Z E N T R A L E R K R E D I T A U S S C H U S S

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Comments of the Zentraler Kreditausschuss[1] on CESR's call for evidence regarding technical advice on possible implementing measures concerning the Transparency Directive Storage of regulated information and filing of regulated information

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[1] The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,300 banks.

I. General remarks

The Zentraler Kreditausschuss (ZKA) wishes to thank CESR for the opportunity to comment on the call for evidence on the setting-up of a mechanism for storing so-called 'regulated information' within the meaning of the Transparency Directive. Before commenting below on individual aspects of the call for evidence, we should like to first outline two fundamental concerns.

It is already clear that the scheduled timetable for transposition of the Transparency Directive cannot be adhered to. CESR will probably only present the final advice to the European Commission in June next year. The Commission itself will need time to issue the directives or regulations based on this advice. There will be hardly any time afterwards to conclude the transposition work at Member State level before the deadline for transposition of the Transparency Directive expires in January 2007. We therefore believe that an extension of the transposition deadline is called for. If, on the other hand, the present deadline were to be retained, the addressees of the Directive would be required to publish and store regulated information although the necessary technical framework would not be in place.

In addition, we should like to stress the importance of the cost aspect referred to by CESR. Before CESR conducts any consultation on concrete proposals for the programming of the central storage mechanism, a cost-benefit analysis should certainly be carried out. The way the storage mechanism is designed must also take into account that high costs for compliance with regulated information requirements may make it unattractive for small companies in particular to go public.

II. Individual remarks

1. Role of the officially appointed mechanism for the central storage of regulated information (Art. 21(2) of the Transparency Directive)

a) Minimum quality standards of security

Both the filing of information and the storage and provision of such information should be made so safe that unauthorised third parties can never have access to the information or the chance to tamper with it.

For cost and efficiency reasons, the data should be filed and stored solely in electronic form.

b) Minimum quality standards of time recording

If issuers are to be required to use certain standards or forms to file regulated information with the Officially Appointed Mechanism (OAM), there should be no commitment to a specific standard at the present stage. Instead, the minimum requirements that such a standard must fulfil should first be defined. These requirements include, for example, reliability, data security and transmission speed. To keep the implementation costs for issuers as low as possible, an already widely used standard should be adopted.

End users should naturally have access to regulated information without delay if possible. However, it should be borne in mind that a storage mechanism is involved here. Before it is filed with the OAM, regulated information is published via media in accordance with the provisions of the Transparency Directive, i.e. the information is publicly available before being stored in the central database. The filing of information with the OAM is ultimately only for storage purposes, which is why processing delays can be accepted.

Reference is made in section 3.2 (3) (b) to a ‘content checking’ procedure. We assume that the accuracy of regulated information will not be checked by the OAM. For one thing, along with other problems, this would raise the question of the extent to which the OAM is liable for the result of this check. For another thing, such content checking would not be necessary. For example, the content of annual accounts certified by an auditor may not be checked by the OAM operator. Moreover, some European countries already have enforcement bodies which check annual accounts and reports presented by companies and examine them for any breaches of accounting standards. This is why we feel that any further content checking is inappropriate. The same goes for other regulated information such as ad hoc reports.

c) Minimum quality standards of easy access by end users

All information should be subject to the same standard. We see no justification for different standards. The user language for the OAM should be a language that is commonly used in financial markets, as this is also frequently stipulated in the directives themselves.
A common user language would also be desirable for cost reasons.

For cost reasons, the OAM should not be required to send printed versions of regulated information to end users. Capital market information needs are satisfied if end users can access the information. The cost of any additional service should be borne by end users. Furthermore, we believe that end users could also be charged for electronic use of corporate information.

e) Role of competent authorities

The competent authority of the Member State in which the OAM is located should supervise its compliance with quality standards. Where several Member States operate an OAM, coordination between the respective competent authorities would be required.

2. Costs and funding

As mentioned above, we feel that a comprehensive cost-benefit analysis is essential in this case.

3. The filing of regulated information by electronic means with the competent authorities (Art. 19(1) of the Transparency Directive)

a) Minimum quality standards

In our view, the same minimum quality standards should apply to the filing of information as to the storage of information. This means that the information must be filed in such a way that unauthorised third parties cannot access it. Our remarks under 1. above also apply to the filing of regulated information with the competent authorities.