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**FESE Technical Drafting Comments on the DG Internal Market Services Working Document  
on storage of regulated financial information in relation to issuers whose securities are  
admitted to trading on a regulated market (ESC/10/2007 rev.1)**

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**I. Introduction**

1. The Federation of European Securities Exchanges (FESE) represents operators of the European regulated markets and other market segments, comprising the markets for not only securities, but also financial, energy and commodity derivatives. Established in 1974 as a small forum of stock exchanges in Europe, FESE today has 24 full members representing close to 40 securities exchanges from all the countries of the European Union (EU) and Iceland, Norway, and Switzerland, as well as several corresponding members from other non-EU countries.
2. We appreciate the Commission's efforts to present a possible way forward to facilitate the implementation of the Transparency Obligations Directive as regards to storage of regulated information and we are thankful for the opportunity to comment on DG MARKET Working Document.
3. In this response we first provide a summary of our views on the Commission's Working Document and in the subsequent section we present our comments on the minimum quality standards for the central storage mechanism and the minimum conditions for a pan-European network of national central storage mechanisms.

**II. Executive Summary**

4. FESE believes in a **fully internet-based system for storage of regulated information**: filing with the Storage Mechanism, processing and access to regulated information should be entirely internet based. Straight-through-processing is needed in order to avoid imposing unnecessary burdens on issuers and to ensure an inexpensive and rational process providing issuers with a "one-stop shop" solution for filing, dissemination and storage of regulated information. The availability of the information in the internet will allow investors (regardless their location) to easily and quickly gain access to such information. FESE advocates the **use of electronic means** to the maximum extent possible; the processing of the information by electronic means allows for automated workflow and avoids unnecessary costs<sup>1</sup>.
5. FESE believes that **any translation – potentially provided by the storage - of the regulated information received from the issuers falls into the category of value-added service**<sup>2</sup>. Therefore, we welcome the Commission's clarification that the language regime minimum standards should not be construed as imposing on the Storage mechanism an obligation to translate the information filed. Moreover, we welcome the Commission's statement, in line with CESR's formal advice as sent to the Commission on 30 June

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1. 1 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 Transparency Obligations 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".
  2. 2 The legal obligation of the issuer is well defined in the language regime of the regulated information in both the Transparency and the Prospectus Directives, which were a matter of lengthy debate and reflect a balanced compromise between the needs of investors and the cost of admission to trading for listed companies.

2006<sup>3</sup>, that the searching facilities in a national OAM should be made available in the official local language and in the language customary in the field of international finance.

6. FESE believes that the **open e-filing architecture should support a limited number of format standards and that no prescribed format should be required**. Moreover, it should be up to the OAM to choose the format in which files are processed. We agree that the Storage Mechanisms should be allowed to require issuers to use predetermined file formats and templates and we support 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.
7. FESE believes that in order to achieve the goals of the Transparency Obligations Directive, to avoid posing significant hurdles in the implementation process and imposing consistent investments in term of IT, the most efficient solution would be a central application server and a central database containing a list of all the EU listed companies. Therefore **FESE supports the so-called Model C**, as presented by CESR in its June 2006 final advice to the Commission. Such a model could be assessed after a sufficient period following its implementation with a survey taking into account costs and benefits and the Commission could decide, on the basis of this assessment, if there is a need and an advantage for proceeding with more integrated solutions such as the BRITE Project.

### **III. Comments on the Working Document**

#### **A. Minimum Quality Standards for the central storage mechanism**

##### **a) Security**

8. FESE agrees in principle with the Commission's thoughts with regard to security of communication, integrity of stored regulated information, validation, reliable access to services, acceptance of waivers and recovery as well as to back-up systems. However, flexibility for the Storage Mechanisms to adapt their security systems to their environment and end users' needs must be ensured.
9. We agree that the nature of these back ups systems will need to be evaluated by each storage mechanism taking into consideration the specific characteristics of the systems in place. We agree that each OAM should have in place sound security mechanisms that will ensure the security of the means of communication used to link the filers to the system, minimize the risks of data corruption and unauthorized access and provide certainty as to the source of the information being filed.
10. We agree that the Storage Mechanism should ensure that the information which is already stored is available to end-users, without disruption, 24 hours per day, 7 days per week.

##### **b) Time recording**

11. We agree that the Storage mechanisms should be able to automatically docket electronics filings and add a date and time stamp. To do so, FESE believes that the open e-filing architecture should support a limited number of format standards and that no prescribed format should be required. Moreover, it should be up to the Storage Mechanism to choose the format in which files are processed. We agree that the Storage Mechanisms should be allowed to require issuers to use predetermined file formats and templates and we support 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

##### **c) Easy access by end users**

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<sup>3</sup> Ref: CESR /06-292

12. FESE welcomes the Commission's clarification that the language regime minimum standards should not be construed as imposing on the Storage Mechanism an obligation to translate the information filed. Moreover, we agree that the searching facilities in a national OAM should be made available in the official local language and in the language customary in the field of international finance. Requiring national OAMs to have the searching fields available in all languages of the European Union would be burdensome and not useful because this objective would be reached anyway thanks to the building up of the EU network.
13. On the interoperability between Storage Mechanisms both at the EU and the national level (whereas more than one OAM will be appointed in a single Member State), FESE fully supports the use of open architecture systems for the access to the stored information. To secure a fast integration in a simple and cost-effective way, we support the "Central List of Issuers" model as presented by CESR in its June 2006 final advice to the Commission. We believe that "model C" would achieve the goals of the Directive and would not pose overwhelming hurdles to implement given that the data would remain at national level and the only common element would be the list of all EU listed companies.
14. FESE agrees that end users should have access to all stored regulated information on a continuous basis, 24 hours a day and 7 days a week, and welcomes the Commission's reference to the fact that the level of support that each Storage Mechanism decides to provide needs to be decided at national level.
15. We think that the list of compulsory items drawn up by the Commission in Paragraph 14.3 is too specific. In particular, it should be noted that processing reference information requires time, staff resources and IT investments. Making reference information too complicate would mean slowing down the whole process, thus undermining the "fast access" as foreseen by the Directive.
16. With reference to the request for the Storage Mechanism to organise and categorise regulated information in accordance with the standards previously mentioned, we draw the Commission's attention to the fact 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 remind the Commission that the Storage Mechanisms in the Transparency regime are aimed at answering investors' requests (making investment decisions) and not at providing 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. In addition, 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.

## **B. Minimum conditions for a pan-European network of national central storage mechanisms**

### **a) The network**

17. FESE believes that to secure a fast integration in a simple and cost-effective way, the so-called Model C, as presented by CESR in its June 2006 final advice to the Commission would represent the best solution. To achieve the goals of the Transparency Obligations Directive, to avoid posing significant hurdles in the implementation process and imposing consistent investments in term of IT, the most efficient solution would be a central application server and a central database containing a list of all the EU listed companies. A common interface would permit users to click on the name of the issuer to be connected with the storage mechanism which holds regulated information on that listed company.
18. Such a model could be assessed after a sufficient period after its implementation with a survey taking into account costs and benefits. Hazardous and premature decisions should be avoided at this early stage. It should be noted that the BRITE Project could be financially overwhelming especially for small or emerging countries which will have to introduce the standards of the EU network. We believe that an impact assessment done after 6 months from the implementation of the network would tell if there is a need and an advantage for proceeding with the BRITE Project.

**b) Characteristics of the network**

19. As regards the inter-operability technical issues, FESE supports point (1) and (2) but has some concerns regarding point (3): “Harmonised Searching Facilities” and the “Standardisation of input format”. Once again, we would like to draw the Commission’s attention to the fact that the Storage Mechanisms in the Transparency regime are aimed at answering investors’ requests (making investment decisions) and not at providing elaborate research. We believe that the free access to the information should 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.
20. 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 disproportionably, while the possibility of developing added value services would not.

**c) Supervision of the functioning of the network**

21. FESE agrees that the most workable solution would be to accept that supervision of the activities of the institution running the network relies on the supervisor of the Member States in which the institution is registered. We support the idea of CESR undertaking work at Level 3 to facilitate the supervisory task.