



THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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September 2008

# Summary of responses

## to Questionnaire on Transposition of the Transparency Directive

September 2008



## Introduction

1. In May–June 2008 CESR Transparency Group conducted a mapping on the transposition of the Transparency Directive in EU Member States (ref. CESR/08-156, see Annex I of this document). This document summarises the responses. The individual answers of each Member State are presented in Annex II of this document.
2. The mapping process for the transposition of the directive is a part of the mandate given by the CESR chairs to the Transparency Group. The background for the mandate is requests from market participants identified in the call for evidence that was conducted during 2007 in order to assess if CESR should do any work on Level 3 regarding the Transparency Directive.
3. The respondents in the call for evidence in 2007 highlighted the lack of a central information source as a major obstacle to the operation of the Directive in practice, especially for internationally active investors and issuers. CESR was asked to gather and publish information on how the directive has been implemented across different jurisdictions. As examples the respondents mentioned the notification thresholds, the reporting procedure, how to calculate the holdings, etc.
4. The respondents also highlighted that the difficulty in knowing the different requirements in the Member States arises partly because of the Directive's minimum harmonisation status and the implied possibility to prescribe additional transparency measures and the right of the Member States to choose between different options allowed by the Directive.
5. The questionnaire contained questions regarding the Transparency Directive and also regarding the Level 2 Directive, which implements some of the comitology requirements in the Transparency Directive. In this summary of responses the following abbreviations are used:

TD                      Transparency Directive (link to the directive <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:390:0038:0057:EN:PDF>)

L2D                    The level 2 Directive (link to the directive <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:069:0027:0036:EN:PDF>)

6. It has to be noted that the implementation of the rules of the TD and especially interpretations relating to those rules have not been finalized in all Member States. Therefore, the information presented in Annex II may become outdated. In addition, CESR Transparency Group intends to discuss some of the questions in the questionnaire in order to achieve convergence in the application of the TD and the L2D.

### **General information on availability of Implementing Rules, Guidance and other Key Information**

7. Three Member States have not yet fully transposed the TD or the L2D. Most of the Member States that have transposed the Directives have the implementing rules also available in English [Q3]. Most of the competent authorities also provide interpretive written guidance on the application of the implementing rules [Q4-5].

### **Major Shareholding Notifications**

8. In all Member States the upward and downward thresholds for major shareholding notifications are the same [Q10]. The initial threshold varies between 2 % and 5 % [Q8]. In most Member States the subsequent thresholds are the ones stipulated in the TD. Some Member States, however, have more stringent requirements [Q9].
9. Specific exemptions for management companies or investment managers (other than those of the TD) exist only in one Member State. In this Member State the management companies and investment managers holding voting rights between 2 % and 5 % are required to notify only when a general meeting of the issuer is held. [Q11-12]
10. In many countries the issuers are allowed to require notifying of voting rights in their statutes [Q13]. In some countries they may also require confirmation that the person holds no voting rights [Q14]. In only one Member State there is a central list of issuers and their respective thresholds available [Q15].

### **Holdings in UCITS and other Open-Ended Investment Funds**

11. The approach to the notification requirement of management companies of UCITS or other open-ended investment funds varies. In about half of the Member States the management company is required to notify all voting rights held on behalf of the funds managed whereas in the rest of the Member States it is only required to notify the voting rights over which it exercises discretion [Q17-18].
12. Four Member States have applied the major shareholding notification requirements to holdings in UCITS and other open-ended investment funds [Q16].

### **Notifications by Underwriter**

13. All but two Member States require underwriters to make major shareholding notifications where they acquire shares in their own name. In one those two Member States the underwriter is not required to make the notification if the market maker exemption (TD Art. 9(5)) applies [Q19-20].

### **Position of Stock Lenders/Borrowers**

14. In most Member States standard lending agreements have the effect of transferring the voting rights [Q21]. In most Member States both the lender and the borrower are required to make the notification in case they reach or cross a notification threshold. In some Member States, however, only the borrower is required to notify either because



the lender is still considered as legal owner of the shares or because the lent shares are still aggregated to the lender's holdings [Q22-23].

15. Netting of lent and borrowed positions is allowed only in some Member States [Q24]. Separate disclosure of actual holdings and holdings for which the lender has retained a right to call for re-delivery of the lent shares is required in nine Member States [Q25].

#### Position of Collateral Takers and Repo Buyers

16. Collateral takers and equity base repo buyers are usually not exempted from making major shareholding notifications [Q26-27].

#### Calculation of Total Voting Rights/Capital and Impact of Corporate Actions

17. Treasury shares as well as shares whose voting rights are suspended are in most Member States included in the calculation of the issuer's total voting rights and capital [Q28-29].

#### Disclosure of Holdings that have Fallen Below Disclosure Thresholds

18. About half of the Member States require detailed breakdown of holdings also in the disclosure of holdings that have fallen below the lowest notification threshold [Q30].

#### Netting of Positions

19. Netting of long and short positions is usually not allowed overnight. However, in many Member States intraday netting of positions is allowed [Q31, Q50].

#### Rounding and Truncating

20. Some Member States provide rules or guidance on rounding of holdings. In these cases, the proportion of holdings is to be rounded either to two decimals or down to the next whole number [Q32-33].

#### Separately Listed Share Classes

21. In most of the Member States it is possible that the issuers have more than one class of shares with voting rights attached [Q34]. In these cases, some Member States require the calculation of thresholds to be made on a class-by-class basis whereas others require the calculation to be made on the basis of all shares and voting rights [Q35]. In the majority of Member States, the information on holdings has to be disclosed separately for each class of shares [Q36].

#### Concerted exercise of voting rights

22. Some countries provide rules or guidance on when there is a concerted exercise of voting rights between two parties. Usually, these rules or guidance are similar to TD Art. 10(a) or refer to takeover rules [Q37-38].

#### Disclosure of the Percentage of Capital of the Issuer

23. In most of the Member States the shareholders are required to notify both the percentage and the number of voting rights held. In about half of the Member States the shareholders are also required to provide the corresponding percentage of share capital held [Q39-41].

#### Notification of proxies

24. About half of the Member States have provided rules or guidance on when and how to notify proxies. In many cases, the rules or guidance are similar to TD Art. 10(h) and L2D Art. 8(2) [Q42-43].

#### Standard Notification Form

25. Usage of standard notification form is required or recommended in most Member States. Only in half of those Member States the form is the one recommended by the European Commission. Other Member States have introduced their own notification form. Some of these are based on the Commission's form but reflect the different notification requirements. Some Member States require less detailed information [Q44-47].

#### Disclosure Deadlines

26. Thirteen Member States have imposed more stringent notification deadlines for shareholders. In these Member States the deadline varies between immediately after the trade and three days after the trade [Q48]. In one Member State there are exceptions available to cross-border investors [Q49].

27. The majority of the Member States do not require notification if a threshold is reached or crossed intra-day but the net end-of-day position remains unchanged at the end of the trading day [Q50].

28. Three Member States use different term than trading day [Q51]. The majority of Member States defines the term "date of the transaction" as the date of the trade. Some Member States, however, define it as the date when the trade is settled or e.g. the date of the transfer of legal ownership [Q52]. The interpretation of when the shareholder should have learned of the acquisition, disposal or possibility of exercising voting rights varies [Q53].

#### Disclosure of aggregated group holdings

29. In the majority of the Member States corporate groups are allowed to aggregate acquisitions and disposals at the level of ultimate control [Q54]. Where the aggregation is not allowed, individual acquisitions or disposals are usually required to be notified if the controlled undertaking reaches or crosses a threshold [Q55].

#### Application procedures regarding exemptions and disaggregation

30. All but one Member State have no additional requirements to the ones set out in the TD and L2D for investors that wish to benefit from the exemptions for major shareholding



notifications [Q56-57]. Similarly, all but one Member State have no additional requirements to the ones set out in the TD and L2D for parent companies of EEA management companies or EEA investment firms fulfilling the criteria for disaggregation of holdings [Q58-59].

#### Trading Book Exemption

31. Most of the Member States have implemented the trading book exemption of TD Art. 9(6) [Q60]. These Member States require disclosure and aggregation of all voting rights held in the trading book if the number of voting rights held in the trading book exceeds 5% [Q61]. The aggregation and disclosure of non-exempt holdings with the holdings held in the trading book is required even if the non-exempt holdings remain under the minimum notification threshold [Q62].

#### Publication of received major shareholding notifications

32. Some Member States have set more stringent deadlines for issuers for publishing the received notifications. In many cases the deadline is either as soon as possible or the next trading day [Q63].

33. Some competent authorities publish notifications they have received under the conditions set out in TD Art. 21 [Q64]. Usually the issuers are then exempted from publishing the received notification [Q65]. Majority of the competent authorities that do not publish the received notifications require the issuers to file published information with the competent authority [Q66].

#### Treatment of Financial Instruments and Aggregation

34. The definition of financial instruments varies between Member States [Q67]. Majority of the Member States require aggregation of shareholdings with holdings of financial instruments as referred to in TD Art. 13 [Q68].

#### Frequency of Total Voting Rights Disclosures

35. Most Member States allow investors to rely on the month end figures (total number of voting rights) published by issuers when calculating whether a threshold has been reached or crossed [Q69-70].

#### Disclosures about Shareholders' Objectives

36. Only one Member State requires disclosure about shareholders' objectives [Q71].

#### Additional or More Stringent Disclosure Requirements

37. Twelve Member States have imposed shareholders additional or more stringent disclosure requirements relating to major shareholding notifications [Q72-73]. Eight Member States have imposed issuers additional or more stringent disclosure requirements relating to major shareholding notifications [Q74-75].

#### Major Shareholding Notification Regime – Non Regulated Markets

38. In some Member States the major shareholding notification regime also applies to shares admitted to trading on a non-regulated market [Q76-77].

## **Periodic Financial Information**

### Annual Financial Reports

39. Three Member States have imposed shorter deadline for publishing annual financial reports than the four months deadline imposed by TD Art. 4. In these Member States, the requirement is either three months or 90 days after the end of the financial year [Q78].
40. In most countries the annual financial report to be published in accordance with the TD has been approved by the general meeting of shareholders [Q79]. Usually there is no obligation for issuers to keep the annual financial reports available for more than five years [Q80]. The elements in the annual financial reports are in most Member States the ones in TD Art. 4 [Q81-82].

### Half yearly Financial Reports

41. In seven Member States half yearly financial reports are required for all issuers having securities admitted to trading on a regulated market [Q83]. No Member State has imposed more stringent deadline for publishing the half yearly financial report than the two months set out in the TD [Q84].
42. The elements of the half yearly financial report are in most Member States the ones in TD Art. 5 [Q85-86]. The same applies also to half yearly financial reports not prepared in accordance with IFRS [Q87].
43. Two Member States require mandatory review of the half yearly financial report whereas audit or review of half yearly report remains voluntary in other Member States [Q88]. Some Member States have issued rules or guidance on the nature of the review [Q89-90].

### Interim Management Statements (IMS)

44. Three Member States have imposed issuers of other securities than shares requirement to publish an interim management statement [Q91]. In most cases the deadline for publishing interim management statement is the same as in TD Art. 6 [Q92]. Information required in the interim management statement is in most Member States the same as in TD Art. 6 [Q93-94].

### Publication of IMS or quarterly financial reports

45. In most Member States issuers of shares are allowed to choose whether they publish an interim management statement or a quarterly financial report [Q95].
46. In most Member States issuers of debt securities or other securities are not required to publish an interim management statement or a quarterly financial report [Q96-97].



#### Quarterly financial reports

47. In the majority of Member States it is mandatory for companies publishing quarterly financial reports to publish the report based on the same requirements that apply to half yearly financial reports [Q98-99].
48. In some Member States the deadline for publishing quarterly financial report is shorter than for half yearly financial reports [Q100]. The requirements for quarterly financial reports not prepared in accordance with IFRS are in most Member States the same as for half yearly financial reports not prepared in accordance with IFRS [Q101-102].

#### Additional information in half yearly financial reports, quarterly financial reports and interim management statements

49. In most Member States the issuers are allowed to present more information than legally required in their half yearly or quarterly financial reports or interim management statements. In these cases there are no legal restrictions to the information to be disclosed [Q103-111].

#### Financial Reports for the 2<sup>nd</sup> half year or the 4<sup>th</sup> quarter

50. In some Member States issuers of shares are required to publish financial report for the 2<sup>nd</sup> half year or the 4<sup>th</sup> quarter. A couple of these Member States also require financial report for the 2<sup>nd</sup> half year or the 4<sup>th</sup> quarter from issuers of debt securities and issuers of other securities [Q112]. In most of these Member States the financial report is based on the same requirements as for half yearly financial reports [Q113-114].

#### Responsibility and liability regarding articles 4-6

51. Responsibility for financial reports varies considerably in Member States [Q115-118].

#### Exemptions regarding articles 4-6

52. About half of the Member States have implemented all the exemptions in TD Art. 8 [Q119].

#### Periodic information – Non Regulated Markets

53. In some Member States the requirements for financial reports are also applicable to shares admitted to trading on a non-regulated market [Q120]. Some Member States require also these reports to be prepared in accordance with IFRS [Q121].

#### **Dissemination of regulated information**

54. Paper-based dissemination of regulated information is required in eight Member States. It is permitted in all but one Member States [Q122-124]. In addition to the requirements set out in TD Art. 21(3) one Member State has set additional requirements for issuer for which they are the host Member State [Q125-126].





## **Questions related to third countries**

### **Important Third Country Disclosures**

55. In many Member States the competent authorities' interpretations are still open regarding disclosure of information disclosed in a third country [Q127-128].

### **Application of Trading Book Exemption to non-EEA Investors**

56. Two Member States have extended the trading book exemption to non-EEA credit institutions and / or investment firms subject to equivalent regulation in their home jurisdiction [Q129].

### **Issuers Guaranteed by Non-EEA Public Sector Entities**

57. Six Member States have exempted issuers issuing debt on behalf of and / or guaranteed by a non-EEA state or public entity from the periodic financial reporting requirements of the TD [Q131].

## **New loans**

58. In most Member States new loan issues are considered as new issues of debt securities on a regulated market [Q132-134].

## **Additional information required by regulated markets**

59. In some Member States the regulated markets are explicitly allowed to impose more stringent or additional requirements regarding disclosure of regulated information whereas they are explicitly prevented from doing that in only one Member State [Q135-136].

## **Languages**

60. Most Member States require disclosure of regulated information on their national language(s) when they are allowed to do so by the TD. [Q137, Q139]. In some countries the language requirements may depend on whether the issuer is incorporated in that Member State [Q138].

61. No Member State that has more than one national language requires publication of regulated information on all the national languages [Q145-146].

## **Definitions: “regulated information”**

62. Prospectuses are seldom considered being included in the definition of regulated information. Member States have different interpretations on whether information required by TD Art. 17 is regulated information [Q147].

## **Definitions: “electronic means” and reporting systems to the Competent Authority**

63. About half of the competent authorities have implemented an electronic reporting system whereby issuers can submit regulated information through an online tool whereas only seven competent authorities have implemented such a system for investors for submitting major shareholding notifications [Q148-149].
64. XBRL is required to be used as mandatory only in one reporting system whereas twelve systems do not support XBRL [Q150]. About half of the reporting systems accept any of the electronic means as defined in TD Art. 2(1)(l) [Q151].
65. Most of the competent authorities provide information on how to file information with the competent authority [Q 152].

**Storage of regulated information and publication of regulated information on the Internet site of the competent authority**

66. Twenty-one Member States have set up an Officially Appointed Mechanism (OAM) for the central storage of regulated information [Q153]. Most of those Member States have implemented the European Commission's recommendation either as mandatory or as recommendation [Q154]. In most Member States filing with the OAM is aligned with filing with the competent authority [Q155-156].
67. In nineteen Member States that have set up the OAM there is an electronic reporting system for submitting information electronically through an online tool [Q157]. Use of XBRL is mandatory in one OAM, recommended in one OAM and not supported in the other OAMs [Q158]. Minority of the OAMs accept any of the electronic means as defined in TD Art. 2(1)(l) [Q159].
68. Twelve competent authorities publish regulated information on their internet site [Q160].