Mr Charlie McCreevy
Member of the European Commission
B – 1049 Brussels

Brussels 16 May 2008

Dear Commissioner

We would like to refer to your letter of 18 July 2007 and our response to it of 3 August 2007. In our response we proposed that the three associations and their members will carefully consider the text of the Guideline in the light of the experience gained in responding to requests being made and to the application of the Guideline in these circumstances.

Nearly one year after publishing the Access and Interoperability Guideline, we believe that a first review process may be appropriate and we could consider additional editorial comments on the Guideline.

In order to give due consideration to the specific points raised by the Commission, we have prepared our comments on the proposed changes. You will find them in the attached annex I. We specifically accept the proposed changes in paragraphs 32, 102, and 111. We have not been able to take into account some of the proposed changes for the reasons which are mentioned in the attached document.

We are looking forward to discussing this topic further with your cabinet and services and remain at your disposal for any questions you may have.

With best wishes

Judith Hardt
FESE Secretary General

Rory Cunningham
EACH Chairman

Joël Mérère
ECSDA Chairman

Annex I – FESE, EACH and ECSDA comments to Commissioner McCreevy's letter of 18 July 2007 regarding the Access and Interoperability Guideline

This note outlines the detailed comments of FESE, EACH and ECSDA to the letter of Commissioner McCreevy on the Access and Interoperability Guideline. The comments from the three associations are outlined in a box:

2. General Principles and Definitions

- ***Paragraph 12:*** We would rephrase the first sentence as follows: "*These Guidelines applies to Organisations whose CCP activities are subject to supervision or oversight as a CCP by competent authorities in the EU/EEA, in accordance to commonly accepted standards ;…"*

We would agree in principle that a sentence could be added but currently for CCPs there are no commonly accepted standards that we could refer to.

- ***In analogy with paragraph 12 for CCPs Paragraph 14 on CSDs should read*** "*These Guidelines applies to Organisations whose SSS activities are subject to supervision or oversight by competent authorities in the EU/EEA, in accordance to commonly accepted standards ;…"*

The proposed adaptation would change the scope (much broader scope) of the organisations involved as currently it is referred to "parties offering issuer CSD services" and not all SSS activities. We do not believe that such amendment would add value as the scope of the Guidelines is identical to the scope of the Code itself (Article (6)), and so are their signatories. We would agree in principle that a reference to commonly accepted standards for CSDs be added but, of course, such standards do not (yet) exist.

- ***Paragraph 32***: It should be rephrased as: "*Any customisation should be aligned with EU and international industry standards*".

Change accepted.

- ***Paragraph 40***: We would substitute "*limit*" with "*scale*".

Acceptable only with the wording "limit or scale".

3. Access and Interoperability Scenarios

- ***Paragraph 102:*** Reference in fifth bullet point to "common contingency procedures" is too strong; our suggestion is to rephrase as "*Coordinated contingency procedures*."

Change accepted.

5. Application Process

- ***Paragraph 111 and 113:*** It is unfortunate that the chapter as currently drafted do not explicitly cater for all potential links (in particular it leaves out interoperability between CSDs). I encourage you to address it by making it clear that Chapter 5 in general, and in two articles in particular, applies to all types of links foreseen by the Code and the Guideline.

Change accepted.

- ***Paragraph 113:*** Specify at the end of the paragraph a maximum time limit for the whole application process: "*The application process under normal circumstances will last a maximum of 6 months, unless the parties agree otherwise."* We believe that this represents a reasonable timeline in view of the process outlined above.

Such a defined fixed time scale is not feasible as the scale and scope of the link may induce a large number of changes in the operating and technical model or the legal framework, resulting to long period of discussions, as demonstrated by the requests raised under the Access and Interoperability Guideline. We would prefer a more flexible approach: e.g. a quarterly review process of pending requests should offer the opportunity for all parties concerned to bring forward their observations.

6. Mediation mechanisms

- ***Paragraph 122:*** We would further specify the mediator's mission, adding after the third bullet point:
    - *Collect facts and gather information.*
    - *Listen to the parties and respect due process.*
    - *Lead the negotiations.*
    - *Make a proposal for an agreement.*

Although we do not see problems in the points mentioned it might cause a contradiction to the mediation processes in place in the different legislations.

- ***Paragraph 123:*** Rephrase last sentence as "*It is understood that any commercially sensitive information communicated….*"

The publication should not include commercial details. It is our basic understanding that, beside the names of the disputants, all information will be treated confidentially.

7. Legal Fiscal & Regulatory arrangements

- ***Paragraph 125:*** We would rephrase last line of this article as "*…and should be reported to the European Commission which may decide to publish this information.*"

As the European Commission can already publish such information today we do not see any reason in explicitly stating it in the Guideline. As the monitoring of the access requests is ongoing since a couple of month such reporting to the Commission and publication of such information by the Commission has already taken place.