

DG Internal Market Services Working Document ESC-10-2007 rev. 1

**on storage of regulated financial information
in relation to issuers whose securities are admitted to trading on a regulated market.**

Borsa Italiana expresses its full appreciation for the work undertaken by the European Commission and is thankful for the opportunity to contribute to the consultation process.

Please find below Borsa Italiana's general observations and some more detailed comments related to specific subjects.

Part A

Minimum Quality Standards for the central storage mechanism

Preliminary remarks on Internet based systems

As a general remark, Borsa Italiana would like to stress that it must be clarified that 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 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 would slow down the process (because of the time needed to revise and edit the documents), could increase the possibility of errors in transmission and would not guarantee the certainty of source.

In particular, we would like to draw the attention to the fact that the expression "electronic means" does not have a commonly accepted meaning. More specifically, we consider that the use of fax or electronic fax (i.e. sending a fax message through a personal computer) should be excluded from the category of "electronic means". We argue that a message is sent by an electronic means only if it can be electronically processed further without manual intervention. Consequently, fax falls out of the definition of "electronic means".

From this perspective, Borsa Italiana would like to stress that the definition of electronic means contained in the directive does not represent a legal constraint for including 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 should lead the Commission to exclude fax from the definition of "electronic means".

Internet 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 rationalise 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.

Furthermore, we point out that – further in the working document, while drafting minimum conditions for a pan-European network of national OAMs – the Commission constantly refers to the building up of a quite sophisticated electronic platform. Borsa Italiana firmly believes that such an achievement is likely to be feasible only if the platform will be connected with web-based national storage mechanisms.

1. Security of communication

We share the opportunity for the storage mechanism “*to ensure the security of the means of communication used to link the issuer with the mechanism*”. However, we have the following remarks:

1.1 Use of third parties

This provision shall not discourage the use by the issuer of a service provider for dissemination purposes.

If the issuer decides to make use of a third party for the dissemination, it is important to specify that in this case the “security duty” under consideration only applies for the means of communication between the OAM itself and the service provider chosen by the issuer. This is also consistent with the fact that the security of the means of communication between the issuer and the service provider is already ensured by equivalent TOD provisions on dissemination. Furthermore, this interpretation would be in line with the following provisions on certainty as to the information source. The text under consultation on paragraph 7.1 expressly refers - in addition to the issuer – to the “*person or entity authorised to on its behalf*” : we suggest that the same wording could be used in paragraph 1.1.

1.2 Admission to trading without the issuer’s consent

With regard to the fact that the same regime foreseen for the issuer also applies to the “person that has applied for the admission of securities to trading on a regulated market without the issuer’s consent”, we believe it is extremely relevant to expressly clarify in the text that the unilateral applicant is in charge of such an obligation only when there is no an issuer in charge of the dissemination/storage: depository receipts, corporate bonds, non European financial instruments etc.

A different (misleading) interpretation should be clearly excluded as there is no sense - if there’s an issuer in charge of the storage - in asking twice for the same information flow. Especially with reference to price sensitive information, we would like to stress that the information is not at the concrete and immediate disposal of the unilateral applicant. By definition, the unilateral applicant does not have a direct and permanent relationship with the issuer and hence it would have to search for the required information, wherever and whenever has been published by the issuer. This would be so burdensome and risky as to discourage the pursuing of the admission to trading without the issuer’s consent.

Moreover, this could be in contrast with the Prospectus Directive and the MiFID which allow the admission to trading without the issuer’s consent by simply requiring the presentation of a summary, as foreseen by Art. 4.2 of the Prospectus Directive.

2. Reliable access to Service

We highly appreciate and fully support the introduction of a standard concerning the *system capacity*, that has to be sufficient for supporting an high number of requests from issuers and end users.

From this perspective we suggest to change “*expected*” with a more specific wording – e.g. “*an extremely high*”, “*huge*” – in order to better quantify such a requirement.

13. Technical Accessibility

As for the requested ability of OAM to ensure *technical interoperability* with other Storage Mechanisms, we are firmly convinced that at this stage it is too early for imposing such a requirement. Indeed, there is no reference to the technical degree reached by the different OAMs and on this ground becomes difficult to even define the feasibility and the opportunity of such a requirement.

On the level of *support service for users* offered by the OAM, we believe that this is a matter to be decided at national level by the Storage Mechanism itself.

14. Format of the information that can be accessed by end users

Borsa Italiana considers that the list of compulsory items drawn up by the Commission seems to be too specific. In particular, we highlight that processing reference information requires time, staff resources and IT arrangements. If the considered reference information is particularly complicate, these requirements risk to seriously slow down the whole process, thus undermining the “*fast access*” as foreseen by the Directive.

With reference to the request for the Storage Mechanism to *organise and categorise regulated information* in accordance with the standards previously mentioned, we highlight that the Directive only provides for basic access to the stored information. Therefore, these activities should be considered as added value services and therefore developed by the OAM.

In this context, we would like to recall that the storage mechanisms in the Transparency environment are targeted to answer investors’ requests (making investment decisions) and not to provide elaborate research. Therefore, we suggest to simplify the standard of the so called reference information (at paragraph 14.3), by eliminating the “*title*” and the “*language*” items. Also, with reference to the item “*type of regulated information*”, we suggest to delete – at least initially – the subcategories foreseen in the Appendix. Later in the implementation process, these standards could be reviewed in accordance with IT developments and new reference data could then be introduced.

Moreover, Borsa Italiana believes that requiring the OAM to align the categories mentioned with the other storage mechanisms is premature and likely to be unreasonably burdensome.

Part B

Minimum conditions for a pan-European network of national central storage mechanism

As a first and most important remark, Borsa Italiana believes that the best option for the construction of an European network of OAMs would be to foresee a list with links to each single OAM. As a matter of fact this would be fully compliant with the provisions as set in the Transparency Directive, which indeed simply asks for the construction of a *network* (i.e. a linkage among OAMs), without any further specification on the need for *inter-operability* and/or on its desirable scope.

Two orders of considerations would support such a choice. Firstly, from a technical point of view we believe this is the only feasible option in the medium term with regard to the *inter-operability* issue. Secondly, taking into account the economic impact that any structural decision would imply, we highlight that there is no ground for imposing huge investments (mainly in terms of IT changes), without before having assessed (and agreed on) the effective usefulness of such a network.

Notwithstanding the above, we have the following observations with regard to the system as currently drafted in the Commission working document.

3.2. Characteristics of the network

With reference to the *inter-operability technical issues*, we have some concerns regarding “*Harmonised Searching Facilities*” and the “*Standardisation of input format*”. Once again, we would like to recall that the storage mechanisms in the Transparency environment are targeted to answer investors’ requests (making investment decisions) and not to provide elaborate research.

The free access to the information has to be granted only with reference to naked information.

If the common reference data and the search keys are very detailed, a sensible number of results can be returned to the investor from the network. We would like to point out that this is more than naked information, as it is already an added value service.

Interoperability means to make OAM able to communicate – up to a certain degree – among themselves, but does not necessarily implies a standardisation of the modalities for storage, which also entails an impact on the OAM IT architecture. The imposition of very sophisticated searching facilities is likely to be burdensome and risks to discourage entities from becoming OAM. This is due to the fact that the level of investments

needed would increase disproportionately, while the possibility of developing added value services would not.

We trust the European Commission will find our comments useful and we remain at disposal for any further clarification.

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