



Fédération Bancaire Européenne
European Banking Federation

Le Secrétaire Général

N°0212
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E-mail

Mr Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13, Avenue de Friedland
75008 Paris
FRANCE

Brussels, 31 March 2006

Subject: Consultation concerning the Transparency Directive - storage of regulated information and filing of regulated information

Dear Mr Demarigny,

The European Banking Federation (FBE)¹ welcomes the opportunity to respond to CESR's consultation concerning the storage and filing of regulated information under the Transparency Directive.

We broadly find CESR's proposals appropriate and we welcome CESR's indication that the cost aspects of the different models will be considered in a separate document. However, we regret that the consultation period of the current paper ends before the publication of this complementary paper. Our comments are therefore preliminary and subject to the costs being proportionate. At this stage and with the mentioned qualification, our preference is for a slightly modified version of model C.

In addition to the technical aspects, we wish to draw CESR's attention to the legal implications of the different possible network models. We note that the allocation of responsibilities and the liabilities must be clearly established for the potential case of errors resulting from the interoperability system. To this purpose, a special legal entity might be set up to operate the electronic network.

Please find our response enclosed. For any questions, please don't hesitate to contact either myself or my colleague Uta Wassmuth (u.wassmuth@fbe.be).

Yours sincerely,

Guido Ravoet

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¹ Set up in 1960, the European Banking Federation (FBE) is the voice of the European banking sector. It represents the interests of over 4,500 European banks, large and small, with total assets of more than €20,000 billion and over 2.3 million employees.



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RESPONSE

CESR's Consultation on Possible Implementing Measures of the Transparency Directive - Storage and Filing of Regulated Information

Ref.: CESR/06-025

GENERAL REMARKS

1. The European Banking Federation (FBE)¹ welcomes the opportunity to comment on CESR's proposed implementing measures of the Transparency Directive as regards the storage and the filing of regulated information. Our members being both issuers and investors, we believe that an adequate fit must be found between the needs of users of regulated information on the one hand, and the burden imposed on issuers on the other hand.
2. We broadly find CESR's proposals appropriate and agree with CESR's approach to consider as a first step the purpose and who could be the end user of the Officially Appointed Mechanisms (OAM). However, we note that in a global market environment, any measures taken must be balanced against the resulting costs. We look forward to this topic being treated with particular attention in a separate paper, as indicated by CESR.
3. In the absence of a cost-benefit analysis, the evaluation of the different models remains uncertain. The comments in the present paper are therefore preliminary and might be subject to modifications to take account of CESR's findings in this respect.
4. While the consideration of the technical aspects involved in the setting up and the running of OAMs is well advanced in the current proposal, we draw CESR's attention to the legal implications linked to the different possible solutions. The allocation of responsibilities and the liabilities must be clearly established for the potential case of errors resulting from the interoperability system. To this purpose, a special legal entity might be set up to operate the electronic network.
5. We support the preference expressed by the European Securities Committee for a network model rather than a centralised system for the storage of regulated information. Subject to the costs being proportionate, we believe that a modified version of Model C, which would also contain regulated information metadata, would be the most preferable solution as regards the possible network models.

¹ The European Banking Federation (FBE) is the voice of the European banking sector representing the vast majority of investment business carried out in Europe. It represents the interests of over 4,500 European banks, large and small, from 28 national banking associations, with assets of more than €20,000 billion and over 2.3 million employees.

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6. On a general note, we request CESR to ensure that the Level 2 measures remain sufficiently high-level. Technical questions should be resolved by the interoperability agreements between the supervisory authorities or the OAMs themselves to allow for adjustments in line with technological developments. We annex to this response some technical remarks that should be considered in the drafting of the Level 3 measures.

ANSWERS TO CESR'S QUESTIONS

Q 1: 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 the OAM itself?

7. We expect that the users of the OAMs will be both institutional and private investors, who will benefit from the existence of a "one-stop-shop" for regulated information in terms of both accessibility and comparability of relevant information. Whilst the latter would be helped by some standardisation of presentation, we believe that this should be brought about through voluntary co-operation and the adoption of best practices. We agree that, given the experience that already existing storage mechanisms have acquired to this date, they are best placed to identify the needs of investors and users alike. We therefore consider that the implementation measures should mainly focus on the provision of an appropriate communication structure, as opposed to the specific content.
8. In view of these objectives, we fully agree with CESR's assessment that a storage system must be easy to use, affordable and not unnecessarily complex or technical, and that its specifications should not be too detailed. Regarding the plain structure, this should be understood as regards the use by both investors and issuers. The information should be easy to access for users, and – along the same lines – should have a fairly simple structure for the posting of information.
9. To this aim, we believe that as part of the Level 3 measures of the Lamfalussy structures, CESR should agree on the use of a common, well established industry standard for the presentation of the information.

Q 2: 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?

10. We concur with CESR that what needs to be stored and to be accessed in the OAM is just the regulated information, as produced and disseminated by the issuer. The OAMs should take reasonable precautions in order to keep received information unedited.

11. We agree with the kinds of information to be collected by the OAM as summarised in paragraph 25. As regards the further harmonisation of the content, we welcome CESR's statement that this discussion should be based on an analysis of the costs and benefits involved.

Q 3: Do you agree with the views above or do you envisage a more ambitious approach to "easy access"?

12. We support CESR's interpretation of "easy access", as well as the view that the requirement to translate all regulated information on a consistent basis would be overly burdensome. Its substantial cost implications would ultimately be passed on to the users of OAMs and to investors. As stated above, information should be published in the original format and language received. Where a demand exists, translations might be offered by commercial entities.

Q 4: Do you agree with the views above or do you envisage a more developed approach for the network?

Q 5: Do you see alternative technical solutions to those envisaged in the consultative document and permitting to reach the same goal, both for the designing of the OAMs and for creating an EU "one-stop-shop"?

13. We consider the "network model" appropriate to deliver the "one-stop-shop" for investors. Given that there are already national mechanisms in place, their interlinking seems the most obvious technical solution.

Q 6 – Q 13 on file format, security and time recording

14. We support CESR's high-level approach in principle, and we agree with the standards proposed in this section as regards both the file format and the security provisions.
15. We do not believe that a specific standard should be imposed through the Level 2 implementing measures. While a common standard should be aimed at, this should be part of the Level 3 guidelines to allow for sufficient flexibility and quick adaptations to technologic developments. Where necessary, peer pressure among supervisors should help to ensure that a dominant standard be adopted for all OAMs.
16. Given the complications and additional costs implied by paper based filings, OAMs should have discretion to charge fees for the reception of information that needs additional manual processing.

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17. In order to take account of the different time zones and of daylight savings time within the EU, we suggest that the use of a universal time code be included in the interoperability agreement between either the supervisory authorities or the OAMs themselves.
18. Regarding paragraph 61, we note that the proposed procedure might become bothersome from a users' perspective in the case that several corrections have been made to a document. Alternatively, the document might be replaced entirely with an indication as to how many times it has been modified.

Q 14 – Q 17 on easy access

19. We broadly agree with CESR's interpretation of "easy access" as regards both the language regime, the technical accessibility and the format of information. In particular, we concur that there should be no requirement for the common interface of the linked national OAMs to be available in all official EU languages. Providing a choice of two or three languages for the searching fields should be sufficient. This is especially in consideration of the fact the potential users of the network of OAMs are also potential investors. It can certainly be assumed that this clientele will have a sufficient knowledge of the language customary in international finance.
20. Along the same lines, it can readily be assumed that potential users respectively investors have sufficient facilities to print out relevant documents themselves. The printing and sending of hard copies would involve significant and unnecessary costs, which would have to be borne by all users of the system.

Q 18 on costs and funding

21. We agree that there are different possible solutions, including public funding, charges on issuers and/or users, and funding based on national OAMs. As overarching principle, we request CESR to consider the potential competitive implications of different funding mechanisms. While no information on potential costs is currently available, we expect that depending on the mechanism chosen, costs might not be negligible. Where OAMs are run by the competent authorities, which in turn are funded by the financial services industry, this may result in the distortion of the level playing field.

Q 19 on possible network models and the content of the interoperability agreement

22. Given the fact that different national databases are already in existence today and the legal questions that might arise from the creation of a single database for all EU Member States, the FBE prefers the setting up of a network of databases to a single database.

23. Regarding the two approaches on how to reach interoperability, we note that CESR has a preference for an agreement between Member States rather than between the OAMs themselves. The FBE does not in principle have a strong preference for one or the other model but concurs that the most efficient and effective way of reaching interoperability should be chosen.
24. In the absence of an extensive consideration of the respective cost implications, any assessment of which of the four network models would be preferred can only be preliminary. However, our members have at this stage a preference for a modified version of Model C, i.e. a central server hosting an application, containing a complete list of issuers and the links to each OAM which holds information on that issuer. We assume that this model would deliver the best cost-benefit ratio, while complying with all the necessary requirements.
25. While from an investor's perspective, the Models A and B might be considered most user-friendly, we believe that a similar effect can be achieved on the basis of Model C. Instead of just providing a database of issuers and links to OAMs that have corresponding regulated information, regulated information metadata in the form of common reference data and the direct links to the respective documents could be included in this model.
26. This solution would come closer to the one-stop-shop envisaged by the Commission than the original Model C, and it would allow for the use of more precise search criteria. Contrary to the Models A and B, there would be no redundant search requests to OAMs that do not store the requested information, and as a result overall network traffic would be reduced. Please find a more detailed description of the advantages of Model A in the annex.
27. Whatever model will be chosen, we consider that it should not only generate the hyperlinks, but also the common reference data referred to in paragraph 214 of CESR's consultation paper.
28. Whilst Model D would constitute the least costly solution, we do not consider it to add sufficient value to the current situation, nor to comply adequately with the requirements of the Transparency Directive.

Q 20 – Q 23 on the role of the competent authority
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29. We support the considerations set out in this section and we especially agree that any provisions should be sufficiently flexible to allow for the updating of the OAM standards to take account of technological and other innovations.

Q 24- Q 31 on the quality standards of filing

30. We agree with CESR's interpretation of filing as the process by which information is presented or made available to the competent authority for supervisory purposes under the Transparency Directive. As regards the process, we consider that standard industry formats must be accepted, and certainly the standards that are used for storage of the information. However, as to less commonly used means it is up to the competent authorities to decide which ways of electronic communication shall be accepted.
31. We find CESR's proposals in terms of both security and time recording appropriate. However, we underline again the need for any Level 2 measures to be sufficiently flexible to allow for the necessary adjustments to be made within the legal framework.

Q 32 – Q 33 on the alignment of filing with storage

32. We welcome CESR's acknowledgement that issuers should not be overburdened with different procedures of storing and filing information. From the perspective of issuers, a sufficient alignment centres on the electronic standards used and on the means of communication.
33. Regarding additional ways of alignment, we note that the OAMs might function as service providers for the competent authorities. In this case, OAMs would file, store and disseminate the required information and thus constitute the single point of contact for issuers.

Q 34 on the interaction between the filing and the storage function

34. We consider that linking the filing and the storage function through a mechanism of visible corrections and additions to the stored information is sufficient to address this issue.



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ANNEX TO RESPONSE:

CESR's Consultation on Possible Implementing Measures of the Transparency Directive - Storage and Filing of Regulated Information, ref.: CESR/06-025

I. Technical advantages of a modified version of Model C

CESR's proposed Model C could slightly be modified to also contain metadata on regulated information, instead of just providing a database of issuers and links to OAMs that hold regulated information on a specific issuer. This metadata would contain the common reference data for each document and the direct link to its storage location.

Thus, when an issuer submits a document to an OAM, the OAM will store the document and extract at the same time the corresponding metadata. This could be done automatically if issuers were asked to submit the information in the correct data format. The OAM then sends the document and the metadata to the central database.

The advantages of this modification would be the following:

- the delivery of a real "one-stop-shop" for the investor;
- the possibility to define more precise search criteria than just the investor's name or code;
- more specific queries, avoiding that OAMs be burdened with search requests on documents not stored by them;
- faster replies due to reduced overall network traffic;
- structured input of issuers' information, reducing the overall complexity of the network system, with OAMs only submitting the metadata and setting up the hyperlink;
- straight-forward interoperability agreements, due to the fact that OAMs only have to agree on a limited number of criteria and the way of representation;
- immediate availability of the metadata information for users, even if the specific OAM is temporarily unavailable.

II. Additional technical comments

1. Given the different time zones and daylight savings time within the EU, UTC (universal time code) based time stamps should be used to facilitate the exchange of information between OAMs.
2. In addition to the common technical standards mentioned in paragraph 194, OAMs should include information about the technical behaviour of the system. This is to make provision for the case of non-responses due to e.g. network problems, time out periods or maintenance windows. It will ensure that after a certain period of waiting time, users will be informed about the temporary unavailability of the system.

3. Regarding the requirement set out in paragraph 210, according to which documents should be found which are classified under different versions of an issuer's name, this would be delivered through a system which allocates a unique Issuer ID to each issuer across all OAMs. The system would register any names assigned to an issuer over a defined period of time and would ensure a constant identity even where an issuer has been renamed.
4. On a similar note, regarding the paragraphs 211-213 unique category IDs should be assigned to the different categories across all OAMs. A unique category ID could be combined with the assignment of category icons, which would facilitate the use of the systems also in languages in which users are not fluent.
5. In paragraph 229 it is suggested that a common list of identifiers for Member States should be drawn up under the interoperability agreement. This could be based on the existing ISO standards which are widely used in various systems to identify countries, languages and currencies. These ISO standards could also be used for the common list of identifiers for languages referred to in paragraph 244.
6. In addition to the restrictions mentioned in paragraph 235 in terms of date range, it might be useful to also restrict the overall number of results returned to the user in order to ensure that the query concentrates on the most relevant documents, and to avoid a system overload.