

PRESS RELEASE

ESMA investigates how Member States have implemented the Transparency Directive

ESMA publishes today a review (ESMA/2011/194) of how securities regulators across Europe use options and discretions under the Transparency Directive (TD). This mapping focused on those parts of the TD and its implementing measures that the participating 29 EU/EEA Member States are allowed to apply in different ways. The main purpose of the stock-take was to ascertain the extent to which Member States introduced options, discretions, additional requirements and/or more stringent rules in their national legislation in this respect.

Overall, the report shows that a large majority of Member States made use of additional requirements. As the review of the Member States is very detailed it is not possible to draw up a single overall conclusion (major findings are detailed in the report itself, with a break-down for the different areas of the TD).

Jean Guill, Director General of the Luxembourg Commission de Surveillance du Secteur Financier (CSSF), Member of the ESMA Management Board and Chair of its Review Panel, stated:

“One of the report’s main purposes is to provide an update regarding earlier assessments and to ascertain the extent to which Member States introduced options, discretions, or other additional requirements. The report unveils the areas in which additional rules have been implemented, and as such it provides valuable input for the work conducted by the European Commission on the review of the Transparency Directive.”

The key findings are as follows:

Good compliance with publication deadline rules

The TD sets deadlines for the publication of annual financial reports (at the latest four months after the end of each financial year) and requires that Member States ensure that the reports remain publicly available for at least five years. The vast majority of the Member States have indicated that the deadline prescribed for publishing annual financial reports is not shorter than four months after the end of the financial year and that the period for which the annual financial reports should remain publicly available is five years or more. The same finding is also valid for half-yearly financial reports, interim management statements and quarterly financial reports as applicable.

No additional requirements on public disclosure

The use of electronic means for the purposes of conveying information to shareholders is not subject to additional conditions in the Member States. One third of the Member States indicated that their Competent Authority, as the Competent Authority of the home Member State, has decided to publish regulated information on its internet site.

Most regulators accept multi-language disclosure

Most of the Member States stated that, as a home Member State they have laid down in their laws, regulations or administrative provisions, a requirement that the regulated information shall, depending on the choice of the issuer, be disclosed either in a language accepted by their Competent Authority or in a language customary in the sphere of international finance.

Majority of regulators store information in a single OAM

The majority of the Member States indicated that they have only one officially appointed mechanism (OAM) for the central storage of regulated information in line with the TD. However, for larger markets, the regulated information is additionally published in different types of media with national and European audiences.

Differences in approach for publication of regulatory sanctions and infringements

Four Member States designated an authority other than the central Competent Authority for the examination of information in accordance with the relevant reporting framework and in order to take appropriate action where infringements are discovered. It should be noted that within the EU, there is no unique model of financial supervision and none of the European level rules provide for a preferred model of national supervisory structure.

Different policies are adopted by the Competent Authorities in relation to the publication of measures or sanctions. It is acknowledged that the publication of sanctions and measures imposed by the Competent Authorities is of high importance to enhance transparency and maintain confidence in financial markets.

Background

ESMA and before CESR started work on options, discretions and additional requirements under TD in line with the revision of the Lamfalussy process set up by the ECOFIN in December 2007 and the recommendations of the de Larosière Group. After launching two separate mappings focusing on the 'options and discretions' under MiFID and MAD in 2010, the Review Panel decided in November 2009 to start a mapping of the 'options and discretions' used under TD and the related Level 2 Directive (L2D), as part of CESR's 2010 Work Programme. While conducting this mapping, special attention was paid to the work already conducted by CESR/ESMA and the European Commission on this issue and the TD review.



Notes for editors

1. ESMA is an independent EU Authority that was established on 1 January 2011 according to EU Regulation No. 1095/2010 as published on December 15, 2010, in the Official Journal of the European Union (L 331/84). The Authority contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA fosters supervisory convergence both amongst securities regulators, and across financial sectors by working closely with the other European Supervisory Authorities competent in the field of banking (EBA), and insurance and occupational pensions (EIOPA).
2. ESMA's work on securities legislation contributes to the development of a single rule book in Europe. This serves two purposes; firstly, it ensures the consistent treatment of investors across the Union, enabling an adequate level of protection of investors through effective regulation and supervision. Secondly, it promotes equal conditions of competition for financial service providers, as well as ensuring the effectiveness and cost efficiency of supervision for supervised companies. As part of its role in standard setting and reducing the scope of regulatory arbitrage, ESMA strengthens international supervisory co-operation. Where requested in European law, ESMA undertakes the supervision of certain entities with pan European reach.
3. ESMA also contributes to the financial stability of the European Union, in the short, medium and long-term, through its contribution to the work of the European Systemic Risk Board, which identifies potential risks to the financial system and provides advice to diminish possible threats to the financial stability of the Union. ESMA is also responsible for coordinating actions of securities supervisors or adopting emergency measures when a crisis situation arises.
4. ESMA replaced the Committee of European Securities Regulators (CESR), an advisory body comprised of EU securities regulators that advised the European Commission from 2001 to 2010 on policy issues around securities legislation.

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