

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 11 October 2007

on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/EC of the European Parliament and of the Council

(notified under document number C(2007) 4607)

(Text with EEA relevance)

(2007/657/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular second indent of Article 211 thereof,

Whereas:

- (1) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC⁽¹⁾ requires that the access for investors to information about issuers is more organised at a Community level in order to actively promote the integration of European capital markets.
- (2) Directive 2004/109/EC obliges the competent authorities of the Member States to draw up guidelines with a view to further facilitate public access to information to be disclosed under Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁽²⁾, Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC⁽³⁾ and Directive 2004/109/EC of the European Parliament and of the Council and to create a single electronic network (hereinafter 'the electronic network') or a platform of elec-

tronic networks across Member States linking the different mechanisms appointed at national level for the storage of such information (hereinafter 'the storage mechanisms').

- (3) The competent authorities of the Member States adopted, within Committee of European Securities Regulators (CESR) established by Commission Decision 2001/527/EC⁽⁴⁾, an opinion to the Commission on 30 June 2006, in which they expressed a preference for a simple electronic network mode linking the storage mechanisms. Such network could be accessed via a common interface which would contain a list of all listed companies in the Community and would redirect the user to the site of the relevant storage mechanism. The relevant data would thus remain stored at national level without any need to establish a common infrastructure replicating all the relevant information contained at national level and incurring excessive additional costs.
- (4) It is appropriate to provide at this stage for voluntary standards giving the necessary flexibility to the storage mechanisms to adapt themselves to the functioning of the electronic network.
- (5) It is desirable that the storage mechanisms are able to interconnect electronically to each other, so that investors and interested parties can easily accede to financial information on listed companies in the Community. In order to provide for a rapid establishment of such an electronic network, it should be based on simple conditions such as those suggested by the competent authorities of the Member States. A simple network should also allow for the provision of added value services to investors.

⁽¹⁾ OJ L 390, 31.12.2004, p. 38.

⁽²⁾ OJ L 96, 12.4.2003, p. 16.

⁽³⁾ OJ L 345, 31.12.2003, p. 64.

⁽⁴⁾ OJ L 191, 13.7.2001, p. 43.

- (6) For the purposes of facilitating the access of investors to financial information on listed companies, storage mechanisms should be invited to integrate, wherever possible, related financial information disclosed by issuers in accordance with other Community or national acts.
- (7) In order to enable effective launching of the electronic network, the competent authorities of the Member States, within CESR and in close association with the storage mechanisms, should be invited to prepare a network governance agreement containing the essential conditions for the creation, functioning and funding of the electronic network and notably the appointment of a body that should be charged with the daily management of the network.
- (8) It is important that the storage mechanisms remain free to decide on their own pricing policy so as to secure their own financial viability. At the same time, they should not discriminate in their pricing policy between the users of electronic network and the users who have access to the storage mechanism at national level.
- (9) For the proper functioning of the electronic network, and in order to make sure that comparable services are offered to the users of that network within the Community, minimum quality standards for the storage of regulated information at the national level are necessary. It is important that sufficient security as regards the communication, storage and access to data is guaranteed by the storage mechanisms. It is equally important to establish systems providing for certainty as to the source and the content of the information filed with the storage mechanisms. In order to facilitate the automatic electronic docketing, date and time stamping and further processing of information filed, storage mechanisms should consider imposing the use of appropriate formats and templates. Additionally, in order to facilitate the access to the information stored by end users, appropriate searching facilities and service support should be provided. For the purposes of coherence of the system, the standards should be, to the extent possible, identical for the storage mechanisms participating in the network and for the body designed to manage the network platform on a daily basis.
- (10) A gradual approach appears necessary in order to ensure that the electronic network of storage mechanisms will be able to meet the expectations of issuers and investors in the long term, notably the possibility of a virtual one-stop-shop for accessing financial information disclosed by listed companies. Therefore, it is appropriate to provide for an examination of possible solutions to enhance this network in the future. In order to ensure coherence with the initial establishment of the network, such examination should be undertaken by the competent authorities of the Member States within the CESR. This work should at least include an examination of the possibility to link this electronic network with the

electronic network which is being developed by the national company registries covered by the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community⁽¹⁾.

- (11) In order to allow the Commission to monitor closely the situation and to assess the need for further measures, including the possibility to adopt implementing measures in accordance with Article 22(2) of Directive 2004/109/EC, the Member States should be invited to provide the Commission with the relevant information,

HEREBY RECOMMENDS:

CHAPTER I

SUBJECT MATTER

1. The objective of this Recommendation is to encourage the Member States to ensure that the necessary steps are taken in order to effectively interconnect the officially appointed mechanisms for the central storage of regulated information, as referred to in Article 21(2) of Directive 2004/109/EC (hereinafter 'the storage mechanisms'), in a single electronic network within the Community, as referred to in point (b) of second subparagraph of Article 22(1) of that Directive (hereinafter 'the electronic network').

CHAPTER II

THE ELECTRONIC NETWORK

2. The agreement on governance of the electronic network
 - 2.1. Member States should facilitate the establishment and development of the electronic network in its initial stage by mandating the competent authorities referred to in Article 24 of Directive 2004/109/EC to prepare within the Committee of European Securities Regulators (CESR) established by Decision 2001/527/EC, an agreement on the governance of the electronic network (hereinafter 'the governance agreement'). The storage mechanisms should be closely associated to the preparation of that agreement.

Member States should designate the entity empowered to conclude this agreement. In doing so, they should take into account the respective powers of the storage mechanisms, the competent authorities or other appropriate entity.

⁽¹⁾ OJ L 65, 14.3.1968, p. 8. Directive as last amended by Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137).

- 2.2. The governance agreement should address at least the following issues:
- (a) the creation of a network platform;
 - (b) the conditions to join the electronic network;
 - (c) the consequences of non-compliance with the conditions of participation and how to enforce these conditions;
 - (d) the appointment of a body that manages the network platform on a daily basis and the main conditions applicable to this management;
 - (e) the mechanism to decide on the upgrades of the electronic network, which should take into account, where appropriate, the views of all stakeholders, including end users;
 - (f) the funding conditions;
 - (g) the dispute resolution system;
 - (h) the mechanism for the modification of the agreement itself.
- 2.3. Member States should take appropriate measures to ensure that the storage mechanisms comply with the governance agreement.
3. The conditions as regards technical interoperability of the electronic network
- The electronic network, established under the governance agreement, should, at least, contain the following functionalities:
- (a) a central application server and a central database containing a list of all issuers with a common interface and allowing, for each issuer, to link the end user to the storage mechanism which holds regulated information relating to that issuer;
 - (b) a single access point for end users, which could be either achieved at a central point or at each storage mechanism individually;
 - (c) an interface language directory available to end users at the single access point with the communication languages accepted nationally by the storage mechanisms participating in the electronic network;
 - (d) access to all documents available nationally in the storage mechanisms participating in the electronic network, including, when available, information disclosed by issuers pursuant to Directive 2003/06/EC, Directive 2003/71/EC and other Community acts or national law;
 - (e) the possibility of the further use of data accessible through the electronic network, where possible.
4. Pricing of access to the information contained in the electronic network
- 4.1. Storage mechanisms should be free to establish their own pricing policy. However, they should not discriminate in their pricing policy between end users accessing to their information directly through their respective national access point and those accessing indirectly through the single access point provided by the electronic network.
- 4.2. Storage mechanisms should consider granting free of charge access to investors or interested parties in relation to the regulated information, at least during a certain period following its filing by the issuer.
- 4.3. Points 4.1 and 4.2 do not concern the provision of added value services by the storage mechanisms or by any third party using the information accessible through the electronic network.

CHAPTER III

THE MINIMUM QUALITY STANDARDS

Section 1

General

5. Member States should ensure that the storage mechanisms participating in the electronic network comply with standards equivalent to the model standards laid down in this chapter.

The Member States should also ensure that the body referred to in point 2.2(d) appointed pursuant to the governance agreement complies with the standards laid down in Sections 2 and 3.

6. Member States should ensure that the same standards applying to issuers as defined in point 1(d) of Article 2 of Directive 2004/109/EC apply also to persons who have applied for admission to trading on a regulated market without the issuer's consent, as referred to in Article 21(1) of that Directive.

Section 2

Security

7. Security of communication

- 7.1. The storage mechanism should have in place sound security mechanisms designed to ensure the security of the means of communication used to link the issuer with the mechanism, and to provide certainty as to the source of the information being filed.
- 7.2. The storage mechanism should be, for security reasons, entitled to limit the means of communication to be used but it should be able, at least, to receive electronic filings through a system accessible to the issuer.

In any event, the types of means of communication to be used should be easily accessible, commonly used and widely available at a low cost.

8. Integrity of stored regulated information

- 8.1. The storage mechanism should store the information in a secure electronic format and should have in place appropriate security mechanisms designed to minimise the risks of data corruption and unauthorised access.
- 8.2. The storage mechanism should ensure that the regulated information it holds as received from the issuer is complete and that the content of the regulated information is not editable while stored.

In case that the storage mechanism accepts the filing of information using means of communication other than electronic, the storage mechanism should ensure, when converting the documents into electronic documents, that the content of the information is complete and unedited as originally sent by the issuer the information.

- 8.3. Information that has been sent to the storage mechanism and displayed should not be taken out of the storage mechanism. If an addition or correction is necessary, then the correcting or additional piece of information should identify the item it modifies and should be identified as a correction or addendum.

9. Validation

- 9.1. The storage mechanism should be able to validate the information filed, meaning that the mechanism should enable an automatic inspection of the filed documents for technical adherence to standards required, completeness and accuracy of their formats.

- 9.2. The storage mechanism should have systems in place to detect interruptions of the electronic feed and to request the re-transmission of any data that it fails to receive from the sender.

10. Reliable access to services

- 10.1. The storage mechanism should have security systems in place so as to ensure that its services can be accessed by issuers and end users, without disruption, 24 hours a day and seven days a week.

Each storage mechanism should define its own requirements, based on the characteristics of its systems and the particular conditions in which it operates.

The capacity of the systems, namely, the capacity of its servers and the bandwidth available, should be sufficient to support the expected requests from issuers, as regards filing of information, and end users, as regards access to stored information.

- 10.2. The storage mechanism should be entitled to prevent access to its systems for brief periods when necessary in order to perform essential maintenance or in order to upgrade its services. Where possible, such interruptions should be announced in advance.

11. Acceptance of waivers and recovery

The storage mechanism should have an evaluation process for reviewing and accepting or denying waivers for late filings due to technical issues of the storage mechanism and non-standard submissions. The mechanism should also provide recovery tools that allow the issuer to use other mechanisms of filing in place of the prescribed one when this is out of order. However, there should be an obligation on the issuer to re-file the information through the main mechanism when restored.

12. Back-up systems
- 12.1. The storage mechanism should be technologically independent and have sufficient back-up facilities in place in order to maintain and to re-establish its services in a reasonable timeframe.
- 12.2. The nature of these back-up systems will need to be evaluated by each storage mechanism taking into consideration the specific characteristics of the systems in place.

Section 3

Certainty as to the information source

13. Certainty as to the source of information and the authenticity of origin
- 13.1. The storage mechanism should have in place sound systems designed to provide certainty as to the source of the information being filed. The storage mechanism should have certainty that the information it receives is from an authentic source. The storage mechanism should verify that any regulated financial information it receives directly originates from the person or entity that has the filing obligation or from a person or entity authorised to on its behalf.
- 13.2. The storage mechanism should be able to electronically acknowledge receipt of documents. The storage mechanism should either confirm validation of filing or reject a submission with an explanation for the rejection and it should have a 'non-repudiation' function.

14. User Authentication

The security measures of the storage mechanism should be designed to establish the validity of the originator, or a means of verifying an individual's authorization to send specific information. The storage mechanism should be entitled to impose the use of digital signatures, access codes or any other appropriate measure providing with sufficient certainty.

15. Need to ensure integrity of the content of regulated information

The storage mechanism should assure that there is no significant risk of corruption or change of original information either accidentally or maliciously and to ascertain any alteration.

Section 4

Time recording

16. Electronic docketing and date and time stamp
- 16.1. The storage mechanism should be able to automatically docket electronic filings and add a date and time stamp.

- 16.2. The storage mechanism should be entitled to impose the filing of information in pre-determined formats and templates allowing for the use of straight-through processing technology.

If particular formats are imposed, the storage mechanism should nevertheless use open architecture systems for the filing of information and should, at least, accept:

- (a) file formats and transmission protocols that are non-proprietary and that obviate single vendor software applications;
- (b) commonly used and generally accepted proprietary formats.

If templates are imposed, the storage mechanism should ensure that they are easily accessible and, where available, they should be aligned with those used for filing the same regulated information with the competent authority.

- 16.3. The information should be date and time stamped as it enters into the storage mechanism, irrespective of whether the information is checked by the competent authority before (*ex ante* control) or will be checked after (*ex post* control) it enters in the storage mechanism.

Section 5

Easy Access by end users

17. Presentation of the information

When presenting its services to the end users, the storage mechanism should distinguish between regulated financial information filed pursuant to a legal obligation and any additional valued-added service offered by the storage mechanism.

18. Language regime

- 18.1. The storage mechanism should file and facilitate access to all the available linguistic versions of the information as submitted by the issuer. However, access to all the linguistic versions does not mean that the information should be translated by the storage mechanism into languages other than those submitted by the issuer.

- 18.2. The searching facilities in the storage mechanism should be available in the language accepted by the competent authorities in the home Member State and, at least, in a language customary in the sphere of international finance.

19. Technical accessibility

19.1. The storage mechanism should use open architecture systems for the access to the stored information. In designing the systems, the storage mechanism should ensure that its systems allow or are capable of allowing for technical interoperability with other storage mechanisms in the same or in other Member States.

19.2. Information should be accessible to end users by the storage mechanism as soon as technically feasible from its filing, taking into consideration the structures and operating procedures of the storage mechanism. The storage mechanism should not deliberately delay the process.

19.3. The storage mechanism should provide end users with access to all stored regulated information on a continuous basis, in accordance with the conditions described in point 10.

19.4. The storage mechanism should offer service support for its users. The level of support that each storage mechanism decides to provide needs to be decided at national level.

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

20.1. Regulated information held by the storage mechanism should be held in a format that enables users to view, download and print, in a straightforward manner, the full content of regulated information from wherever the user is located. However, access to the regulated information does not mean that printed copies of this information should be made available by the storage mechanism.

20.2. The storage mechanism should offer end users the possibility to search, order and interrogate regulated information stored.

20.3. The storage mechanism should record sufficient reference information relating to the regulated information it receives. Such reference information should, at least, include the following items:

- (a) identify the information as regulated information;
- (b) the name of the issuer from which the regulated information originated;

(c) the title of the document;

(d) the time and date on which the regulated information was disseminated;

(e) the language of the document;

(f) the type of regulated information.

The storage mechanism should organise and categorise regulated information in accordance with, at least, the items listed in the first subparagraph.

The storage mechanism should be allowed to require issuers to provide the necessary reference information when filing regulated information.

The storage mechanism should align these categories with the other storage mechanisms, in particular in relation to the type of regulated information, in accordance with the agreement referred to in chapter II of this Recommendation.

20.4. The storage mechanism should be allowed to require issuers to use predetermined file formats and templates. In any event, the storage mechanism should, at least, accept:

- (a) file formats and transmission protocols that are non-proprietary and that obviate single vendor software applications;
- (b) commonly used and generally accepted proprietary formats.

If templates are imposed, the storage mechanism should ensure that they are easily accessible and they should be aligned with those used for filing the same regulated information with the competent authority.

CHAPTER IV

GUIDELINES FOR FUTURE DEVELOPMENT OF ELECTRONIC NETWORK

21. The Member States should encourage the competent authorities to draw up, by 30 September 2010, within CESR, appropriate guidelines for the future development of the electronic network.

22. Those guidelines should in particular examine the feasibility, including a cost/benefit analysis, to require:

- (a) the use, in all the access points to the electronic network, of harmonised searching facilities based on a set of common search keys and reference data items, thus harmonising the methods of classifying and identifying the information to store;
- (b) the use of common input formats and standards for the submission of regulated information to the storage mechanisms;
- (c) the use by the storage mechanism of a common list of types of regulated information;
- (d) the technical interconnection with the electronic network developed by the national company registries covered by the Directive 68/151/EEC;
- (e) entrusting the supervision of the services provided by any legal entity operating the common elements of the electronic network to a single body composed of representatives of the competent authorities referred to in Article 24 of Directive 2004/109/EC.

The harmonised searching facilities referred to in point (a) of the first subparagraph should at least provide for the possibility of making:

- (a) searches using common category labels attached to the regulated financial information when filed with the storage mechanisms, such as: issuer name; date of filing; country of issuer; title of document; industry/branch of trade and type of regulated information;
- (b) dynamic or chain searches;
- (c) multiple-country searches with a single request.

The guidelines should also develop common lists for the purposes of establishing sub-category labels with regard to industry/branch of trade and type of regulated information.

CHAPTER V

FOLLOW-UP AND ADDRESSEES

- 23. Member States are invited to inform the Commission of the steps taken in the light of this Recommendation by 31 December 2008.
- 24. This recommendation is addressed to the Member States.

Done at Brussels, 11 October 2007.

For the Commission
Charlie McCREEVY
Member of the Commission