible by non authorised intrusions. Security cautions may require to "edit" in some way the stored information (for example by means of cryptography).

With reference to the validation requirement, we believe that the mechanism should be validate information filed as regard prescribed format, weight, readability of the documents (i.e. the documents are not protected by cryptography or by password).

- Q11: Do you agree with the above? Please provide reasons if you do not agree
- Q12: Do you agree with the above? Please provide reasons if you do not agree
- Q13: Are there any additional standards on time recording CESR should consider?

We agree with CESR assessment related to the minimum quality standards of certainty as to the information source and of time recording to be complied by the OAM. We consider that these standards are sufficient and believe that there is no need for additional standards.

- Q14: Do you agree with the above? Please provide reasons for your answers

We agree that there is indeed no need to differentiate between minimum quality standards for different types of regulated information.

With reference to the last requirement concerning organisation and classification of the information, we would argue that such an organisation/classification should be finalised to ensure easy access. OAMs should be left free to develop deeper and more sophisticated arrangements as value added services.

- Q15: would you require searching capabilities in the language of international finance to be able to have easy access to the information stored?
- Q16: Do you agree with the above standards in relation to technical accessibility? Please provide reasons for your answers

Yes we agree

- Q17: Do you agree with the above in relation to the format of information to be accessed by end users? Please provide reasons for your answers

As regard the content of reference information necessary to allow searches, we believe that CESR should clarify that the name of the issuer is the current name or the name used in the communication to the media. In accordance with Article 13, paragraph 4 of the Working Document ESC/34/2005 on possible implementing measures of the Transparency Directive “regulated information shall be communicated to the media in a way which makes clear that the information is regulated information, ***identifies clearly the issuer concerned***, (...)”.

The relevance of the issuer’s current name is in line with the Transparency’s directive that is aimed at promoting the investors’ access to regulated information in order to take investment decisions on an informed basis.

The capability to search documents throughout the issuers’ history (mergers, acquisition, changes of name, and so on) should be considered as a value added service.

- Q18: Do you agree with the above? Please provide reasons for your answer if you do not agree.

We share CESR’s intention to support Recital 25 of the Transparency Directive which stipulates that information which has been disseminated should be available in the Home Member State in a centralised way and accessible at affordable prices for retail investors.

We appreciate that CESR considers various sources of funding of the OAM, namely funding by the users of the system as well as public and private funding. However, we are not certain what exactly CESR means by “users of the systems”. We would appreciate it if CESR could explain what is meant by “users”. We understand that the scope of this expression covers also “issuers” but would like to get confirmation.

- Q19: What are your views in relation to the issues being discussed above?

We have a strong preference for Model C. This is the only possible scenario to fulfil the requirements of the Transparency Directive at the present moment.

Model A as well as Model B are not feasible because these models send in an indiscriminate manner numberless requests to each national databases. This heavy flow risks to undermine the security and the efficiency of the national databases and requires a very high degree of band, memory, staff.

Model D is too basic and does not ensure easy access

During CESR's open hearing, the so called Model E (Central List of links to issuers' web sites) was introduced. We believe that the chief failing of such a model is that it would oblige issuers to heavy and expensive implementations of their web sites. Their web site should comply with the same standards of the OAMs. The role and functions of national OAMs would be compromised. Moreover this model at the very end would discourage issuers (and especially small/medium enterprises) from listing.

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

We agree with CESR's approach. Pursuant to the Directive, competent authorities have to oversight the OAM's compliance with all the prescribed quality standards. We also believe that competent authorities should be involved in the appointment of the OAM, because of the technical issues involved. However, the level and the manner of this involvement are matters for the national legislators to decide when implementing the directive

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

We share the need of stability in the supervision of the joint OAM. Nevertheless, when a joint mechanism is appointed, the agreements among Member States concerning functioning and supervision of the common OAM should be rationale and should favour forms of co-operation/co-ordination in order to not overburden the appointed OAMs.

However we have some concerns about the requirement that the joint OAM should have its registered office in the territory of one of the joining Member State. This is obviously to facilitate ongoing and effective supervision (that may also include on site inspections). However, this requirement may represent an obstacle in the appointment of the OAM. Competitive reasons support the need for a non restrictive regulation concerning the registered office of the joint OAM. However, we

are aware that regulatory and supervisory difficulties may arise when the joint OAM has not the registered office in the territory of one of the joining Member State.

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

We believe that standards review over time is necessary in order to take into account technical developments. The Commission should provide for such a review at Level 2. The standards updating could be made directly by the Commission or at national level. However gold plating (in accordance with the results of the White Paper) should be avoided also for granting a fair competition among OAMs. We suggest that CESR should have an active role in the future reviews of these standards at national level so ensuring full harmonisation.

The generalised technical updating of national OAMs is of vital importance for the development of the Eu network.

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

We share that regulation and co-ordination of the operation of the future EU electronic network will be better effected at the level of CESR

Chapter IV The filing of regulated information by electronic means with the competent authorities

- Q25: Do you agree with the above conclusion? Please provide reasons for your answers
- Q32: Do you agree with the above concepts of alignment?

Alignment of the filing with the storage

Also from the point of view of the filing of regulated information it is of vital importance to promote the automation of systems because the use of non electronic means, for instance, would slow down and complicate the process (because of the time and staff needed for revise and edit the document), could increase the possibility of errors in transmission, and would not guarantee the certainty of source.

In addition, we would like to draw CESR's attention to the fact that the expression "electronic means" does not have a commonly accepted meaning (also in CESR's papers). If the use of fax or electronic fax (sending a fax message through a personal computer) is included in the definition of "electronic means" for the filing but not for the storage (where an internet based system is required) this different treatment could obstacle the possible alignment among the two processes and could cause confusion in definitions especially at the Commission level (for example, for the dissemination of regulated information, the Commission is still allowing the use of fax).

On this issue, we would argue that a message is sent by an electronic means only if it can be electronically processed further without manual intervention. Consequently, the fax would fall out of the definition of "electronic means".

However, depending on the systems in place in each competent authority, a requirement of using electronic means would be costly: an adequate transition period could be fixed in order to allow everybody to reach gradually the goal (e.g 1 years).

The alignment of the filing procedure with the procedure for sending the information to the OAM is achievable, at a starting stage, in the form of requiring the use of electronic means (with the exclusion of fax)

The encouragement of automated systems would better meet the need for inexpensive and rational processes serving to comply with the legal requirements and provide issuers with **a one-stop shop system for the filing, dissemination and storage of regulated information**.

We strongly support this last concept of alignment (from the perspective of issuers).

This alignment could be best achieved by the use of a service provider (in a competitive environment): in such a model a single electronic transmission to the service provider would have allowed issuers to consider that they had simultaneously fulfilled not only the disclosure obligations having the same content vis-à-vis the competent authorities but also the related dissemination and storage obligations.

However this model raises the unresolved question concerning the approval of service providers eligible by the issuers. Issuers would be encouraged to use the one stop shop only if they can rely on a pronouncement of the competent authority on the service providers' compliance with prescribed standards.

Finally, we would like to answer to the question raised by CESR in the Open Hearing. CESR asked the participants for their general view on the usefulness of the OAM regime being prepared. The outline of this regime is laid out rather clearly in Level 1. However, we believe that the question itself is useful and relevant in that it gives the consultees an opportunity to express their views on the overall effort under way. We believe that a regime for nationally appointed OAMs is indeed really useful. Thus, while we support the overall work on the OAM regime, we wish to stress that it needs to keep as much room as possible for market-led solutions with regard to the structure of the OAMs. One of the key purposes of having a central national storage mechanism is to ensure that investors will find the information produced by all companies in a very easy and fast manner. If storage is not centralized, investors will be obliged to look for corporate information. Companies' web-sites as an alternative of storage will not be a sufficient remedy. This solution will cause fragmentation of the information; it is burdensome for issuers: their web-sites should be heavily implemented in order to be able to ensure easy access in a long term perspective

We hope that CESR will find our comments useful and we remain at disposal for further explanations and details. Moreover we look forward to further co-operate.

Milan, February 10, 2006

For additional details:
Borsa Italiana
Regulation & Post Trading - Legal & Institutional Affairs
Tel: +39 02 72426.285