efama
European Fund and Asset Management Association

EFAMA'S REPLY TO CESR'S CALL FOR EVIDENCE ON LEVEL 3 WORK ON THE TRANSPARENCY DIRECTIVE

EFAMA[1] welcomes the opportunity to comment on CESR's Call for Evidence. In this context, we wish to draw CESR's attention in particular to the obligations regarding the notification of major holdings, which we believe have received insufficient attention so far during the implementation process. This might be explained in part by the fact that the firms required to file major holdings notifications (asset managers, banks, insurance companies) are not represented on CESR's Consultative Group on the Transparency Directive, a situation which should be remedied.

It is normal practice for institutional investors to invest cross-border on a pan-European basis, and the investment management industry will therefore be heavily affected by the requirement to notify major holdings, also in view of the fact that several member States have opted for thresholds lower than those set by the Directive. EFAMA believes that a harmonized implementation is essential to avoid an excessive administrative burdens and costs, as well as to achieve the goals of the Directive. Clear and easy access to essential information in order to file notifications must also be ensured by Regulators.

Q1: Do you consider that CESR should start working in its Level 3 capacity in order to promote a consistent application of the TD and the Level 2 Directive?
Yes

Q2: If yes, which areas do you think CESR's work should cover? Could you prioritise them?
EFAMA believes that Level 3 work on the harmonization of major holding notifications should be started immediately, as it appears that key issues are already subject to inconsistent implementation due to the general nature of the provisions at Level 1 and 2. Furthermore, although there is no easy access to information to enable investment firms to comply, penalties already apply.

Specifically, EFAMA believes that CESR should provide a central database with the following minimum information:

1) **Home Member State**, as it can be chosen by issuers under certain circumstances.
2) **Total number of shares to be used in threshold calculations.**

[1] EFAMA is the representative association for the European investment management industry. Through its 23 national member associations and over 40 corporate members, EFAMA represents about EUR 15 trillion in assets under management, of which EUR 7.5 trillion managed by around 46,000 investment funds. For more information, please visit www.efama.org.

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3) **Method used for holdings calculations**. This issue is already subject to diverging implementations: some Member States include all the shares held on behalf of the accounts managed; others include in the calculation only the shares voted on behalf of the accounts managed (in other words, shares held for funds with own independent proxy voting committee or where the client has retained the right to vote should not be included); some Member States require the reporting of the voting rights, and finally some ask for a combination thereof.
4) **Has notification been extended to issuers listed on non-regulated markets? If so, which ones?** We are aware of at least one Member State where notification obligations have been extended.
5) **National reporting thresholds**, including the possibility for companies to set statutory thresholds. Companies with such statutory thresholds should be listed in the database, with a mention of the respective thresholds (as an alternative, a link to the exact company web page where the threshold can be found would be possible, but not a general reference to the company website or to the company statutes).
6) **How to file the notifications** (mail, fax, or electronically).
7) **Where to notify**, including name, e-mail and phone number of contact person(s).
8) **Standard notification form**, available in all languages.
9) **Language of notification.**
10) **Penalties.**
11) **Interpretation of aggregation rules**. The interpretation of independence rules is crucial for the determination of the holdings that are subject to aggregation or benefit from an exemption from aggregation under Art. 12 and 23(6) of the Directive. In some Member States the possibility of exemption from aggregation still has to be confirmed, and in some Member States it is not clear whether an application for exemption needs to be filed. Furthermore, we are aware of different interpretations of the rules to calculate holdings that are exempt from aggregation.
12) **Rules related to derivatives and stock lending**. Which instruments need to be included in the calculation?
13) **Deadline for notification/Start of notification period.** No definition is provided in Level 1 or Level 2 text.
14) **Reference to applicable legislation** or – preferably – a summary of applicable regulation in a language customary in the sphere of international finance.

Ideally, some of the above information (i.e. thresholds, total number of shares, home Member State) should be listed in the database in a way that would allow automated (computerized) retrieval, so that time-consuming manual retrieval could be minimized.

Should a central database be unfeasible, each Regulator should provide the above information on its own website, with a standardized content agreed at CESR level (similarly to the information web page agreed in the guidelines on the simplification of the UCITS notification procedure). Such website should also be available in a language customary in the sphere of international finance.

Q3: Do you think CESR's work to harmonise should be published in the form of a Q&A section of its website (in a similar way as CESR is currently doing in the prospectus area)?
We do not believe that a Q&A format would be appropriate. Regarding Level 3 measures, we encourage CESR to provide guidelines, which should be subject to public consultation. Regarding the information to comply with notification requirements, we favor a central database as discussed in our reply to Question 2.

EFAMA is of the opinion that a harmonized implementation of the Directive without CESR's intervention at Level 3 will not be possible. Harmonization in several areas is particularly important to simplify the setup of computer systems to monitor holding levels and enable notification.

In order to facilitate compliance by investment managers and their parent undertakings, CESR should start as soon possible Level 3 work to provide guidance on the following issues:

a) Standard notification form. Testing of the standard form presented by the Commission is essential to ensure the mandatory use of the form as soon as possible. A very long trial period might not be appropriate or necessary.
b) Method used to calculate holdings for threshold notifications (see point 3 in the above list).
c) Interpretation of aggregation/independence rules (including equivalence for holdings in third countries). See point 11 in the above list.
d) Rules on inclusion of derivatives (and convertible bonds) and stock lending. See point 12 in the above list.
e) Deadline for notification/start of notification period.
15) Language of notification. EFAMA believes that the use of a language customary in the sphere of international finance must be possible, besides the national language(s).
f) How to file. We agree with the European Commission that electronic notification should be possible in all Member States, also in order to speed up notifications, thus achieving the Directive's goal of speedy transparency for the markets.

Other Issues

EFAMA also wishes to point out that the recently adopted Directive on the prudential assessment of acquisitions and increase of shareholdings in the financial sector (2006/0166(COD)) contains references to Article 12 in the Transparency Directive. While implementing the Transparency Directive, CESR members should therefore also take into consideration that the effects under the Directive on the prudential assessment of shareholdings in the financial sector go well beyond notification, and the impossibility to invest for investment managers would represent a serious obstacle to the pursuit of the best interests of their clients. Coherence with the principles of the Transparency Directive would also be desirable during the implementation of the Takeover Directive at Member State level.

We remain at your disposal should you wish to discuss our comments further, or should you require any clarification.

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