

27 April 2007

Summary of comments by interested parties to the DG Internal Market and Services' working document ESC/10/2007 Rev.1 on storage of regulated information in relation to issuers whose securities are admitted to trading on a regulated market.

Introduction

In March 2007 DG Internal Market and Services disclosed working document ESC/10/2007 Rev.1 on storage of regulated information in relation to issuers whose securities are admitted to trading on a regulated market calling for comments from interested parties until beginning of April 2007.

14 interested parties responded to this public consultation. The categories of respondents are: banking associations (43%), stock exchanges and associations of stock exchanges (21%), issuers or issuers associations (14%), securities markets regulators (7%) and news providers (14%).

Part A – Minimum Quality Standards for the central storage mechanisms

General comments

Overall the replies welcome the provisional conclusions the Commission has drawn and support ready access to regulated financial information as a key element to the efficient functioning of markets.

Timescale for the establishment of CSMs. One respondent regrets that the Working Document does not indicate any timescale for the establishment of Storage Mechanisms and their inter-linkage in a network. A clear indication of timing would be a significant factor for those entities contemplating whether to seek appointment as a Storage Mechanism and essential for those actually appointed. The timescale for establishing Storage Mechanisms should allow for the potentially long process of appointing (e.g. by tender) commercial entities as Storage Mechanism.

Expected costs and benefits. Two replies deal with the fundamental issue of expected costs and benefits of officially appointed Storage Mechanisms.

One respondent estimates that the establishment of Storage Mechanisms will not create any sizeable surplus for investors or the capital market. Institutional investors may not be dependent on institutions like a Storage Mechanism, getting the relevant information by contact with the issuers or on road shows. Therefore, the cost of creating a pan-European net should match its limited benefit and should be reduced to the minimum required.

Another reply calls for an assessment of the cost associated with compliance with the proposed standards. It proposes that costs should be borne by the companies which apply to act as Storage Mechanism.

Liability. One comment calls for addressing the issue of liability in the Working Paper. It argues that Storage Mechanisms should have the possibility to add a disclaimer excluding liability for them and the issuer related to technical problems in transferring regulated information.

Definition of "regulated information". Two respondents argue that the cross-border use of regulated information by investors would be facilitated by keeping the definitions of regulated information by Member States in line as much as possible. The possibility for Member States to subject their issuers to requirements more stringent than those laid down in the Transparency Directive could lead to divergent definitions of regulated information. Therefore, the respondents emphasize the importance of common guidance on the registration requirements for Storage Mechanisms.

Influence on other directives. One voice pleads for abolition of the obligation under the Prospectus Directive to publish an annual document containing all relevant information published or made available to the public over the preceding 12 months. This provision might be redundant since the invention of Storage Mechanisms by the Transparency Directive has given investors an easy internet-related access to the information they want. Alternative ways to obtain the information necessary to make investment decisions were available. Private investors usually would not base their investment decisions on blank corporate data, relying instead on print media, reports on radio or television or turning to analysts' and issuers' websites where they can already find relevant information and commented and evaluated data.

Another respondent recommends that the Commission establish uniform standards and protocol for Storage Mechanisms to maintain all regulated information required under the respective EU Directives (Prospectus Directive, Take-over Directive) and securities markets law. Common guidance should be coordinated with each of the Member States in respect of the types of regulated and other information that are to be contributed to and maintained by a pan-European Storage Mechanism. Additional guidance as to the scope of regulated information that will be required to be stored, the flexibility of such scope to allow for inclusion of new categories of financial instruments and securities which require documentation, e.g., loans, derivatives, structured notes, collateralized private securities and others and the timing of this determination within the consultation process would be appreciated.

Security

Security of communication. One comment states that the provision on third parties should not discourage the use by the issuer of a service provider for dissemination purposes. In this case it would be important to specify that the "security duty" under consideration only applies for the means of communication between the Storage Mechanism itself and the service provider chosen by the issuer. The security of the means of communication between the issuer and the service provider would already be ensured by provisions on dissemination.

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”, a respondent considers it to be extremely relevant to expressly clarify that the unilateral applicant is under such an obligation only when there is no issuer in charge of the dissemination/storage (depository receipts, corporate bonds, non European financial instruments etc). A different 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.

Integrity of stored regulated information. One reply raises the question how the reference to security systems providing certainty as to the source of the filed information interacts with the provisions of provision 2 (certainty as to the information source). It also asks whether the requirement that stored information must not be removed from the CSM (provision 2.3) is consistent with the time limits of the Transparency Directive.

Another respondent makes specific proposals on the presentation of wrong information, considering it to be more advantageous e.g. to give investors full access only to the amended version of the document while listing the original false document, that is no longer retrievable by the investor, with its title. Another possibility would be the insertion of a link within the original document that leads the investor automatically to the amended version.

Reliable access to Services. One respondent fully supports the introduction of a standard for the system capacity while suggesting to change “expected” for a more specific wording – e.g. “an extremely high”, “huge” – in order to better quantify such a requirement.

Acceptance of waivers and recovery. One voice asks for a clarification of the wording of provision 5, arguing that if the intention is to require Storage Mechanisms to insert provisions in their contracts with issuers placing an obligation on the issuer to re-file information, then the provision should say so.

Another comment on this provision demands that the obligation of the issuer to refile the information in case of shut-down time or electronic breakdown of the storage mechanism should not impose any additional costs on the issuer as most companies operating the storage system charge the investor per upload of a document.

Certainty as to the information source

On a general level, two respondents plead strongly in favour of avoiding any double or even triple filing obligation. Issuers should only be requested to file each document once, with one single Storage Mechanism.

Concerning provision 7.1, obliging the Storage Mechanism to verify that any regulated information it receives directly originates from the person fulfilling a filing obligation, two respondents argue that the filing of information to a government storage mechanism that forwards this information to the officially appointed Storage Mechanism should be considered to meet this requirement. This would be especially important for Member States which have already storage mechanisms in place prior to the Transparency Directive and where a system of transfer of the received information from the storage mechanisms to the officially appointed central mechanism is foreseen. The authenticity of such an “indirect” filing could be ensured by requiring that the mechanism receiving the items of regulated information directly from the originator adheres to the same minimum quality standards provided in provision 7 or that the intermediate mechanisms

that forward the information is considered as being authorised by way of a statutory provision.

One reply expressed the need to explain the role of a ‘non repudiation’ function (provision 7.2).

With respect to provision 8 one voice expressed support for the flexibility provided by the variety of measures that Storage Mechanisms may impose in order to ensure sufficient user authentication.

Time recording

Filing of regulated information and use of electronic means. Two replies argue strongly in favour of an exclusively internet-based system for the storage of regulated information (filing with the Storage Mechanism, processing and access to regulated information) and advocate the use of electronic means to the maximum extent possible.

The use of non-electronic means would slow down the process. In addition, the expression “electronic means” might not have a commonly accepted meaning. Therefore faxes and electronic faxes should be excluded from the definition of "electronic means". Internet based systems should be imposed as minimum standard for Storage Mechanisms. Straight through processing should be strongly recommended bearing in mind also the other requirements set by the Transparency Directive. The Commission should ensure an inexpensive and rational process providing issuers with a “one-stop shop” solution for filing, dissemination and storage of regulated information.

Another respondent demands that electronic filing should be the default mechanism on the grounds of efficiency and cost-effectiveness, given the anticipated information volumes, and that the Storage Mechanisms should have the ability to require input, except in emergency situations, in machine readable format.

One reply, however, maintains that in some aspects the minimum quality standards should give Member States more flexibility in how to provide for the filing of regulated information with the Storage Mechanism.

Another voice welcomes the variety of measures that storage mechanisms may impose to ensure adequate user authentication and pleads for maintaining this flexibility.

Concerning the filing of regulated information one comment supports those provisions furthering an alignment between the requirements to file the regulated information with the competent authorities and with the Storage Mechanisms. It calls for the Storage Mechanisms to be open to receive regulated information from any entity (issuers or service providers).

Two comments expressly welcome the fact that templates, if they are imposed, have to be easily accessible and should be aligned with those used for filing the same regulated information with the competent authority. This approach would diminish costs for market participants because they could use the same templates when fulfilling their filing obligations.

Easy Access by End Users

Presentation of the information. One respondent recommends that provision 11, making a distinction between regulated information filed pursuant to a legal obligation and information comprising value added services, should allow for the possibility that not all information filed pursuant to a legal obligation (e.g. pursuant to super-equivalent rules) is necessarily regulated information. The provision should therefore require the Storage Mechanism to distinguish (as does the Appendix to the Working Document) between regulated information as defined by the Transparency Directive, information legally required (by national law) in addition thereto, and any additional information which the Storage Mechanism may offer.

Language regime. Several comments dealt with the language regime and generally voiced support for the recommendation that searching facilities be available in the language accepted by the competent authorities of the home Member State and in a language customary in the sphere of international finance.

They also expressed agreement with the Commission's consideration that "easy access" should not imply an obligation for the Storage Mechanisms to translate the information filed. One reply, however, warned that apparently giving Member States the possibility to impose an obligation on Storage Mechanisms to translate the information filed (Provision 12) may undermine the carefully negotiated language provisions of the Transparency Directive. A second reply supports the view that any translation – potentially provided by the Storage Mechanism – of the regulated information received from issuers falls into the category of value-added service.

Another respondent considers a clarification to be necessary concerning provision 12.1 by requiring the filing to be done by issuers in both the local language and English in order to guaranty full accessibility to the filed information for all investors throughout the Community.

The language used when searching the database should be relevant to the language in which the content is stored. Should, therefore, local Storage Mechanisms be required to provide English based search functionality then issuers should also be required to file in English (provision 12.2).

Format of the information that can be accessed by end users. One voice believes that the level of support service for users offered by the Storage Mechanism should be decided at national level by the Storage Mechanism itself.

One respondent expressly welcomes the Commission's suggestion not to impose an obligation on Storage Mechanisms to provide end users with printed copies of the information stored. However, if such a requirement was imposed on the national level the concerned Storage Mechanisms should be authorised to levy appropriate fees to cover the extra cost incurred.

Provision 14.3 was subject of several comments. One respondent considers the list of compulsory items drawn up by the Commission to be too specific and emphasizes the time and effort needed for processing reference information while another warns that a non-exhaustive list of minimum reference fields suggests that Member States could add additional field requirements, making Storage Mechanism operation more complex and harmonisation more difficult. One comment states that the organisation and categorisation of regulated information by the Storage Mechanism exceeds the basic access provided for by the Transparency Directive. Therefore, these activities should be considered as added value services and developed by the Storage Mechanism. More

generally, one voice considers it to be too early for requesting ability of Storage Mechanisms to ensure technical interoperability with other Storage Mechanisms.

In reference to the provision 14.4 requirement that a Storage Mechanism offer filing in both proprietary and non-proprietary formats, one respondent stresses that filers should not have to change the format in which they ordinarily publish information. Another reply states that the open e-filing architecture should support a limited number of format standards and that no prescribed format should be required. It should be up to the Storage Mechanism to choose the format in which files are processed. The respondent agrees that the Storage Mechanisms should be allowed to require issuers to use predetermined file formats and templates and supports the Commission's consideration that Storage Mechanisms should accept file formats and transmission protocols that are non proprietary and that obviate single vendor software applications.

Part B – Minimum conditions for a pan-European network of national central storage mechanisms

General comments on the network

Most replies express their support for Model C proposed in CESR's technical advice of June 2006 as a pragmatic and a straightforward solution living up to the requirements of the Transparency Directive. This model consists of a common element containing a list of all EU listed companies. This list would provide users of the system with hyperlinks to the national Storage Mechanisms containing regulated information about a particular issuer. Regulated information itself would only be stored in the national Storage Mechanisms.

One voice believes that the best option for the construction of a European network of Storage Mechanisms would be to create a list with links to each single Storage Mechanism. This may be the only feasible option in the medium term, taking into consideration the inter-operability issue from a technical point of view. It would also avoid imposing huge investments (mainly in terms of IT changes), without before having assessed (and agreed on) the effective usefulness of such a network.

BRITE. The proposal to integrate the Storage Mechanism network with the BRITE network of business registries led to several sceptical replies. One respondent comments that this could make the governance, interoperability, funding etc issues arising in the Storage Mechanism network even more complex. While the objective of creating a 'one-stop-shop' may be laudable, the two networks were likely to comprise very different public and private entities; were at different stages of development, and may have inconsistent growth objectives (e.g. in terms of search functionality). Another opinion considers this proposal to be acceptable in principle, but demands an assessment whether the pan-European network of central storage mechanisms at the level of European Business Registries could give rise to a concentration in the form of a substantial monopoly against the fundamental principle of free competition established by the EC Treaty. One voice argues that the development in accordance with Model C could be assessed by a survey after a sufficient period following its implementation, taking into account costs and benefits; the Commission could then decide, on the basis of this assessment, if there may be a need and an advantage for proceeding with more integrated

solutions such as the BRITE Project. On the other hand, one respondent voice strong support for an ambitious vision of a one-stop-shop, giving investors quick and easy access to all regulated information.

One respondent recommends a competitive, pan-European storage mechanism model derived from the private sector as best suited to the interests and needs of all concerned. The provider of a pan-European system could offer both a local Storage Mechanism solution to individual Member States and provide a common pan-European hub. Member States could then be given the freedom to appoint the appropriate market players to provide the relevant storage systems.

On a general level, one respondent asserts that further detail would be needed because currently the Working Document contains only very high-level reference to the legal framework and governance structures that will underpin the network.

One voice called for clarification of the definition of business registries at local level and the technical environment in which they operate.

Governance and interoperability

Institutional elements. A decision on the origin of the funding and the repartition key of this funding at the political level is recommended by one respondent. Political action should not be limited to the setting up of along list of requirements. Moreover, a solution amongst the participants of the network could be very difficult given the different nature of such participants.

One reply asks for more detailed information on the funding of the network, especially if parts of the information are available free of charge. In this case the respondent asks for a concept for funding that distributes the cost for the network between all issuers that disclose information on that network, based on the amount of information disclosed by each issuer.

Inter-operability technical issues. Four replies emphasize that the Commission's approach should be more closely aligned to Model C. The functionalities of the Commission's model – single access point, multiple-country searches – might seem to be closer to Models A and B, going far beyond what is inherent to Model C. This could cause costs several times higher than for Model C while adding only limited value.

The prevention of language barriers would not necessitate the establishment of a single access point as provision 12.2 of Part A of the Working Document already deals with this problem by making available the searching facilities in the Storage Mechanism in a language customary in the sphere of international finance.

The categorisation of regulated information could be left to the national storage mechanisms. A voluntary alignment by the Storage Mechanisms would still be possible. This solution could lead to similar interfaces but not to one single access point with one interface.

Another respondent voices concern in relation to the "Harmonised Searching Facilities" and the "Standardisation of input format" and draws the Commission's attention to the fact that the Storage Mechanisms in the Transparency regime were aimed at answering investors' requests (making investment decisions) and not at providing elaborate research. Free access to the information should be granted only with reference to naked information. The aim of interoperability should be to make Storage Mechanisms able to

communicate – up to a certain degree – with each other, but would not necessarily imply a standardisation of the modalities for storage, which also entails an impact on the Storage Mechanisms' IT architecture.

Pricing and access to information

Pricing. The free access to regulated financial information in its raw format is subject to a critical comment; a market-driven solution would imply the need to have the information accessible at affordable prices for end users and not free of charge. In fact the solution proposed by the Commission would envision reliance on a type of subsidization by requiring storage mechanisms to look to their value-added services to recover not only the costs of those services but also the cost of storing and providing the regulated information to the same parties or to others.

One respondent argues that, as a matter of principle, if part of the information can be obtained for free the costs for the network should be distributed between all issuers that disclose the required information on such network, based on the amount of information disclosed by each issuer.

One reply points out that notwithstanding the public nature of the disclosure services to be provided by the national business registries pursuant to the First Company Law Directive, these registries act as profit-making entities and do not perfectly adhere to the provision of Article 3, paragraph 3 of the First Directive, which imposes them to charge a price not exceeding the administrative cost for the copies of corporate documents. Such a provision should in any case be taken into account when determining the funding and pricing under the pan-European network of central storage mechanisms.

One voice considers it important to facilitate free access to regulated information for any end user (investors or any person or entity interested in accessing it). It asks the Commission to recommend to Member States a free-market solution open to competition by basing the national storage mechanism on the same business model, i.e. operated by regulators, if the network is funded with EU money.

Access to information. One respondent recommends the addition of the ISIN code as most investors search for information on an issue by this reference.

Supervision

The idea of a single supervisor for the network is strongly opposed by one reply. Each supervisory authority should be responsible for the supervision of the national Storage Mechanisms in its jurisdiction, the supervision of any common parts of the network being the shared responsibility of all supervisors of the participating Storage Mechanisms.

One respondent favours the shared/concurring supervision option as being more practical potentially, more cost-effective, and liable to allow for the earlier introduction of the network

Another comment points out that in effect only the shared/concurring supervisory model – the college of regulators with its attendant problems of multiple agendas, points of contact etc – seems to be feasible because provision 3.3 explains that it is unclear whether there is sufficient legal basis for setting a single supervisor.

Draft list of regulated information

One reply expressed the wish for on-going information on new loan issues to cover all listed/admitted to trading debt instruments.

Another comment calls for a rectification: first, reference to price sensitive information/inside information should be replaced with reference to “privileged information” pursuant to Directive 2003/6/EC; second, the list of subcategories should correspond to the one provided for by CESR (see Ref.: CESR 06-562) so that the definitions were coordinated.