

27th May 2005



REGISTRARS GROUP

The Committee of European Securities Regulators

Submitted via e-mail

Dear Sirs,

**REVISED DRAFT ADVICE ON THE IMPLEMENTATION OF THE
TRANSPARENCY DIRECTIVE**

Consultation CESR/05-267 – Transparency Directive.

I am pleased to enclose herewith a response on behalf of the Registrars Group of the Institute of Chartered Secretaries and Administrators (ICSA) to the above consultation.

The Institute of Chartered Secretaries and Administrators is the professional body governing Chartered Secretaries, comprising a significant number of company secretaries and senior company secretarial staff in UK Listed companies.

The Registrars Group represents the major service registrars in the UK who have an unrivalled expertise in the administration and collation of proxy appointments and management of voting at Company Meetings representing over 99% of all UK listed companies.

Our responses to the questions raised are as follows:

1. *Do consultees agree with the above proposal? ('connections with the media' should include multiple national coverage)*

No – this seems overly onerous, especially for smaller companies, and should be left to the national regulator to address in detail in line with the needs of that market.

2. *What distribution channels do consultees consider should be mandated? Please provide reasons for the answer.*

None – this should be left flexible for appropriate local regulation. The only general mandate should be that the internet should be the default.

3. *Do consultees consider that CESR should mandate that the connections between issuers (either directly or through a service provider) and media be based on electronic systems, such as dedicated lines?*

No – this should be left flexible for local regulation.

4. *Do consultees consider that a specific method should be mandated? Which one? Please provide reasons for your answers.*

No, except to the extent that electronic communication (eg through the internet) should be the default.

5. *Do consultees agree with the approach of redrafting the required field of information, as proposed above? (ISIN rather than company name)*

Yes.

6. *Do consultees consider that a specific method of issuer identification should, in addition, be mandated (such as the identification number in the companies register or the ISIN)? Which of these? Please provide reasons for the answer.*

Yes, the ISIN, which is the single most widely recognized unique key for identifying issuers.

7. *Do consultees consider that CESR should establish a method, or some sort of a code, by which there would be a single and unique number of identifying each announcement that an issuer makes, that is valid on a european basis and that could be used also for storage?*

No.

8. *What methods do consultees suggest CESR should establish? Please provide reasons for the answer.*

N/a.

9. *Do consultees agree with the above proposals? [Separation of functions where service providers provide multiple services] Please provide reasons for the answer.*

Yes – on grounds of transparency and fair competition.

10. *When the competent authority is acting as service provider, CESR considers that these competent authorities may not, as stated in the Directive, impede free competition by requiring issuers to make use of their services. Do consultees agree with this approach? Please provide reasons for the answer.*

Yes – otherwise anti-competitive.

11. *When stock exchanges act as service providers, CESR considers that their admission to trading criteria on any of their markets can not mandate the use of their service as a service provider. Do consultees agree with this approach? Please provide reasons for the answer.*

Ditto.

12. *Do consultees agree that media should not be charged by service providers to receive regulated information to be disseminated by them? Please provide reasons for the answer.*

Yes – if companies cannot charge for this information under the Directive, why should an intermediary be able to do so? Similarly, the media should be prohibited from charging companies or service providers for publishing this information unless they are doing so by way of a paid-for advertisement.

13. *Do consultees consider that it is possible, on a commercial basis, to mandate that media receive regulated information for free from service providers? Please provide reasons for the answer.*

Yes – service providers are being paid by the company. It seems unreasonable that they should be paid by the media as well.

14. *Do consultees consider it useful and practicable to require a document from service providers showing how they meet the dissemination standards and requirements? Please provide reasons for the answer.*

Yes – if the Directive / law places an obligation on companies, they will need to be able to demonstrate that they have complied.

15. Do consultees consider that CESR should undertake, at level 3, future work on how to address the concerns raised on how approval of operators is to work, even if approval is not mandatory? Please provide reasons for your answer.

Yes. Approval probably should be mandatory to ensure appropriate standards. An Issuer will want to be able to rely on the service provider it chooses, and if these have been approved by the regulator that will provide significant comfort. However, such approval should be on the basis of compliance with local market practice.

16. Do you agree with this change? [market makers are only exempt if they do not exercise any voting rights]. Please give reasons for your answer.

Yes – but I would add the qualification that the market maker should only be exempt if it is contractually prohibited from exercising voting rights or using the shares to influence management. This would include holding shares to hedge contracts for difference.

17. Do you agree with this change? [keeping activities separate] Please explain.

Yes – the critical point to demonstrate is that the shares are held transparently in a separate account wherever jurisdictional custody and settlement arrangements are such that this can be done.

18. Do you agree with the proposed changes to this advice? Please explain.

Yes, but in the interests of transparency, the notification should also be given to the issuer concerned. It is not always clear to the issuer whether a major shareholding should have been declared or not.

19. Do you agree with this change in the content of the declaration that the parent undertaking has to make? Please explain.

Yes. This seems reasonable and sensible.

20. Do you consider there to be any benefit by CESR retaining its original proposals and requiring a subsequent notification from the parent undertaking when it ceases to meet the test of independence?

No – given the requirement to report interests once the exemption no longer applies.

21. What are your views on this new definition of indirect instruction?

Agreed – the new wording seems reasonable and proportionate.

22. Do you agree with this approach in relation to Article 12(1)(d)? Please give reasons.

This approach is reasonable in principle, but should not adversely affect the right of individual member states to set a threshold for notification that is below the 5% suggested in the directive – ie where the threshold is set at, for example, 3% as in the UK, then that figure should be applied throughout this section.

23. What do you think the resulting situation information disclosure should be when the notification is of a holding below that of the minimum threshold?

The disclosure should be in full – ie the resulting percentage of shares held. As you point out in the consultation paper, there is an enormous difference between an interest which falls from 5.1% to 4.9% and one which falls from 5.1% to 1.5%. This is a fundamental issue of market transparency.

24. Should the standard form for all notification requirements include some form of issuer identification number? Please give your reasons.

It would be sensible for the form to include the ISIN for the avoidance of doubt. However, far more important is that all information be sent to the issuer.

25. Should CESR mandate what form this security identification should be in? If so, please state what the standard should be and why.

Yes – ISIN is the most widely accepted form.

26. Do you agree with these principles? (Equivalence)

They seem reasonable and proportionate. Where an individual member state opts for super-equivalent rules, these should, of course, take precedence.

27. Are you satisfied with the draft technical advice considering both the need for flexibility and the requirements of the text of the Directive?

In general, yes. However, as mentioned above, where an individual member state opts for super-equivalent rules, these should, of course, take precedence.

28. Do you agree with the proposal that an issuer should make a notification when it chooses its competent authority

Yes.

Additional Comments

We have identified one further issue where the wording of the Directive and of the CESR technical advice would have onerous and, we assume, unintended consequences.

Paragraph 224 et seq relate to Article 10(h) of the Directive, which states that :

"The notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:
(h) voting rights which that person or entity may exercise as a proxy where it can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders."

Many shareholders appoint as their proxy the Chairman of the company, or an independent person, with discretion to vote as they think fit. The requirement for the Chairman or independent nominee to make notification under these circumstances is surely not what was intended by the Directive, not least because the appointment of a proxy only becomes effective at the point when the proxy casts the vote – up until that time the shareholder can revoke the appointment and vote themselves. In our view it is therefore only practical to comply with this reporting requirement once the meeting is over, and hence that would be the point at which the reporting period commences.

We have also identified three areas where the wording of the Directive and of the CESR technical advice does not, in our view, tend towards the best possible practice in market transparency.

- Paragraph 154 refers to the provision in Article 12 that
"Persons in charge of making the notification to issuers, acting on behalf of shareholders or persons referred to in Article 10 have to comply with time requirements defined in the Directive. Time requirements are D + 4 (four) trading days concerning the notification and D + 4) + 3 (three) trading days concerning the publication. "D" is the date on which the shareholder, or natural person or legal entity, learns of or should have learned of the execution of the transaction (see Section 5 in this chapter of this Consultation Paper)."

We believe that D+4 is far too late in the process to deliver any real sense of market transparency. Paragraph 269 states that :

"Taking into account the very high duty of care that a natural person or legal entity that acquires and disposes of major holdings should exercise, CESR considers that a natural person or legal entity is deemed to have knowledge of the acquisition or disposal or the possibility to exercise voting rights on the day after the transaction was actually executed."

We believe that this is reasonable, but that notification should take place before start of business on the next day after the natural person or legal entity is deemed to know of the transaction. Individual member states should be encouraged to set this shorter timescale in local legislation.

- Paragraph 482 states that :
“The holder of financial instruments is required, under Article 13, to aggregate and notify all instruments held that qualify under Article 13 relating to the same underlying issuer.”

We believe that in order for this notification to be meaningful, and in the interests of market transparency, the requirement should include the aggregation of the qualifying financial instruments with any ordinary shares held.

Where a person holds both ordinary shares and financial instruments in such quantities that both individually fall below the threshold for notification but, when aggregated, exceed that threshold, this fact should also be notifiable.

- Paragraph 485 states that :
“The deadlines for notification under Article 13 should be the same as those established for the notifications under Articles 9 and 10.”

As mentioned above, we believe that these timescales are far too long to meet the requirements of proper market transparency. Individual member states should be encouraged to reduce these timescales as far as practically possible.

I hope that these comments are of assistance, and of course if you do require any clarification please do not hesitate to contact me.

Yours faithfully,

JOHN ROUNDHILL
Chairman