

DG Internal Market Services Commission Working Document on procedural arrangements for the choice of the home Member State, the content of the half-yearly financial report, the procedures for the notification and disclosure of acquisition or disposals of major holdings of voting rights, the dissemination of regulated information and the equivalence of third country issuers, under Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

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DG Internal Market Services Working Document on procedural arrangements for the choice of the home Member State, the content of the half-yearly financial report, the procedures for the notification and disclosure of acquisition or disposals of major holdings of voting rights, the dissemination of regulated information and the equivalence of third country issuers, under Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

Introduction

The **Transparency Directive**¹, like many other directives in the financial services sector, is a framework directive restricted to some principles. Hence, it does not regulate in detail all the issues it addresses. The Directive expressly foresees that it will be completed with implementing measures to be adopted by the Commission through a special procedure.

In June 2004, **the Commission granted the Committee of European Securities Regulators (CESR) a mandate for technical advice** in relation to possible general implementing measures related to the Transparency Directive². The Commission limited the scope of the mandate to those issues in relation to which possible implementing measures appeared necessary or beneficial to market players. Accordingly, the mandate did not cover all implementing measures foreseen in the Directive.

CESR's formal advice was sent to the Commission on 30 June 2005³. It covers five issues. First, it deals with minimum standards on dissemination of regulated information by issuers and conditions for keeping periodic financial reports available. Second, it deals with notification of major holdings of voting rights. CESR here provides advice on a number of technical issues such as: control mechanisms for market makers for notification purposes, determining of calendar of trading days, who should be required to make the notification and when, standard forms for notifications etc. Third, it provides advice on half-yearly financial reports and which minimum content they should have, a clarification of major related transactions and a clarification of the nature of auditor's review of half-yearly reports. Fourth, it deals with procedural arrangements for the choice of the home Member State. Finally, it addresses the question of equivalence of third country issuers.

¹ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

² The specific issue of the equivalence of third party General Accepted Accounting Principles (GAAP) was addressed in a separate mandate. It is not dealt with in this document.

³ The mandate to CESR and CESR's advice are available at DG Internal Market website at : http://europa.eu.int/comm/internal_market/securities/transparency/index_en.htm

Documents in connection to the work undertaken by CESR, in particular in relation to the two consultation rounds held, is available at: www.cesr-eu.org

This working document builds on CESR’s advice as far as its substance is concerned. After further reflection, however, DG Internal market services believe at this stage that **not all issues addressed in CESR advice may need to be the subject of a binding legal text.** While formal Commission’s implementing measures may prove necessary to clarify some definitions and principles contained in the directive, clarification through non binding text, such as recitals to a possible legal text or a recommendation, may be a suitable way forward for other issues.

Therefore **this working document is divided into two parts.** **Part I** of the working document presents a draft legal text containing possible implementing measures to the Transparency Directive. Whenever appropriate, this text contains possible draft recitals in relation to issues which are not specifically addressed in the draft articles. **Part II** of the working document presents a draft recommendation on the use of standard forms for the purposes of notifying the acquisition or disposal of major holdings of voting rights and of major holdings of financial instruments. While the use of these forms may be beneficial to market players and investors in practice, DG Internal Market services believe that, in the absence of implementing measures in relation to storage of regulated information, its use should certainly be encouraged but not imposed.

DG Internal Market and Services would like to draw the attention of interested parties to the following elements of the working document (without prejudice of the opinion that interested parties may have on other aspects of the text):

- (1) The approach taken in the working document as regards the use of recitals and a recommendation (e.g. as regards the use standard forms for the notification of major holdings) for some issues;
- (2) As regards the standard forms for the notification of major holdings, whether it would be appropriate to require its use through electronic means only, in the event that the use of the forms becomes mandatory;
- (3) The relation between the proposed text in connection to half-yearly financial reports (cf. draft Articles 4 and 5 of the text in Part I of this Working Document) and the current legislative framework on accounting rules (including the proposal for the modification of the 4th and 7th Company Law Directives) as well as in relation to Article 5(3) 2nd Paragraph of the Transparency Directive, bearing in mind that the Transparency Directive and any possible implementing measure pursuant to this Directive are only addressed to listed companies;
- (4) The requirements on third country issuers for equivalence purposes as regards the content of the financial reports (cf. draft Article 14(1) to (6) of the text in Part I of this Working Document);
- (5) The use of the “execution of the transaction” as the triggering event for the purposes of clarifying the circumstances under which the notifying person should have learned of the acquisition, disposal or of the possibility to exercise voting rights. In particular, comments are sought on the consequences for off-exchange transactions and on the possibility to use the “settlement of the transaction” as triggering event instead (cf. draft Article 10 of the text in Part I of this Working Document);
- (6) The notification to the Competent Authority of the issuer to be made by market markers (cf. draft Article 7), knowing that the Competent Authority of the market**

maker might be different. In particular, whether an appropriate system of cooperation among Competent Authorities would allow for market makers to notify only their own Competent Authority.

Working document - PART I on possible implementing measures

CHAPTER I

General provisions

Article 1

Subject matter and scope⁴

This Directive lays down/establishes

- requirements relating to procedural arrangements for the choice of the home Member State in accordance with Article 2(3)(a) of the Transparency Directive;
- requirements relating to the content of the half-yearly financial report in accordance with Article 5(6) and 5(6)(c) of the Transparency Directive;
- requirements relating to the procedures for the notification and disclosure of acquisition or disposals of major holdings of voting rights in accordance with Articles 9(7), 12(8)(b) to (d), 13(2)(a) to (c)
- minimum standards for the dissemination of regulated information in accordance with Article 21(4)(a) of the Transparency Directive; and
- criteria for determining whether an issuer whose registered office is in a third country may be deemed to be meeting equivalent requirements to those set out in certain articles of the Transparency Directive in accordance with Article 23(4) and 23(7) of the Transparency Directive;

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

- (a) ‘Transparency Directive’ means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose

⁴ N.B. The explanatory memorandum to a possible legal text would include clarification that the content of this legal text would be in conformity with the principle set out in Article 3 of the Transparency Directive concerning the integration of securities markets.

securities are admitted to trading on a regulated market and amending directive 2001/34/EC;

- (b) 'direct instruction' means any instruction given by the parent undertaking or another controlled undertaking of the parent undertaking specifying how the voting rights shall be exercised by the management company or investment firm in particular cases;
- (c) 'indirect instruction' means any general or particular instruction, regardless of the form, given by the parent undertaking or another controlled undertaking of the parent undertaking that limits the discretion of the management company or investment firm in relation to the exercise of the voting rights in order to serve specific interests of the parent undertaking or another controlled undertaking of the parent undertaking;

CHAPTER II

Procedural arrangements for the choice of the home Member State

Article 3

Procedural arrangements for the choice of the home Member State⁵

In the case the issuer makes a choice of its home Member State pursuant to Article 2(1)(i)(ii) of the Transparency Directive, whether for the first time or as a result of changing circumstances, he shall make a declaration to this effect which is to be disclosed to the public in the manner set out by Article 21 of the Transparency Directive.

⁵

Possible recital: Issuers that are authorised to choose their home Member State, may need to make a new choice (**within the limits of the Transparency Directive**), as a result of changing circumstances, such as delisting from the regulated market of the original home Member State ~~whilst continuing being listed in other Member States.~~

CHAPTER III

Regulated Information

SECTION I

HALF-YEAR FINANCIAL REPORT⁶

Article 4

Minimum content of half-yearly non-consolidated financial statements

1. With respect to half-yearly financial statements not prepared in accordance with international accounting standards adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) n° 1606/2002, the minimum content of the balance sheet, profit and loss account and explanatory notes to these accounts shall be the following, as defined by reference to the principles of IAS 34:
 - (a) The balance sheet and the profit and loss account shall show, as a minimum requirement, each of the headings and subtotals included in the most recent annual financial statements of the issuer. Additional line items shall be included if their omission would make the half-yearly report misleading.
 - (b) The half-yearly financial information shall include comparative information presented as follows:
 - balance sheet as at the end of the first six months of the current financial year and comparative balance sheet as at the end of the immediate preceding financial year;
 - profit and loss account cumulatively for the first six months of the current financial year with comparative information for the comparable period for the preceding financial year.
 - (c) The notes of the half-yearly financial statements shall, as a minimum requirement, include the following information, if material and not disclosed elsewhere in the half-yearly report:
 - a statement that the same accounting policies and methods of computation are followed in the half-yearly financial statement as

⁶ Possible Recital on Auditor's review of half-yearly report: It is important to ensure a common understanding on the level of assurance that investors can expect from the auditors' review of half-yearly reports referred to in Article 5(5) of the Transparency Directive. Without prejudice to the international standards on auditing under development, the nature of the auditors' review of half-yearly report should be understood as requiring at least a limited review containing concluding in the form of negative assurance and providing a moderate level of assurance, which is less than a full scope audit.

compared with the most recent annual financial statements or, if those policies or methods have been changed, a description of the nature and effect of the change;

- explanatory comments about the seasonal or cyclical nature of interim operations;
- the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence (disclosure of cash flow information is required in the half-yearly report only if the issuer has disclosed this type of information in its annual financial statements);
- the nature and amount of changes in estimates of amounts reported in prior financial years, if those changes have a material effect in the current interim period;
- issuances, repurchases, and repayments of debt and equity securities;
- dividends paid (aggregate or per share) separately for ordinary shares and other shares;
- segment revenue and segment result for business segments or geographical segments, whichever is the entity's primary basis of segment reporting (disclosure of segment data is required in the half-yearly report only if the issuer has disclosed segment data in its annual financial statements);
- material events subsequent to the end of the first six months that have not been reflected in the financial statements for the interim period;
- the effect of changes in the composition of the entity during the interim period, including business combinations, acquisition or disposal of subsidiaries and long term investments, restructurings, and discontinued operations, and
- changes in contingent liabilities or contingent assets since the last annual balance sheet date if the issuer has recognised or disclosed contingent liabilities or contingent assets in its annual financial statements; and
- any events or transactions that are material to an understanding of the first six months of the financial year.

2. In order to ensure comparability with the annual financial statement, the half-yearly financial statement referred to in paragraph 1 shall also include information required by IAS 34 which the issuer has decided to voluntarily disclose in the annual report although not required by the obligations in the accounting rules that the issuer has to apply.

Article 5

Major related parties' transactions⁷

In the interim management reports provided for in paragraph 4 of Article 5 of the Transparency Directive, issuers of shares shall disclose, as a minimum, the following information as major related parties' transactions:

- (d) related parties' transactions that have taken place in the first six months of the financial year and that have materially affected the financial position or the performance of the enterprise in this period;
- (e) any changes in the related parties transactions described in the last annual report that could have a material effect on the financial position or performance of the enterprise in the first six months of the financial year.

SECTION II

NOTIFICATION OF THE ACQUISITION OR DISPOSAL OF MAJOR HOLDINGS

Article 6

Maximum length of the usual 'short settlement cycle'

1. For the purposes of paragraph 4 of Article 9 of the Transparency Directive, the maximum length of the usual 'short settlement cycle' shall be three trading days following the day of the transaction.
2. For the exemption of notification of the acquisition or disposal of major holdings to be applicable, the definition of maximum length of the settlement cycle provided in paragraph 1 shall equally apply in the following cases:
 - when shares admitted to trading on a regulated market are also traded outside the regulated market;
 - in the case of financial instruments referred to in paragraph 1 of Article 13 of the Transparency Directive.

⁷ Possible Recital: Issuers of shares who prepare consolidated accounts should apply the same definition of related party transactions in annual and half-yearly reports, as provided in IAS 24 (Related Party Disclosure). In order to ensure comparability of the information provided to investors on regulated markets and considering the provisions of Commission Regulation n°809/2004 regarding the implementation of the Prospectus Directive, it is appropriate that issuers of shares who do not prepare consolidated accounts and are not required to apply the IAS/IFRS equally use the same definition provided in IAS 24 for the purposes of the interim management report foreseen in Article 5(4) of the Transparency Directive. Third country issuers that use GAAP that has been determined to be equivalent to IFRS should apply the definition of related party transactions provided by these standards.

Article 7

Control mechanisms by competent authorities as regards market makers

1. For the purposes of paragraph 5 of Article 9 of the Transparency Directive, a market maker shall notify to the competent authority of the home Member State of the issuer that it conducts or intends to conduct market making activities:
 - (a) immediately after the end of the transposition period foreseen in Article 31 of the Transparency Directive for those issuers for which it is acting as market marker;
 - (b) whenever the market maker enters into a new contract whereby it will be performing market making activities; or
 - (c) at the latest within the time limit provided for in paragraph 2 of Article 12 of the Transparency Directive after the threshold was crossed or reached.

This notification shall be made for each share for which market making activities are conducted.

2. A market maker benefiting from the exemption provided for in paragraph 5 of Article 9 of the Transparency Directive shall equally notify to the competent authority of the home Member State of the issuer that
 - (a) it ceases to conduct market making activities;
 - (b) it intends to undertake any of the activities mentioned in letter (b) of paragraph 5 Article 9 of the Transparency Directive.

This notification shall imply that the exemption provided for in paragraph 5 of Article 9 of the Transparency Directive does not apply.

3. For the purposes of paragraph 5 of Article 9 of the Transparency Directive, the competent authority of the home Member State of the issuer shall be entitled to request a market maker to:
 - (a) identify, where applicable, other activities conducted by the market maker in relation to the issuer's shares or the issuer in question;
 - (b) provide a copy of the agreement between the market maker and the regulated market operator and/or the issuer if such agreement is required under national law;
 - (c) identify the shares held for market making activity purposes.

The requirement in letter (c) of this paragraph shall be deemed to be fulfilled if the market maker holds the shares subject to market making activities in a separate account.

4. Without prejudice to Article 24 and 28 of the Transparency Directive, in case a market maker do not comply with the conditions for the exemption provided for in paragraph 5 of Article 9 of the Transparency Directive, the competent authority of the home Member State of the issuer shall at least be entitled to:
 - (a) require the market maker to notify its holding to the issuer;
 - (b) notify the competent authority of the home Member State of the market maker under Directive 2004/39/EEC⁸ of this circumstance for this authority to take appropriate action.

Article 8

Calendar of trading days⁹

For the purposes of paragraph 2, 6 and 7 of Article 12 and Article 14 of the Transparency Directive, the calendar of trading days of the home Member State of the issuer shall be applicable.

Each competent authority shall publish in its Internet site the calendar of trading days which applies within its jurisdiction for the purposes of the above provisions.

Article 9

Who shall be required to make the notification of major holdings

1. For the purposes of paragraph 2 of Article 12 of the Transparency Directive, **the following natural persons or legal entities** shall be required to make the notification to the issuer:
 - (a) in the circumstances foreseen in letter (a) of Article 10 of the Transparency Directive, all parties to the agreement;
 - (b) in the circumstances foreseen in letter (b) of Article 10 of the Transparency Directive, the natural person or legal entity that acquires the voting rights and is entitled to exercise them under the agreement and the natural person or legal entity who is transferring temporarily for consideration the voting rights;

⁸ Directive 2004/39/EEC of the European Parliament and of the Council of 21 April 2004; OJ L 145, 30.04.2004; p.1.

⁹ Possible recital: Calendars of trading days vary from one Member State to the other. Each competent authority will inform the investors and market participants of the applicable calendar of trading days by publishing the said calendar on their Internet sites. To increase transparency and ensure the complete information of all interested parties, **it would be desirable that** issuers ~~should~~ indicate on their Internet sites the name and Internet site of their competent authority.

- (c) in the circumstances foreseen in letter (c) of Article 10 of the Transparency Directive, the natural person or legal entity holding the collateral, provided the person or entity controls the voting rights and declares its intention of exercising them, and natural person or legal entity lodging the collateral under these conditions;
- (d) in the circumstances foreseen in letter (d) of Article 10 of the Transparency Directive, the natural person or legal entity who has a life interest in shares if that person or entity is entitled to exercise the voting rights attached to the shares and the natural person or legal entity who is disposing of the voting rights when the life interest is created;
- (e) in the circumstances foreseen in letter (e) of Article 10 of the Transparency Directive, the controlling natural person or legal entity and, provided it has a notification duty at an individual level under Article 9, ~~and~~ under letters (a) to (d) of Article 10 of the Transparency Directive **or under a combination of any of those situations**, the controlled undertaking;
- (f) in the circumstances foreseen in letter (f) of Article 10 of the Transparency Directive, the deposit taker of the shares, if he can exercise the voting rights attached to the shares deposited with him at his discretion, and the depositor of the shares;
- (g) in the circumstances foreseen in letter (g) of Article 10 of the Transparency Directive, the natural person or legal entity that controls the voting rights;
- (h) in the circumstances foreseen in letter (h) of Article 10 of the Transparency Directive, the proxy holder, if he can exercise the voting rights at his discretion, and the shareholder who has given his proxy to the proxy holder.

The notification obligation of each natural person or legal entity mentioned in letter (a) is triggered where the proportion of voting rights subject to the agreement reaches, exceeds or falls below the applicable thresholds.

The notification obligation of each natural person or legal entity mentioned in letters (b) to (h) is triggered individually where the proportion of voting rights held reaches, exceeds or falls below the applicable thresholds.

2. Whenever changes in the circumstances described in paragraph 1 take place which result in changes to the proportion of voting rights attributable to the natural person or legal entity that was required to make the notification, a subsequent notification requirement shall be triggered if the proportion of voting rights held reaches, exceeds or falls below the applicable thresholds.

In the circumstances foreseen in letter (h) of the first paragraph, if the proxy is given in relation to one shareholder meeting, a single notification at the moment of giving the proxy shall be sufficient to fulfil the requirement of the first subparagraph of this paragraph provided it is clarified in the notification which the resulting situation in terms of voting rights will be when the discretion ends.

3. The notification requirements in paragraph 1 are without prejudice to the possibility for the natural person or legal entity to appoint another person or entity to make a notification on his/its behalf. Such an appointment does not release the natural person or legal entity holding the notification obligation from this obligation.
4. The notification requirements in paragraph 1 are without prejudice to the possibility to use a single notification where the duty to make a notification lies with more than one natural person or legal entity. The use of a single notification does not release the natural person or legal entity holding the notification obligation from this obligation.

Article 10

Circumstances under which the notifying person should have learned of acquisition or disposal or of possibility to exercise voting rights¹⁰

For the purposes of paragraph 2(a) of Article 12 of the Transparency Directive, the shareholder or the natural person or legal entity referred to in Article 10 of the Transparency Directive, shall **be** deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights on the trading day after the execution of the transaction.

¹⁰ Possible Recital: Taking into consideration the very high duty of care that a natural person or legal entity that acquires or disposes of major holdings should exercise, that person or entity should be deemed to have knowledge of the acquisition or disposal or of the possibility to exercise voting rights on the trading day after the execution of the transaction. In the case of transaction that takes place on exchange, it should normally be executed at the point in time when the matching of the orders occurs; in the case of a transaction that takes place off exchange, it should normally be executed at the point in time when an agreement is entered into.

Conditions of independence to be complied with by management companies and investment firms¹¹¹²

1. For the purposes of the exemption to the aggregation of holdings provided for in paragraphs 4 and 5 of Article 12 of the Transparency Directive, a parent undertaking of a management company or of an investment firm shall notify to the competent authority of the home Member State of the issuer:
 - (a) that it does not interfere by giving direct or indirect instructions or in any other way in the exercise of the voting rights held by its management company or investment firm;
 - (b) ~~that it can demonstrate~~ that its management company or investment firm exercise the voting rights attached to the asset they manage independently from it;
 - (c) a list of the names of the management companies and investment firms of the parent undertaking as well as the competent authority that supervises them.

The parent undertaking shall update the information required under letter (c) on an ongoing basis in case of any change to the list.

In case the parent undertaking intends to benefit from the exemptions only in relation to the financial instruments referred to in Article 13 of the Transparency Directive, this notification shall only include the information required under letter (c).

The parent undertaking shall ~~made~~ **make** this notification immediately after the end of the transposition period foreseen in Article 31 of the Transparency Directive or whenever it wishes to make use of the exemption. This notification may be done only once and needs not to be done on an issuer by issuer basis.

2. In order to ensure compliance with the conditions of independence to benefit from the exemptions in paragraphs 4 and 5 of Article 12 of the Transparency Directive, a parent undertaking of a management company or of an investment firm shall be able to demonstrate to the competent authority of the home Member State of the issuer on request that:

¹¹ Possible Recital: The exemption in Article 12(4) of the Transparency Directive should apply to all management companies that conduct their management activities under the conditions laid down under the UCITS Directive, irrespective of whether or not they are authorised under that Directive, provided in the latter case that they are supervised under national legislation.

¹² Possible Recital: The provisions of Articles 12(4) and 12(5) of the Transparency should also apply in cases where the exercise of the voting rights is delegated by the management company or investment firm under the relevant requirements of the UCITS or MiFID Directive, as applicable, to a third party provided that the third party exercises the voting rights independently from the parent undertaking of the management company or investment firm.

- (a) the organisational structures of the parent undertaking and the management company or investment firm are such that the voting rights are exercised independently of the parent undertaking;
- (b) the persons who decide how the voting rights are to be exercised are not the same for the parent undertaking and the management company or investment firm and act independently;
- (c) if the parent undertaking is a client of its management company or investment firm or has holding in the assets managed by the management company or investment firm, there is a clear written mandate for an arms-length customer relationship between the parent undertaking and the management company or investment firm.

The requirement under (a) shall imply as a minimum that the parent undertaking and the management company or investment firm have implemented written policies and procedures reasonably designed to prevent the distribution of information between the parent undertaking and the management company or investment firm that relate to the exercise of voting rights.

Article 12

Types of financial instruments that result in an entitlement to acquire, on the holder's own initiative alone, shares to which voting rights are attached

1. For the purposes of paragraph 1 of Article 13 of the Transparency Directive
 - (a) the following types of financial instrument referred to Section C of Annex I of the Directive 2004/39/EEC Directive may qualify as 'financial instruments within the meaning of paragraph 1 of Article 13 of the Transparency Directive' if they contain the features described in such Article:
 - Transferable securities;
 - Options, futures, swaps, forward rate agreements and any other derivative contracts relating to shares
 - (b) the following types of financial instrument referred to Section C of Annex I of the Directive 2004/39/EEC Directive do not qualify as 'financial instruments within the meaning of paragraph 1 of Article 13 of the Transparency Directive':
 - Money-market instruments;
 - Units in collective investment undertakings;
 - Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities other than shares, currencies, interest rates or yields;

- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
 - Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF;
 - Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
 - Derivative instruments for the transfer of credit risk;
 - Financial contracts for differences, if these only allow for a cash settlement;
 - Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.
2. For the purposes of paragraph 1 of Article 13 of the Transparency Directive, the holder of financial instruments is required to aggregate and notify all ‘financial instruments within the meaning of paragraph 1 of Article 13 of the Transparency Directive’ pursuant to paragraph 1 relating to the same underlying issuer.
 3. For the purposes of paragraph 1 of Article 13 of the Transparency Directive, a ‘formal agreement’ shall mean a legally binding agreement under national law¹³.
 4. The notification required under Article 13 of the Transparency Directive shall include the following information:

¹³ Possible Recital: A formal agreement entitling the holder of the financial instruments to acquire, on such holder’s own initiative alone, shares to which voting rights are attached, already issued, of an issuers shoes shares are admitted to trading on a regulated market should cover the situations in which the decision of the instrument holder is not dependant on external factors such as the price of the underlying share at a certain moment in time or a decision of the instrument issuer to give shares or cash to the instrument holder on maturity.

- (a) the resulting situation in terms of voting rights;
- (b) if applicable, the chain of controlled undertakings through which financial instruments are effectively held;
- (c) the date on which the threshold was reached or crossed;
- (d) for instruments with an exercise period, an indication of the moment where shares will or can be acquired, if applicable;
- (e) date of maturity or expiration of the instrument;
- (f) identity of the holder; and
- (g) name of the underlying issuer.

The number of voting rights to be considered when calculating whether a threshold is crossed or reached is the number of voting rights in existence according to the issuer's last disclosure under Article 15 of the Transparency Directive.

- 5. The notification period shall be the same as for the notification under Articles 9 and 10 of the Transparency Directive in accordance with paragraph 2 of Article 12 of the Transparency Directive and Articles 8 and 10 of this Directive.
- 6. This notification shall be made to the issuer of the underlying share and the competent authority of the home Member States of such issuer. If a financial instrument relates to more than one underlying share, a separate notification shall be made to each issuer of the underlying shares.

Standard forms¹⁴

CHAPTER IV

Dissemination of regulated information

Article 13

Minimum Standards¹⁵

¹⁴ Possible Recital: In order to simplify the process of notifying major holdings of voting rights, it should be strongly encouraged the use of pan-European standard forms allowing for electronic means to be used both for filling in and sending the standard form to the issuer and the relevant competent authority.

¹⁵ Possible Recitals:

1. When disseminating regulated information pursuant to Article 21 paragraph 1 of the Transparency Directive, issuers shall ensure that the minimum standards contained in paragraphs 2 to 5 are met. When an issuer entrusts a third party with the disclosure of regulated information to the public, it shall ensure that the third party complies with the minimum standards contained in paragraphs 2 to 5. The ultimate responsibility for meeting those requirements shall remain with the issuer which relies on the third party.
2. Regulated information shall be disclosed without delay, in a manner ensuring that it is capable of being disseminated to the general public, fast, and as close to simultaneously as possible in the Home Member State and in the other Member States. To this end, the regulated information shall be communicated to an appropriate number of media, including capable of reaching the public throughout the EU.
3. Regulated information shall be communicated to the media in unedited full text, in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorised access, and provides certainty as to the source of the regulated information. ~~Failures or disruptions in the communication of regulated~~

The Transparency Directive sets high-level requirements in the area of dissemination of regulated information. The mere availability of information to investors, which requires that investors actively seek for such information, should not be considered sufficient for the purposes of this Directive. Instead, dissemination should involve active distribution of information from the issuers to media, with a view to reach investors.

Minimum quality standards for the dissemination of regulated information are necessary to ensure that investors, whether or not situated in other Member States than the issuer have an equal access to regulated information. Issuers must ensure that such standards are met, whether they disseminate regulated information themselves or entrust a third party with the performance of this task on their behalf. When dissemination is performed by a third party, the issuer must ensure that such third party is capable of delivering the dissemination service in adequate conditions. In particular, the third party should have adequate mechanisms in place to ascertain that the regulated information it receives emanates from the relevant issuer and that there is no significant risk of data corruption or of unauthorised access to unpublished inside information. Where the third party entrusted with the dissemination of regulated information on behalf of an issuer provides other services or performs other functions, such as media, competent authorities stock exchanges or the entity in charge of the officially appointed storage mechanism, such services or functions should be kept clearly separated from the services and functions relating to the dissemination of regulated information. **To maximise the benefits of choice and innovation, Member States should seek to ensure open and free competition among third party information providers involved in the dissemination of regulated information.**

Regulated information should be disseminated in a way that ensures wide public access throughout the European Union. Moreover, dissemination of regulated information should aim at reaching the public simultaneously inside and outside the issuer's home Member State. The use of electronic means and industry standard formats when communicating information to the media will significantly facilitate and accelerate the processing of the information and should therefore be strongly encouraged. Moreover, in order to supplement the dissemination process, issuers should also be strongly encouraged to make regulated information available on their own or other websites accessible to investors.

Annual and half yearly financial reports provide investors with key financial and non financial information about issuers. The Transparency Directive provides, therefore, that they must remain available to the public for a period of five years following their publication. The obligations of the issuers in this regard will be met if such reports remain available at the officially appointed mechanism for the storage of regulated information during this period of time.

~~information shall be remedied as soon as possible.~~ **Security of receipt shall be ensured by remedying as soon as possible any failure or disruption in the communication of regulated information.** The issuer shall not be held responsible for systemic errors or shortcomings at the media to which the regulated information has been communicated.

4. Regulated information shall be communicated to the media in a way which makes clear that the information is regulated information, identifies clearly the issuer concerned, the subject matter of the regulated information and the time and date of the communication of the information by the issuer
5. Upon request, issuers shall be able to communicate to the competent authority, in relation to any disclosure of regulated information:
 - (a) the name of the person who communicated the information to the media;
 - (b) the security validation details;
 - (c) the time and date on which the information was communicated to the media;
 - (d) the medium in which the information was communicated; and
 - (e) if applicable, details of any embargo placed by the issuer on the regulated information.

CHAPTER V

Third Countries

Article 14

Equivalence as regards issuers¹⁶

¹⁶ Possible Recitals: National competent authorities should, following the principles developed in this directive, exchange information **among themselves and with the Commission** with a view to establishing a list of third countries in which the domestic law, regulations or administrative provisions provide for equivalent information requirements. Equivalence can be declared when general disclosure rules of third countries provide users with understandable and broadly equivalent assessment of issuers' position that enable them to make similar decisions as if they were provided with the information according to requirements under the Transparency Directive, even if the requirements are not identical. However, equivalence should be limited to the substance of the relevant information and no exception as regards the time-limits set by the Transparency Directive should be accepted.

Competent authorities should be able to grant equivalence on certain items listed in paragraph 1 of Article 23 of the Transparency Directive and not on others, based on the result of an item by item assessment.

1. For the purposes of paragraph 1 of Article 23, an issuer whose registered office is in a third country may be deemed to be meeting equivalent requirements to those set out in Article 4(2)(b) of the Transparency Directive provided that its annual management report includes at least the following information:
 - (a) a fair review of the development and performance of the issuer's business and of its position, together with a description of the principal risks and uncertainties that it faces. The review shall be a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business.

To the extent necessary of an understanding of the issuer's development, performance or position, the analyses shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business;
 - (b) an indication of any important events that have occurred since the end of the financial year;
 - (c) indications of the issuer's likely future development.
2. For the purposes of paragraph 1 of Article 23, an issuer whose registered office is in a third country may be deemed to be meeting equivalent requirements to those set out in Article 5(4) of the Transparency Directive provided that:
 - (a) its interim management report includes at least the following information:
 - a review of the period covered;
 - indications of the issuer's likely future development for the remaining six months of the financial year;
 - for issuers of shares and if already not disclosed on an ongoing basis, major related parties transactions; and
 - (b) a condensed set of financial statements is required in addition to the interim management report by the law of the third country.
3. For the purposes of paragraph 1 of Article 23, an issuer whose registered office is in a third country may be deemed to be meeting equivalent requirements to those set out in Article 4(2)(c) and 5(2)(c) of the Transparency Directive provided that the law of the third country makes a person within the issuer responsible for the annual and half-yearly financial information, and in particular for:
 - (a) the compliance of the financial statements with the applicable reporting framework or set of accounting standards, and
 - (b) the fairness of the management review included in the management report.

Equivalence declarations should remain valid in the absence of fundamental changes in the relevant third country or EU requirements.

4. For the purposes of paragraph 1 of Article 23, an issuer whose registered office is in a third country may be deemed to be meeting equivalent requirements to those set out in Article 6 of the Transparency Directive provided that it publishes quarterly financial reports, whether as a result of the requirements of the law of a third country or on its own initiative.

If the issuer does not publish quarterly financial reports, it should comply with the requirements of Article 6 of the Transparency Directive.

5. For the purposes of paragraph 1 of Article 23, in the case of an issuer whose registered office is in a third country which prepares consolidated accounts but where the provision of individual accounts by the parent company is not required by the law of that third country, such issuer may be deemed to be meeting equivalent requirements to those set out in Article 4(3) first subparagraph of the Transparency Directive provided that the information contained in the consolidated accounts includes the following:

- (a) for issuers of shares, dividends computation and ability to pay dividends;
- (b) for all issuers, minimum capital and equity requirements and liquidity issuers

The competent authority of the home Member State may require additional audited disclosures giving information on the individual accounts of the issuer as a standalone, relevant to the elements of information referred to under (a) and (b) of this paragraph. Those disclosures may be prepared under local accounting principles.

6. For the purposes of paragraph 1 of Article 23, in the case of an issuer whose registered office is in a third country which is not required to prepare consolidated accounts by the law of the third country, such issuer may be deemed to be meeting equivalent requirements to those set out in Article 4(3) second subparagraph of the Transparency Directive in relation to individual accounts provided that the issuer prepares its individual accounts according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation n°1606/2002 or to a third country national accounting standards equivalent to those standards. If such financial information is not equivalent to those standards, it must be presented in the form of restated financial statements¹⁷.

The individual accounts shall be audited independently.

7. For the purposes of paragraph 1 of Article 23, an issuer whose registered office is in a third country may be deemed to be meeting equivalent requirements to those set out in Article 12(6) of the Transparency Directive provided that the period of time within which the notification of the major holdings is to be effected to the issuer and

¹⁷ Possible Recital : In order to establish whether or not a third country issuer is meeting equivalent requirements to those laid down in Article 4(3) of the Transparency Directive, it is important to ensure that there is consistency with the Commission Regulation (EC) N° 809/2004 on prospectuses, in particular item 20.1 of Annex I (Minimum Disclosure Requirements for the Share Registration Document) and item 13.1 of Annex IV (Minimum Disclosure Requirements for the Debt and Derivative Securities Registration Document), both dealing with Historical Financial Information to be included in a prospectus.

is to be made public by the issuer is in total equal to or shorter than seven trading days. The time frames for the notification to the issuer and for the subsequent disclosure to the public by the issuer may be different to those set out in Articles 12(2) and 12(6) of the Transparency Directive.

8. For the purposes of paragraph 1 of Article 23, an issuer whose registered office is in a third country may be deemed to be meeting equivalent requirements to those set out in Article 14 of the Transparency Directive provided that:
 - (a) when the issuer is only allowed to hold up a maximum of 5% of its own shares to which voting rights are attached, a notification requirement is triggered under the law of the third country whenever ~~this~~ **the maximum threshold of 5% of the voting rights** is reached or crossed;
 - (b) when the issuer is allowed to hold up to maximum of between 5% and 10% of its own shares to which voting rights are attached, a notification requirement is triggered under the law of the third country whenever this maximum threshold ~~and~~ **or the 5% threshold of the voting rights** are reached or crossed;
 - (c) when the issuer is allowed to hold more than 10% of its own shares to which voting rights are attached, a notification requirement is triggered under the law of the third country whenever the 5% ~~and~~ **or 10% thresholds of the voting rights** are reached or crossed. Notification above the 10% threshold is not required for the purposes of this Article.
9. For the purposes of paragraph 1 of Article 23, an issuer whose registered office is in a third country may be deemed to be meeting equivalent requirements to those set out in Article 15 of the Transparency Directive provided that the issuer is required under the law of the third country to disclose to the public the total number of voting rights and capital within 30 calendar days after an increase or decrease of such total number has occurred.
10. For the purposes of paragraph 1 of Article 23, an issuer whose registered office is in a third country may be deemed to be meeting equivalent requirements to those set out in Article 17(2)(a) and 18(2)(a) of the Transparency Directive, as far as the content of the information about meetings is concerned, provided that the law of the third country requires to at least provide information on the place, time and agenda of the meetings.

Article 15

Equivalence in relation to the test of independence for parent undertakings of management companies and investment firms¹⁸

¹⁸ Possible Recital : A management company or investment firm that is registered in a third country is not required to be authorised under the law of the third country in order to conduct management activities or portfolio management activities and get the benefit of the exemption to the need to aggregate holdings under Article 12(4) or (5) the Transparency Directive, provided that it is conducting the same

For the purposes of paragraph 6 of Article 23, undertakings whose registered office is in a third country which would have required an authorisation in accordance with Article 5(1) of Council Directive 85/611/EEC or, with regard portfolio management under point 4 of section A of Annex I to Directive 2004/39/EEC if it had its registered office or, only in the case of an investment firm, its head office within the Community, may be deemed to be complying with equivalent conditions of independence as management companies or investment firms to those set out in Article 12(4) and 12(5) of the Transparency Directive provided that:

- (a) the management company or investment firm is free to exercise the voting rights attached to the assets it manages in all situations;
- (b) the management company or investment firm disregards the interest of the parent undertaking or any other party whenever conflicts of interest arise.

The requirements of Article 11 of this Directive shall be applicable in full.

Article 16

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith inform the Commission thereof and communicate a table of equivalence between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 17

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

Article ~~19~~ 18

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission

activities that would require authorisation under the UCITS or MiFID Directives for which such an exemption is provided. Controlled undertaking of the parent undertaking that wishes to make use of the exemption should be supervised by the third country competent authority.

Working document - PART II on a draft recommendation

Draft Recommendation on the standard forms to be used for the purposes of notifying the acquisition or disposal of major holdings of voting rights and of major holdings of financial instruments in the context of Directive 2004/109/EC

[DRAFT] THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HEREBY RECOMMENDS:

1. *Scope and definitions*

Member States should take all appropriate measures to ensure that the shareholder referred to in Article 9 of the Directive and the natural person or legal entity referred to in Articles 10 and 13 of the Directive have regard to this Recommendation.

Member States should ensure that this Recommendation applies to the notification of the acquisition or disposal of major holdings of voting rights and of financial instruments entitling to acquire, on the holder's own initiative alone, shares to which voting rights are attached in the circumstances foreseen in the Directive.

For the purposes of this Recommendation, 'Directive' means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending directive 2001/34/EC;

2. *Standard forms*

The shareholder referred to in Article 9 of the Directive and the natural person or legal entity referred to in Article 10 of the Directive ~~shall~~ **should** notify to the issuer of the underlying shares admitted to trading on a regulated market the information required by Article 12(1) of the Directive in relation to the voting rights they acquire or dispose of.

Additionally, the natural person or legal entity referred to in Article 13 of the Directive shall notify to the issuer of the underlying shares admitted to trading on a regulated market the information required by Article 12(4) of the *[text implementing the Directive]* in relation to the holding of financial instruments that result in an entitlement to acquire, under the conditions set out in the Directive, shares to which voting rights are attached.

The use of standard forms throughout the Community by those who have a notification obligation will provide the issuer and ultimately the public with the required information in a standardised format. This will in particular simplify the notification process for those issuers who may receive notifications from several

voting rights or financial instrument holders located in different Member States. Additionally, it will simplify the notification obligations for voting right or financial instrument holders which may need to make notifications to several issuers located in different Member States.

Hence, those persons or entities that have a notification obligation under Articles 9, 10 and 13 of the Directive should use, as appropriate, the two standard forms provided in the annex:

- form VR, for the information required under Article 12(1) of the Directive;
- form FI, for the information required under Article 12(4) of the *[text implementing the Directive]*.

Both forms should allow those persons and entities that have a notification obligation under Articles 9, 10 and 13 of the Directive to deal with the most frequent cases. It may also allow for its use in less frequent cases or in cases where there are additional requirements at national level by using the additional information section.

3. *Filing with the Competent Authority under Article 19(3)*

~~In order to comply with~~ **Under** Article 19(3), notifications under Article 12 and under Article 13 of the Directive should also be filed with the competent authority. For these purposes, it is necessary that the competent authority is able to correctly identify the voting right or financial instrument holder. Therefore, the contact address for natural persons or the registered office for legal entities should be filled in by the notifying party. However, this information should only be provided in an annex to the standard form that is to be sent to the competent authority only and not disclosed to the issuer or to the public.

4. *The use of electronic means*

The use of electronic means should be the preferred method for both filing in and sending the standard forms to the issuer and the relevant competent authority. To that end, competent authorities should make sure that either in their websites or in any other appointed website the standard forms VR and FI are available to users in electronic format.

5. *Final provisions*

Member States are invited to take ~~the necessary~~ measures to promote the application of this Recommendation by 20 January 2007 and are invited to notify the Commission of measures taken in accordance with this Recommendation in order to allow the Commission to monitor closely the situation and, on this basis, to assess the need for further measures.

This Recommendation is addressed to the Member States.

Done at Brussels, [...]

ANNEX to PART II

<p>STANDARD FORM VR VOTING RIGHTS – ARTICLE 12(1) OF THE TRANSPARENCY DIRECTIVEⁱ</p>
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1. Identity of the issuerⁱⁱ:
2. Reason for the notification (please tick the appropriate box):
 - an acquisition or disposal of shares with voting rights attached "direct holding"
 - an acquisition or disposal of voting rights "indirect holding"
 - an event changing the breakdown of voting rights
3. Full name of person(s) subject to the notification obligationⁱⁱⁱ:
4. Full name of shareholder(s) (if different from 3.)^{iv}:
5. Date on which the threshold was crossed or reached^v:
6. Threshold(s) that has/have been crossed or reached:
7. Notified details:

Class/type of shares	Triggering transaction ^{vi}	Resulting situation after the triggering transaction ^{vii}				
	Number of voting rights acquired (+) or disposed of (-) when reaching or crossing a threshold ^{viii}	Number of shares ^{ix}	Number of voting rights ^x		% of voting rights	
		Direct	Direct	Indirect	Direct	Indirect
TOTAL (based on aggregate voting rights)						

8. Chain of controlled undertakings through which the voting rights are effectively held, if applicable^{xi}:
 9. In case of proxy voting: *[name of the proxy holder]* will cease to hold *[number]* voting rights as of *[date]*.
 10. Additional information:
- Done at *[place]* on *[date]*.

ANNEX TO THE STANDARD FORM VR^{xii}

a) Identity of the holder:

Full name (including legal form for legal entities)

Contact address (registered office for legal entities)

Phone number

Other useful information (at least legal representative for legal persons)

b) Identity of the notifier, if applicable^{xiii}:

Full name

Contact address

Phone number

Other useful information

c) Additional information

STANDARD FORM FI
FINANCIAL INSTRUMENTS – ARTICLE 12(4) OF THE [TEXT IMPLEMENTING THE
DIRECTIVE] ^{xiv}

1. Identity of the underlying issuer of existing shares to which voting rights are attached^{xv}:

2. Reason for the notification (*please tick the appropriate box*):

an acquisition or disposal of financial instruments which may result in the acquisition of shares already issued to which voting rights are attached

an event changing the breakdown of voting rights

3. Full name of the holder (natural person/legal entity) entitled to acquire shares already issued to which voting rights are attached:

4. Date on which the threshold was crossed or reached:

5. Notified details:

Expiration Date ^{xvi}	Triggering transaction ^{xvii}		Resulting situation after the triggering transaction	
	Number of voting rights that may be acquired (+) if instrument is exercised/converted when reaching or crossing a threshold	Exercise/Conversion Period/ Date ^{xviii}	Number of voting rights	% of voting rights
		Total in relation to all expiration dates		

6. Chain of controlled undertakings through which the financial instrument/s are effectively held, if applicable^{xix}:

7. Additional information:

Done at [*place*] on [*date*].

ANNEX TO THE STANDARD FORM FI^{xx}

a) Identity of the holder:

Full name (including legal form for legal entities)

Contact address (registered office for legal entities)

Phone number

Other useful information (at least legal representative for legal persons)

b) Identity of the notifier, if applicable^{xxi}:

Full name

Contact address

Phone number

Other useful information

c) Additional information

NOTES TO THE FORMS

- i This form is to be sent to the issuer and to be filed with the competent authority.
- ii Either the full name of the legal entity or another method for identifying the issuer provided it is reliable and accurate.
- iii This should be the full name of (a) the shareholder; (b) the natural person or legal entity acquiring, disposing of or exercising voting rights in the cases provided for in Article 10 (b) to (h) of the Directive; or (c) all the parties to the agreement referred to in Article 10 (a) of the Directive, as appropriate.
- iv Applicable in the cases provided for in Article 10 (b) to (h) of the Directive. This should be the full name of (a) the shareholder who disposed of the voting rights if he has a notifiable interest; or (b) of the shareholder to whom the voting rights are being transferred if he has a notifiable interest.
- v It should normally be the date on which the transaction took place. For passive crossings, the date when the corporate event took effect. For the case provided for in Article 10(a) of the directive, when entering in to the agreement, the date when the agreement was entered into; when there are subsequent changes to the agreement, this will be the date of the change by the acquisition or disposal of voting rights; when the agreement is terminated, this will be the date of termination.
- vi This column needs not to be filled in, in case of notification due to an event changing the breakdown of voting rights nor when entering into or terminating an agreement.
- vii For the case provided for in Article 10(a) of the directive, there should be no disclosure of individual holdings per party to the agreement unless a party individually crosses or reaches an Article 9 threshold. This applies upon entering into, introducing changes to or terminating an agreement.
- viii In Member States where the number of shares will be disclosable this should be read as number of voting rights and shares.
- ix To be used in Member States where applicable.
- x In case of combined holdings of shares with voting rights attached "direct holding" and voting rights "indirect holding", please split the voting rights number and percentage into the direct and indirect columns – if there is no combined holdings, please leave the relevant box blank.
- xi The notification should include the name(s) of the controlled undertakings through which the voting rights are held, and the amount of voting rights and the percentage held by each controlled undertaking (insofar as individually, the controlled undertaking holds 5% or more).
- xii This annex is only to be filed with the competent authority.
- xiii Whenever another person makes the notification on behalf of the shareholder or the natural person/legal entity entitled to exercise the voting rights.
- xiv This form is to be sent to the issuer of the underlying shares that the holder of the financial instrument may acquire voting rights in and to be filed with the competent authority.
- xv Either the full name of the legal entity or another method for identifying the issuer provided it is reliable and accurate.
- xvi Date of maturity/expiration of the financial instrument i.e. the date when right to acquire shares ends.

xvii This column does not need to be filled in in the case of notification due to an event changing the breakdown of voting rights.

xviii If the financial instrument has such a period – please specify this period – for example once every 3 months starting from [date].

xix State the identity of each controlled undertaking and the total number of voting rights held by each entity.

xx This annex is only to be filed with the competent authority.

xxi Whenever another person makes the notification on behalf of the holder of financial instruments.