



European Securities and
Markets Authority

Report

Mapping of the Transparency Directive –Options, Discretions and “Gold-plating”



IMPORTANT NOTICE

ESMA is submitting to the relevant ESMA Groups this document relating to Member State's responses to a questionnaire regarding options and discretions in relation to the Transparency Directive and its implementing measures.

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The content of the report is without prejudice to any final ESMA contribution relating to the revision of the Transparency Directive (TD).

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COUNTRY CODES AND ACRONYMS OF COMPETENT AUTHORITIES AND MEMBER STATES

Country codes Member States		Competent Authorities-Acronyms	
AT	Austria	Financial Market Authority	FMA
BE	Belgium	Financial Services and Markets Authority	FSMA
BG	Bulgaria	Financial Supervision Commission	FSC
CY	Cyprus	Cyprus Securities and Exchanges Commission	CySEC
CZ	Czech Republic	Czech National Bank	CNB
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
DK	Denmark	Finanstilsynet	Finanstilsynet
EE	Estonia	Estonian Financial Supervision Authority	EFSA
EL	Greece	Capital Market Commission	HCMC
ES	Spain	Comision Nacional del Mercado de Valores	CNMV
FI	Finland	Finanssivalvonta	FIN-FSA
FR	France	Autorité des Marchés Financiers	AMF
HU	Hungary	Hungarian Financial Supervisory Authority	HFSA
IE	Ireland	Central Bank of Ireland	CBoI
IS	Iceland	Financial Supervisory Authority	FME
IT	Italy	Commissione Nazionale per le Società e la Borsa	Consob
LT	Lithuania	Lithuanian Securities Commission	LSC
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
LV	Latvia	Financial and Capital Markets Commission	FCMC
MT	Malta	Malta Financial Services Authority	MFSA
NL	Netherlands	Autoriteit Financiële Markten	AFM
NO	Norway	Finanstilsynet	Finanstilsynet
PL	Poland	Polish Financial Supervision Authority	PFSA
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM
RO	Romania	Romanian National Securities Commission	CNVMR
SE	Sweden	Finansinspektionen	Finansinspektionen
SI	Slovenia	Securities Market Agency	SMA
SK	Slovakia	National Bank of Slovakia	NBS
UK	United Kingdom	Financial Services Authority	FSA

INTRODUCTION

1. By the recent revision of the Lamfalussy process, financial supervision in the EU and the related European acquis on financial services, the European institutions have indicated several times that there is a need to review national options and discretions existing in European financial regulation.
2. The Road Map on the revision of the Lamfalussy process set up by the ECOFIN in December 2007: *“invites Member States to keep under review the options and discretions implemented in their national legislation, limit their use (wherever possible) and report to the Commission on these findings, and invites the Institutions to introduce a “review clause” in future EU legislation on all options and discretions included in the respective acts. When this review clause comes into effect after a specified time, the necessity and use of the options and discretions should be reviewed and, where necessary, abolished where there is no demonstrated need.”*
3. The Communication of the European Commission of 4 March 2009 takes on board recommendations of the de Larosière Group: *“The Group's recommendation on the need to develop a harmonised core set of standards to be applied throughout the EU is of particular interest. Key differences in national legislation stemming from exceptions, derogations, additions made at national level or ambiguities in current directives should be identified and removed.”*
4. In line with the above, in 2009 the CESR Review Panel – in accordance with its 2009 Work Plan - has started a series of mapping exercises focusing on the options, discretions, and additional / more stringent rules (“goldplating”). This work-stream was supported by the CESR Plenary of 24 February 2009. The first two mapping exercises focused on MiFID¹ and MAD².
5. At its meeting on 26 November 2009, the Review Panel decided to start a new mapping focusing on the options, discretions and goldplating provisions under the Transparency Directive (TD)³ and its implementing measures (Level 2 Directive - L2D)⁴, which was made part of the CESR's 2010 Work Programme. TD includes several options and discretionary capacities and as a minimum harmonisation Directive, it also allows home Member States to implement more stringent requirements at national level. Member States have had to notify the Commission on the use of more stringent rules that were applied in their national legislation as home Member States.
6. This mapping focuses on those parts of TD that are allowed to be applied by Member States in different ways. One of its main purposes is to ascertain the extent to which Member States introduced options, discretions, additional requirements and / or more stringent rules in their national legislation, as authorised for in TD and its implementing measures.
7. The Report is divided into two parts. Part 1 deals with options and discretions, which are directly based on a certain Article or Recital either of TD or L2D, while the second part addresses additional requirements. Additional requirements might have a direct link to a certain Article of TD or L2D, for example where the Directives refer to ‘at least ...’, ‘as a minimum ...’ or provide for a non-exhaustive list of elements for the application of certain exemptions. On the other hand additional elements might be introduced without a direct reference in TD or L2D, as Article 3(1) of TD provides the possibility for home Member States to make the issuer or the holders of shares to more stringent requirements to what is required by the Directive. It might be argued that any additional requirement may constitute a

¹ To be published in the course of 2011.

² Review Panel Report – MAD Options and Discretions, 2009 (CESR-09/1120).

³ 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.

⁴ Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of 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.

more stringent requirement for issuers and shareholders, as these provide an extra requirement compared to what is described in the Directive. This mapping, however, did not assess whether the national provisions can be qualified as more stringent requirements, instead the focus was more on presenting the additional requirements.

8. In order to reach a higher level of consistency among the mappings conducted with regard to ‘discretions and options’, the goal of this specific TD mapping was to be in line as much as possible with the reports prepared on MiFID and MAD.
9. While conducting this mapping, special attention was paid to the work already conducted by CESR/ESMA and the European Commission on this issue. In this regard the following documents should be mentioned specifically: “CESR Report on the mapping of supervisory powers, administrative and criminal sanctioning regimes of Member States in relation to the Transparency Directive (TD)” (CESR/09-058), the work conducted by the CESR Transparency Group on the transposition of the Transparency Directive (CESR/08-514b)⁵, the European Commission’s “Report on more stringent national measures concerning 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”, the “Transparency Directive Assessment Report” prepared by MAZARS on the request of the European Commission, the “Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions on the Operation of 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” COM(2010)243, and the „Commission Staff Working Document - The review of the operation of Directive 2004/109/EC: emerging issues” COM(2010)611.
10. It should be highlighted that in addition to the documents mentioned above, the present report provides important additional information and also serves as an update regarding earlier assessments prepared on options, discretions and additional requirements applied by Member States with regard to TD.
11. Finally, it should be noted that the results of this Report could also provide valuable input for the work conducted by the European Commission on the review of the Transparency Directive, for which CESR has already provided its provisional comments⁶.

⁵ In many cases the Review Panel relied on the results of the survey prepared by CESR’s Transparency Group, however asked Members to update their responses provided in 2008.

⁶ CESR’s response to consultation on the modernisation of the Transparency Directive, Ref.: CESR/10-1275.

EXECUTIVE SUMMARY

12. This Executive Summary provides a brief description of the different topics assessed in the Report. The Sections follow the structure of the Directive and give a short summary of the major findings including the description of the underlying issues.. The Executive Summary also covers “goldplating” / additional requirements, which are included in Part 2 of the Report.

Section A – General Provisions

13. Concerning the scope of application (*Article 1(1)-(2)*) of TD provisions 10 Member States have indicated that they also apply certain provisions of TD to issuers whose securities are not admitted to trading on a regulated market situated or operating within a Member State. These Member States indicated that they do so for applying TD provisions for MTF traded securities, for historical reasons and to apply a uniform regulation on public companies. The majority of Member States (26) have stated that they only apply TD provisions to units issued by collective investment undertakings of the closed-end type.
14. Nearly two-third of the Member States exempt the securities issued by their Member State from the application of Articles 16(3)⁷, 18(2)⁸, 18(3)⁹ and 18(4)¹⁰ of TD (*Article 1(3)*). With regard to the securities issued by the regional and local authorities, the rate of Member States exempting these securities from the application of the above TD provisions is around 50%. It should be mentioned that some Member States indicated that they do not have regional authorities and in some Member States there are no securities issued by regional and local authorities. In its response to the consultation on the modernisation of the Transparency Directive (CESR/10-1275) CESR was of the opinion that the requirement to disclose new loan issues should be abolished. If this advice is going to be accepted, then the reference to 16(3) should also be deleted under Article 1(3) TD. A large number of Member States apply this exemption with regard to Article 18(2)-(4), however no Member State has indicated major obstacles, which would prevent the application of these provisions to their Member States, regional and local authorities.
15. 8 Member States have indicated that they do not to apply Article 17¹¹ to their national central bank as an issuer of shares admitted to trading on a regulated market if this admission took place before 20 January 2005 (*Article 1(4)*).
16. With regard to the definition of ‘regulated information’ (*Article 2(1)*), half of the Member States indicated that they have included additional elements to the definition of ‘regulated information’. The most common elements added were: prospectuses; notification of the home Member State selected;

⁷ Article 16(3) TD requires issuer of securities admitted to trading on a regulated market to make public without delay new loan issues and ... any guarantee or security in respect thereof.

⁸ Article 18(2) TD requires issuers to ensure that all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in the home Member State, that the integrity of data is preserved and that debt securities holders may exercise their rights by proxy.

⁹ Article 18(3) TD provides the possibility for the issuer to choose as venue any Member State subject to certain conditions.

¹⁰ Article 18(4) TD allows issuers to use electronic means for conveying information to debt securities holders, subject to certain conditions.

¹¹ Article 17 TD contains the provisions on information requirements for issuers whose shares are admitted to trading on a regulated market

annual document according to Article 10 of Directive 2003/71 /EC¹²; annual document containing disseminated information.

Section B – Periodic information - Annual financial reports

17.). 25 Members have indicated that the deadline for publishing annual financial reports is not shorter than four months after the end of the financial year (*Article 4(1)*). 3 Member States have indicated that the deadline for publishing annual financial report is shorter than 4 months. One Member State indicated that the deadline is linked to the Annual General Meeting; therefore it might be shorter than the TD deadline. 28 Members have stated that the period for which the annual financial report should remain publicly available is five years or at least five years (*Article 4(1)*). 1 Member has indicated that the listing rules oblige an issuer to keep the annual financial report publicly available during the lifetime of the issuer.
18. 5 Member States have indicated that they require issuers that their annual reports shall contain further elements in addition to the elements of the annual financial report specifically mentioned by TD (*Article 4(2)*).
19. 11 Member States indicated that where the issuer is required to prepare consolidated accounts, the audited financial statements shall comprise such consolidated accounts drawn up in accordance with Regulation (EC) N^o 1606/2002¹³ (*Article 4(3)*). Where the issuer is not required to prepare consolidated accounts, the audited financial statements shall comprise the accounts prepared in accordance with the national law of the Member State in which the company is incorporated. 18 Member States replied that audited financial statements of issuers, who are not required to prepare consolidated accounts, are not needed to contain accounts drawn up in accordance with Regulation N^o 1606/2002.
20. 11 Member States have stated that the management reports contain additional information to those listed under Article 46 of Directive 78/660/EEC¹⁴ and Article 36 of Directive 83/349/EEC¹⁵ if the issuer is required to draw up consolidated accounts (*Article 4(5)*). 18 Member States have stated that the management report does not have to contain additional information to those listed under article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC if the issuer is required to draw up consolidated accounts.

Section C – Periodic information - Half-yearly financial reports

21. 28 Member States have responded that the deadline for publishing half yearly financial report is not shorter than 2 months after the end of the half yearly period (*Article 5(1)*). 1 Member State has responded that the deadline for publishing half yearly financial reports is shorter than 2 months after the end of the half yearly period. 6 Member States have indicated that they require issuers of shares or debt securities to also prepare and make public a half-yearly financial report covering the second six months of the financial year.

¹² Directive 2003/71 /EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

¹³ Regulation (EC) N^o 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards

¹⁴ Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies

¹⁵ Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts

22. 29 Member States have responded that they do not require issuers to ensure that the half-yearly financial reports remain available to the public for longer than five years (*Article 5(1)*).
23. 4 Member States have responded that the half yearly financial reports include more elements than required by Article 5(2) of TD. 25 Member States have responded that the half-yearly financial reports do not include more elements than required by the Directive.
24. 7 Member States indicated that where the issuer is not required to prepare consolidated accounts, the condensed set of financial statements shall contain further elements in addition to the condensed balance sheet, the condensed profit and loss account and the explanatory notes on these accounts (*Article 5(3)*). 22 member States have responded that where the issuer is not required to prepare consolidated account, then the condensed set of financial statements does not have to contain additional elements. 14 Member States have responded that they require the condensed set of half-yearly financial statements to be always prepared in accordance with IFRS pursuant to regulation N^o 1606/2002/EC and 15 Member States have responded that they do not require this.
25. The majority of the Members stated that the issuers who do not prepare consolidated accounts, are not required to disclose related parties transactions other than those referred to Article 43(1) (7b) of Directive 78/660/EEC (*Article 4 L2D*). The Member States, who demand this, argue that a wider disclosure is needed than established in the TD in terms of profit or loss detailed and nature of transaction.

Section D – Periodic information – Interim Management Statements and quarterly financial reports

26. 27 Member States have responded that they require issuers, whose shares are admitted to trading on a regulated market, to make public a statement by their managements during the first six-month period of the financial year and another statement by its management during the second six month period of the financial year, in line within a period described in Article 6(1): between ten weeks after the beginning and six weeks before the end of the relevant six-month period.. 2 Member States have responded that as the home Member State, they require issuers, whose shares are admitted to trading on a regulated market, to publish interim management statements more than one in the first and second half of the year. It should be noted that the recent provisions might lead to the situation where IMSs prepared in different Member States cover different periods, depending on the actual date when they are prepared.
27. 12 Member States have responded that they require issuers to publish quarterly financial reports and 17 Member States have responded that they do not require issuers to publish quarterly financial reports (*Article 6(2)*). 12 Member States have indicated that this requirement is set in the national legislation and 10 Member States have indicated that the requirements are set in the rules of the regulated market.

Section E – Periodic information – Responsibility and liability

28. The following table presents the number of Member States lying responsibility for the information to be drawn up and made public through the annual financial reports, half-yearly financial reports, interim management reports, quarterly financial reports under Article 7 and Article 16 TD¹⁶:

29. Table

	Issuer	Administrative body	Management body	Supervisory body	No information provided
Annual financial report	22	13	13	6	7
Half-yearly financial report	22	12	14	7	4
Interim Management Statement	21	10	11	5	4
Quarterly Financial Report	21	9	12	7	5
Information covered by Article 16	24	9	11	9	1

30. 5 Member States have indicated that the responsibility for the information in the annual financial report and the half-yearly financial report also lies with any person or internal/external body in addition to the issuer or its administrative, management or supervisory bodies.
31. 4 Member States have responded that the responsibility for the interim management statements or quarterly financial report lies with any person or internal/external body in addition to the issuer or its administrative, management or supervisory bodies.
32. National company law rules set the responsibility of the issuer and its bodies divergently across the EU. In some Member States the general responsibility for financial information is on the issuer; however certain Member States also put direct responsibility on certain bodies of the issuer. The different solutions vary widely. A more harmonised approach would only be possible if the relevant company law provisions would be further harmonised in this regard, however this issue even seems to be out of the scope of the forthcoming TD review.

Section F – Exemptions

33. 16 Member States have an exemption from publishing a half-yearly financial report for credit institutions whose shares are not admitted to trading on a regulated market and which have, in a continuous or repeated manner, only issued debt securities provided that the total nominal amount of all such debt securities remains below EUR 100.000.000 and that they have not published a prospectus under Directive 2003/71/EC (*Article 8(2)*). Main reasons for applying that discretion were that legislation provides for other tools for protection of investors, political reasons, easing for issuers, implementation as an issuer and issuance related exemption, considered not to be necessary, e.g.

¹⁶ Article 16 TD covers additional information to be made public by the issuer.

because no issuers would have been concerned, implementation of the minimum requirements of TD into national law only or consistency reasons. The application of this exemption for credit institutions acting as small-size issuers of debt securities is quite balanced. In its response to the Commission's consultation on the modernization of the TD, ESMA has already highlighted that the modernization of TD should not lead to reduced transparency. In terms of small issuers investors should be entitled to the same level of protection no matter of the size of the company, However one Member State considered that there is room for an adapted disclosure regime for small listed companies and there should be more flexibility for smaller issuers (e.g.: in terms of deadlines for publication of half-yearly financial reports, methods of disclosure of periodic financial information).

34. 18 Member States as the home Member State chose not to apply Article 5 (obligation to publish semi-annual reports) to issuers already existing at the date of the entry into force of Directive 2003/71/EC which exclusively issue debt securities unconditionally and irrevocably guaranteed by the MS, its regional or local authorities (*Article 8(3)*). Reasons given by Member States for applying or not this particular discretion include political reasons, easing for issuers, no such issuers existing, historical reasons, no need of a half-yearly report due to nature of instruments or the needs of the domestic market.

Section G - Notification of the acquisition or disposal of major holdings

35. 7 Member States have implemented an additional threshold lower than 5%. 2 MS have set the thresholds in 1% steps beginning with 3%. Most Member States (19) have implemented thresholds higher than 75%. 6 Member States give historical reasons. Member States mention transparency and legal reasons (based on national company or takeover law) (*Article 9 (1)*). 13 Member States allow additional thresholds in the statutes of the issuers. 2 Member States mention that it is not forbidden by law and hence allowed.
36. 9 Member States apply the major shareholding disclosure obligation in cases where a notification threshold was reached or crossed intra-day but the net end-of day position remained unchanged at the end of the trading day. The Member States applying this requirement do so due to transparency reasons. Member States that do not apply this requirement do so because they do not consider it to be necessary or state that there is no requirement under national law to disclose in such case. Member States who waived to apply the requirement do not consider it to be useful to implement such requirement.
37. Only 2 Member States apply the 30% and 75% thresholds, where they also apply a threshold of one third and of two thirds (*Article 9(3)* of TD). The Member States not applying this provision give historical, legal, and systematic (5% steps) reasons for not applying both thresholds. In general it has not been considered to be necessary to have both thresholds (except for 4). (*Article 9(3)*)
38. 1 Member State has set the short settlement cycle shorter than the maximum length described by *Article 5* of L2D: three trading days following the transaction (*Article 9(4)* TD).
39. 13 Member States have shortened the 4 trading days deadline(*Article 12(2)* TD) for market makers who conduct, intend or cease to conduct market making activities on the issuer concerned and want to benefit from the exemption as laid down in *Article 9 (5)* TD to notify this vis-à-vis the supervisory authority (*Article 6 (1)* of L2D).
40. 8 Member States require market makers to hold the shares or financial instruments held for market making activity purposes in a separate account for the purposes of identification (*Article 9(5)* of TD - *Article 6(2)* of L2D). As to the reasons for holding such financial instruments in different account 5 Member States did so due to better identification and monitoring possibilities, legal reasons, historical reasons. In 3 Member States out of the 5 who require different accounts due to identification purposes, the above mentioned financial instruments only have to be held in different accounts upon

request, but not automatically. Member States who answered with “No” mainly take the view that the minimum requirements of the TD are sufficient. In 2 Member State States it seems to be an obligatory rule for market makers to hold financial instruments held for market making activity purposes on different accounts..

41. No Member State has set additional requirements to those listed under points a) and b) of Article 9(6) of TD for credit institutions or investment firms in order to be exempted from notification of their voting rights to the issuer under the trading book exemption provided by Article 9(6) of TD. Article 9(6) TD requires that the voting rights in the trading book do not exceed 5% and that the credit institution or investment firm ensures that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the issuer.
42. As a general comment – not directly related to the options and discretions presented in this report - it might be concluded that this mapping exercise reveals a significant divergence in the trigger levels, deadlines and procedures for the reporting requirements of major shareholdings compared to the reporting requirements provided in the proposal for a Regulation on Short Selling. It should be mentioned that CESR launched a fully-harmonized pan-European regime of disclosure on short selling positions in March 2010.

Section H - Acquisition or disposal of major proportions of voting rights

43. 12 Member States apply the notification requirements defined in paragraphs 1 and 2 of Article 9 to a natural person or legal entity in additional cases as compared to those set out in point (a) to point (h) of Article 10 TD. Reasons are amendments due to national (civil) law provisions, amendments due to historical reasons, and amendments due to transparency reasons.
44. 10 Member States provide rules or guidance on when there is a concerted exercise of voting rights between two parties and what the content of that rules/guidance is. Main reasons mentioned by Member States were transparency purposes and legal reasons.

Section I - Procedure on the notification and disclosure of major holdings

45. 11 Member States require additional information for major shareholding disclosure notifications than that set out in Article 12 paragraph 1 point (a) to point (d) of TD (*Article 12(1) (a) – (d)*).
46. 25 Member States require the notifying investor to provide the *percentage of voting rights* held. 25 Member States require the notifying investor to provide the *number of voting rights* held. 22 Member States require both. 15 Member State require the notifying investor to provide the corresponding *percentage of share capital* of the issuer held. (Article 12 (1)).
47. 13 Member States, as the home Member State, require investors to notify the issuer earlier than within four trading days after the date on which the shareholder, or the natural person or legal entity learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard of the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect or is informed about the changes in the proportion of voting rights (Article 12 (2) TD).
48. With regard to the issue on when the shareholder should have learned of the acquisition, disposal or possibility of exercising the voting rights, 4 Member State require shareholders to disclose on the day of conclusion of the transaction/acquisition//date of transfer of the legal ownership. 1 Member State

requires disclosing on the following trading day. 16 Member States explicitly state that they stick to a 2-day-term following the transaction.

49. 24 Member States use standard notification forms for major shareholdings. Out of these 12 use the form recommended by the European Commission, while 12 Member States have implemented a local notification form. 5 Member States don't use standard notification forms for major shareholdings, however 1 Member State will introduce this form soon, and another Member State envisages implementing such standard form as well. (*Article 9(1) and 12(2)*)
50. 28 Member States do not require additional action from investors that wish to benefit from the major shareholder notification exemptions in addition to the requirements set out in articles 9(5)¹⁷, 9(6)¹⁸, 12(4)¹⁹ and 12(5)²⁰ of the TD and articles 6 and 10 of the L2D. (*Article 12(4)-(5) TD and Article 10 L2D*)
51. 10 Member States require issuers to publish the information contained in the notification earlier than three trading days after the receipt of the notification. 5 Member States no later than 1 day, 3 Member States no later than 2 days. 2 Member States respectively as soon as possible (in general within the trading day) / without undue delay.
52. In 7 Member States issuers are exempted from the obligation to publish major shareholding notifications. Member States that opted for a publication by the authority without requiring the issuer for a publication mainly do so in order to avoid duplication of publications and to reduce the administrative burden of the issuer. (*Article 12(7)*).
53. 22 Member States' authorities do not publish the major shareholding notifications within three trading days after the receipt of the notifications under the conditions laid down in Article 21 of the TD (publication of regulated information), while 6 Member States do.
54. 18 Member States apply additional thresholds to the persons mentioned in Article 13 (1) TD. Article 13(1) regulates natural persons or legal entities who hold, directly or indirectly, financial instruments that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market. 14 have provided details. The main purpose of the Member States is to have a general regulation for all persons subject to the disclosure notification obligation. 2 Member States mention that holdings pursuant to Articles 9, 10 and 13 TD are aggregated anyway. 21 Member States require the aggregation of shareholdings with the holdings of 'financial instruments', while 7 Member States do not.
55. 9 Member States require additional information to be included in the notification than set out in Article 11(3) point (a) to (g) L2D.
56. In general 15 Member States indicated that they impose additional requirements on shareholders in addition to the requirements mentioned above relating to the notification of major holdings, 14 Member States did not impose such additional requirements. (Article 9–13)
57. 12 Members require, as home Member State, that, when the proportion of its own shares held by the issuer reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights, that proportion

¹⁷ Article 9(5) exempts market makers from the requirements of notification of the acquisition or disposal of major holdings reaching or crossing the 5 % threshold, subject to certain criteria.

¹⁸ Article 9(6) TD provides that Home Member States may provide that voting rights held in the trading book, ... of a credit institution or investment firm shall not be counted for the purpose of notification of the acquisition or disposal of major holdings, subject to certain criteria

¹⁹ Article 12(4) TD contains the provisions on aggregating holdings of the parent undertaking of a management company under Articles 9 and 10 with the holdings managed by the management company under the conditions laid down in Directive 85/611/ EEC.

²⁰ Article 12(5) TD contains the provisions on aggregating holdings of the parent undertaking of an investment firm authorised under Directive 2004/39/EC under Articles 9 and 10 with the holdings which such investment firm manages on a client-by-client basis.

needs to be made public within a time limit shorter than the one set out in *Article 14* TD (four trading days following such acquisition or disposal). This shorter time limit varies from immediately or as soon as possible to 2 calendar or trading days. Several Members reported that, in considering whether to apply or not to apply this particular discretion, they considered the need to ensure consistency with the timeframe for notification of major holdings by other shareholders. Another main reason reported for not applying this discretion is that the timeframe in *Article 14* TD seems reasonable.

58. 6 Members require, as home Member State, that the issuer has to disclose the total number of voting rights and capital more frequently than as set out in *Article 15* TD (at the end of each calendar month during which an increase or decrease of such total number has occurred). The higher frequency varies from immediately to each month end (regardless of whether any increase or decrease has occurred). Moreover, 1 Member is in the process of introducing stricter requirements in this respect, and another Member does not require but recommends the issuer to declare the new total number of shares and voting rights as soon as possible and to notify the respective new thresholds. The reasons reported for applying this particular discretion are investor protection and an easier calculation of thresholds. The main reason reported for not applying this discretion is that the timeframe in *Article 15* of the TD seems sufficient and a higher frequency would be too burdensome for the issuer or the shareholders.
59. 9 Members impose, as home Member State, other disclosure requirements in addition to those set out under *Articles 14*²¹ and *15*²² of the TD. The other requirements *include* for example additional thresholds or an obligation on the issuer to disclose information on all transactions on its own shares, on its shareholders' structure, on the total number of financial instruments without voting rights, on changes regarding the type of attribution of voting rights or on the breakdown of the total voting rights by type and class of shares. The additional disclosure requirements referred to by Member States may derive from other EU legal instruments (for instance, Takeover Directive). The main reasons reported for applying this discretion are the existence of similar provisions in the pre-TD regime, an enhancement of transparency or the consistency with the major holding notification requirements for other shareholders.

Section J - Additional information

60. 5 Members require, as home Member State, issuers to publish additional information to that required by *Article 16*²³ TD. The additional information required varies among those Member States. The main reason for applying additional requirements is to increase transparency, investor protection and market efficiency. It is noticed however that the answers provided in relation to this section of the report are not fully comparable because Members may have adopted different approaches in the breakdown of certain obligations between (i) requirements "additional" to those set out in *Article 16* of the TD (notification of major holdings), and (ii) requirements "additional" to those set out in *Articles 17*²⁴ and *18*²⁵ of the TD (exercise of rights by shareholders and by debt securities holders). Moreover, some Members reported as "additional requirements" obligations imposed by other EU legal instruments (such as CRAs Regulation and Market Abuse Directive) and therefore applicable in all Member States.

²¹ Article 14 provides that the issuer shall make public the acquisition or disposition of own shares within four trading days, where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights.

²² Article 15 TD provides that issuers shall disclose to the public the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred.

²³ Article 16 TD covers additional information to be made public by the issuer.

²⁴ Article 17 TD contains the provisions on information requirements for issuers whose shares are admitted to trading on a regulated market

²⁵ Article 18 TD contains the provisions on Information requirements for issuers whose debt securities are admitted to trading on a regulated market

Section K - Information requirements for issuers whose shares are admitted to trading on a regulated market

61. 3 Members require, as home Member State that issuers ensure that other facilities and information are made available to enable holders of shares to exercise their rights, in addition to those listed under *Article 17(2)* TD. The additional information and facilities required mainly relate to: (i) information to be made available before the shareholders' meeting (especially with regard to material or extraordinary resolutions), (ii) corporate governance, (iii) approval of financial information, (iv) major corporate transactions, and (v) modalities by which shareholders can exercise their rights. The main reason for those additional requirements is to allow holders of shares to make informed decisions when exercising their rights. The additional requirements may be closely connected to obligations set out in other EU legal instruments, such as the Shareholders' Rights Directive, the Prospectus Directive, the accounting Directives, the Takeover Directive and the Market Abuse Directive.
62. No Member, as home Member State, requires that the decision on the use of electronic means for the purposes of conveying information to shareholders has to meet conditions additional to those laid down under *Article 17(3)* TD. The main reasons reported are that the conditions in the TD were considered sufficient for the purposes of investor protection and equal treatment of shareholders and that additional requirements were not deemed necessary.

Section L - Information requirements for issuers whose debt securities are admitted to trading on a regulated market

63. 1 Member State requires, as home Member State requires that issuers ensure that other facilities and information are made available to enable holders of debt securities to exercise their rights, in addition to those listed under *Article 18(2)* TD. The additional information and facilities required mainly relate to extraordinary transactions, corporate governance, approval of financial information, insolvency proceedings and major corporate transactions. The main reason for those additional requirements is to allow holders of debt securities to make informed decisions when exercising their rights. Like in the case of additional disclosure obligations vis-à-vis shareholders, the additional requirements reported may be closely connected to obligations set out in other EU legal instruments, such as the Shareholders' Rights Directive, the Market Abuse Directive and company law.
64. No Member, as home Member State, requires that the decision on the use of electronic means for the purposes of conveying information to holders of debt securities has to meet conditions additional to those laid down under *Article 18(4)* TD. The main reasons reported are that additional requirements were not deemed necessary and that the conditions imposed in the TD were considered as sufficient for the purposes of equal treatment and correct and timely information of debt securities holders. 3 Members did not implement *Article 18(4)* TD.
65. 2 Members reported that debt securities holders' meetings are not required under their national law and therefore Articles 18(2) and 18(4) of the TD have not been fully implemented in their jurisdictions. In this regard, it is noticed that the application of Articles 18(2) and 18(4) of the TD is not limited to information related to meetings of debt securities holders and that the TD provisions should apply irrespective of whether meetings of debt securities holders are recognized and whenever such meetings are held, including when those meetings are not required by legislation but held on the basis of market practice.

Section M - Home Member State control

66. 10 Member States indicated that their Competent Authority as the Competent Authority of the home Member State decided to publish on its Internet site regulated information that the issuer, or any person without the issuer's consent, having requested the admission of its securities to trading on a regulated market filed with the Competent Authority under *Article 19(1) TD*.
67. 19 Member States indicated that their Competent Authorities do not publish such information on their internet sites; among these 19 Member States 2 Member States stated that their national legislation does not provide this possibility for their Competent Authorities, while 17 Member States indicated that it is the decision of the Competent Authority not to publish such information on its website. One Member State indicated that this aspect is not addressed by its national legislation.
68. 6 Member States stated that the information is already available through the officially appointed mechanism, therefore there is no need to present them on the Competent Authority's web-site, especially that in many cases the OAM is managed by the Competent Authority and being available through the Competent Authority's web-site. Some Member states mentioned the reason for guaranteeing equal access to information for all interested parties, 3 Member States underlined the importance of providing information to the market, whereof 1 Member State stated that it is obliged by law to publish the regulated information, filed with the Competent Authority, in its Register of public companies.
69. 22 Member States indicated that they require that the draft amendment of the instrument of incorporation or statutes of the issuer should be communicated to the Competent Authority of the home Member State and to the regulated market to which its securities have been admitted to trading before the date of calling the general meeting which is to vote on, or be informed of, the amendment. 7 Member States indicated that they do not require that the draft amendment of the instrument of incorporation or statutes of the issuer should be communicated to the Competent Authority of the home Member State and to the regulated market to which its securities have been admitted to trading before the date of calling the general meeting which is to vote on, or be informed of, the amendment..
70. From 13 Member States only 3 stated that the relevant draft amendments should be provided no later than 30 days and 1 Member State at the latest 26 days before the general meeting; in another Member State only 14 days before the general meeting to vote on the draft amendments. For the other 8 Member States it is sufficient to hand in the documents as soon as possible or the day of the general meeting at the latest.
71. 6 Member States indicated that as the home Member State, they exempt issuers from the requirement under Article 19(1) of TD²⁶ in respect of information disclosed in accordance with Article 6 of Directive 2003/6/EC²⁷ or Article 12(6) of TD²⁸ (*Article 19 (2)*). 22 Member States indicated that they do not exempt issuers from the requirement under Article 19(1) of TD in respect of information disclosed in accordance with Article 6 of Directive 2003/6/EC or Article 12(6) of TD. The reasons provided by Member States show that those Member States applying this discretion do so, in order to avoid the duplication of filed information, while some others do not exempt issuers from filing such information because they use these information for supervisory and investor protection purposes.

²⁶ Article 19(1) of TD provides rules on the filing of regulated information with the competent authority.

²⁷ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)

²⁸ Article 12(6) of TD provides that the issuer shall make public all the information contained in the notification of major holdings within three trading days.

Section N - Languages

72. 21 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. 8 Member States stated that they do not have exercised the discretion. (*Article 20*)
73. 23 Member States stated that their language regime applies for regulated information in a uniform manner. 6 Member States have indicated that their language regime applies in different ways for regulated information (i.e. notification of major holdings, ongoing information, periodic information, etc); all of the 6 accepted English near their national language(s). 2 Member States stated that the reason for applying this requirement was implementing the exact (minimum) provisions of TD.

Section O - Access to regulated information

74. No Member State has reported that it would have more than one officially appointed mechanism for the central storage of regulated information (*Article 21(2)*). 5 Member States have indicated that their national laws specifically allow that there may be more than one officially appointed mechanism for the central storage of regulated information but it should be also highlighted that no Member State has raised that there would be limitations in their national laws on the number of officially appointed mechanisms. Out of this 5 Member States, 4 confirmed that – although their national provisions allow for more than one officially appointed mechanism for the central storage of regulated information – recently there is only OAM operating in their Member States. 24 Member States have indicated that they have only one officially appointed mechanism for the central storage of regulated information. In its Report to the European Commission on the ‘Development of Pan-European access to financial information disclosed by listed companies’ (CESR/10-1507), CESR proposed to maintain the underlying principle of the current network structure: information should be filed with national OAMs and a Central Access Point (CAP) operated by CESR will be the pan-European access point to regulated information.
75. 5 Member States have indicated that they require the issuer to publish parts of or all regulated information through newspapers, even if the issuer uses other types of media for publishing regulated information. 24 Member States have indicated that they do not require the issuer to publish parts of or all regulated information through newspapers, if the issuer uses other types of media for publishing regulated information.
76. None of the Competent Authorities require the issuer or the person who has applied for admission to trading on a regulated market without the issuer’s consent to provide additional information on the disclosure of regulated information to those listed under Article 12 (5) (a)–(e) L2D²⁹.
77. 26 Member States have indicated that they do not apply such additional requirements, while 3 Member States have indicated that they require that their officially appointed mechanism for the central storage of regulated information should comply with requirements additional to the minimum quality standards of security, certainty as to the information source, time recording and easy access by end users.

²⁹ Article 12 (5) (a)–(e) L2D requires the issuer to be able to communicate to the competent authority (upon request) certain information (a(-e)), in relation to any disclosure of regulated information.

Section P - Third countries

78. 22 Member States indicated that their competent authority as the competent authority of the home Member State exempt issuers, whose registered office is in a third country from requirements under Articles 4 to 7³⁰ and Articles 12(6)³¹, 14³², 15³³ and 16 to 18³⁴ of TD, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent (Article 23(1) TD). 9 Member States have indicated that their Competent Authority does not grant such exemptions for issuers, whose registered office is in a third country. Among these 9 Member States that have indicated that their Competent Authority does not grant such exemptions for issuers, whose registered office is in a third country. 4 Member States stated that their national legislation does not allow their Competent Authorities to grant such exemptions, while 5 Member States indicated that their Competent Authorities have this possibility provided by their national provisions, but the Competent Authority decided not to grant such exemptions for issuers, whose registered office is in a third country and one of them stated in addition that such an exemption can only be granted based upon a decision of the European Commission and by national law.
79. 10 Member States indicated that with regard to third countries equivalence, the *time frames* for the notification to the issuer and for the subsequent disclosure to the public by the issuer may be different from those set out in Articles 12(2) and 12(6) of TD. (Article 19 L2D)
80. 19 Member States indicated that with regard to third countries equivalence, the *time frames* for the notification to the issuer and for the subsequent disclosure to the public by the issuer may not be different from those set out in Articles 12(2) and 12(6) of TD. (Article 19 L2D)
81. 4 Member States stated that the requirements laid down in the legislation of a third country as equivalent, when the time period for disclosing this information to the public by the issuer from that country is seven trading days or shorter; only one other Member State's timeframe is shorter than five trading days.
82. 10 Member States indicated that when as the home Member State, they set "more stringent" requirements to issuers - in line with Article 3 of TD -, then the assessment of equivalence of third country requirements are actually based on these "more stringent" requirements (unless the requirements of equivalence are directly set by Articles 13-23 of L2D). 19 Member States stated that even if there are "more stringent" requirements established for issuers, the assessment of equivalence of third country requirements are not based on these "more stringent" requirements. 3 Member State declared that they have not implemented "more stringent" requirements and that the assessment is based on the requirements of L2D.

Section Q - Competent authorities and their powers

83. In relation to Member State designation of a Competent Authority other than the central Competent Authority for the purpose of the examination of information in accordance with the relevant reporting framework and take appropriate action in the case of discovered infringements (Article 24(4) (h)), 4 Member States designated a Competent Authority other than the central Competent Authority. Limited information was received regarding reasons for applying or not applying this discretion. This in-

³⁰ Articles 4 to 7 TD –provisions on periodic information.

³¹ See footnote 27.

³² See footnote 20.

³³ See footnote 21.

³⁴ See footnotes 22-24.

cludes maintenance of the framework in place previous to TD, efficiency with one authority (not applying) and legal provision (applying).

84. In relation to Member State's allowing Competent Authority to delegate tasks pose of the examination of information in accordance with the relevant reporting framework and take appropriate action in the case of discovered infringements (Article 24(2)), 4 Member States allow their Competent Authorities to delegate tasks. The type of tasks that are allowed to be delegated includes: technical tasks, examination and monitoring of financial information, request of information and the reception / control of notifications of major shareholders.
85. Limited information was received regarding reasons for not applying this discretion. This includes maintenance of the framework in place previous to TD, the existence of only one Competent Authority and legal provisions.
86. In relation to Member States providing their Competent Authorities with additional powers than those listed in Article 24(4), 11 Member States provide that their Competent Authorities have additional powers. The nature of these powers includes the appointment of experts or external auditors and the request of information from issuers, shareholders, and holders of financial information.
87. The reasons for providing these additional powers are diverse, with the most common being to protect investors and/or maintain a smooth market approach, to reflect the powers that the Competent Authority had prior to TD, to enable the Competent Authority to exercise powers in connection with MAD investigation . The most common reason for not providing additional powers is the view that the powers already provided in the Directive are sufficient.
88. Within the EU, no unique model of financial supervision exists. None of the European level rules provide for a preferred model of national supervisory structures. The Commission's view on this issue has been described as set out in the de Larosière report and the EC Communication on European financial supervision.

Section R - Penalties

89. This part reflects the Competent Authority's powers to take or impose measures/penalties in respect of persons responsible, where the provisions adopted in accordance with the TD have not been complied with, in conformity with national law (Article 28). As detailed below, the findings in the Membership are diverse in relation to different measures/penalties.
90. All Member States with the exception of 1 responded that they provide that appropriate administrative measures be taken or imposed.
91. All Member States with the exception of 2 responded that they provide that civil and/or administrative penalties may be taken or imposed. It should be noted that the 2 Member States that stated that they do not provide such powers indicated that they do have the power to impose pecuniary penalties.
92. 17 Member States responded that they provide that additional measures/penalties may be taken or imposed.
93. 6 Member States responded that their Competent Authorities may disclose to the public every measure taken or penalty imposed for infringement of the provisions adopted in the TD, save where such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.
94. The information provided by Member States in relation to the Competent Authorities powers regarding measures / penalties include: to impose a fine/pecuniary penalty (20 Member States) , criminal prosecution, criminal penalties and/or imprisonment (9 Member States) ; and suspension and/or prohibition of trading, listing and/or offering of securities on at least a temporary basis (7 Member States).

95. Limited information was received in relation to the reasons for applying (not applying) the discretion to impose measures / penalties. For the application of the discretion reasons include deterrence, prevention and/or sanction (3 Member States), domestic market needs (1 Member State) and transparency (1 Member State).
96. 3 Member States provided the reasons for not applying the discretion to provide additional measures/penalties to the provisions of the Directive and this relates to the existing measures/sanctions being considered to be sufficient and/or effective.
97. The reasons given for providing that the Competent Authority disclose to the public every measure taken or penalty imposed for infringement of the provisions adopted in the TD include: dissuasive effect leading to higher level of investment protection and effective reputational incentives.
98. In December 2007 the European Commission was requested by the ECOFIN Council to take part in a study of sanctioning regimes in their present state in the European financial services sector, in order to compare the consistency, application, effectiveness and convergence rate of sanctions across the Member States. In 2008 the Commission invited the Level 3 Committees, to provide assistance in conducting such a review and upon this request the L3 Committees carried out a series of studies. By considering the results of this work the Commission is recently conducting further work concerning sanctioning regimes within the EU.
99. In the course of 2008 and 2009 CESR's Review Panel prepared a mapping report entitled „CESR Report on the mapping of supervisory powers, administrative and criminal sanctioning regimes of Member States in relation to the Transparency Directive (TD)” (CESR/09-058), which covered the sanctioning regimes available in the Member States with regard to TD.
100. 23 Member States responded that their Member State provided that their Competent Authority may disclose to the public every measure taken or penalty imposed for infringement of the provisions adopted in accordance with TD, save where such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.
101. Different policies are adopted by the Competent Authorities in relation to the publication of measures or sanctions. There are differing views among Member States as to whether a) the Directive requires that all Competent Authorities must be able to disclose any administrative measure or sanction but have a discretion whether to do so in each case (except for the two circumstances specifically mentioned under Article 28(1) where disclosure is restricted), or b) whether the Directive intends to impose an obligation on Competent Authorities to disclose all administrative measures or sanctions, except in the two aforesaid circumstances specifically mentioned in Article 28(1) where Competent Authorities must assess whether those circumstances exist and then exercise a discretion to disclose or not.

Section S - Transitional provisions

102. 8 Member States stated that, in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005, they have exempted issuers who are incorporated in a third country, from drawing up their financial statements in accordance with Article 4(3) and its management report in accordance with Article 4(5) as long as they fulfil the conditions laid down under Article 30(3) (a) – (c) of TD.
103. 6 Member States have indicated that in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005, they exempt issuers from disclosing half-yearly financial report in accordance with Article 5 for 10 years following 1 January 2005, provided that the home Member State had decided to allow such issuers to benefit from

the provisions of Article 27 of Directive 2001/34/EC³⁵ at the point of admission of those debt securities. By applying this discretion the obligation to publish half-yearly reports could be exempted for a fixed term of 10 years. This exemption will expire on in 2015 and no issuer will be exempted from publishing half-yearly financial reports from 2016 on.

Section T - General additional questions

104. Section T describes general additional questions - regarding satisfaction, difficulties encountered, effectiveness, plans to change, enforcement and court cases.

Satisfaction

105. Almost all Members said that they were satisfied with the practical application of the discretions in their Member States, but only a very few answered the question and “described the reasons why they are satisfied or not,” but this gives only a vague overview about the satisfaction in the Member States. The second question about the satisfaction with the practical application of the additional/more stringent requirements in their Member States was answered similarly.

Difficulties

106. Only two Member States were facing difficulties with the application of options and discretions: One Member State noted that difficulties could be linked to 1. in relation to dissemination 2. regarding those issuers where the Competent Authority is only the host or 3. issuers of the home Competent Authority that are not listed in their home Member State. Another Member State answered that it has experienced a number of cases where issuers have not been in a position to meet the obligation to notify the total number of voting rights and capital to the public by the end of the calendar month. This occurred where there were changes to major holdings on the last two days of the month. In these instances, issuers may not be in a position to report the necessary figures by month end, thus resulting in non compliance with Article 15.

107. The Member States did not face “difficulties” regarding the practical application of the additional/more stringent requirements in their Member States are concerned there were no difficulties reported.

Effectiveness

108. 17 Member States say that the discretions are effective, without further explanations. Only 2 Member States gave descriptions why they are effective. 1 Member State considers them as not effective, without explaining why.

109. As far as additional/more stringent requirements are concerned, 13 Member States say that the discretions are effective, without further explanations. Only 3 Member States gave a description why they are effective. 1 Member State again considers them as not effective, without explaining why, 3 Member States hope that they are effective.

Plans to change

110. 20 Member States have no plans/thoughts for changes of the application of the discretion in future legislation, while 6 Member States clearly announced changes, 2 Member States in detail.

³⁵ Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities

111. There is a draft law which seeks to introduce a lower 3% threshold, a statement of intention, as well as a separate draft law which seeks to extend article 10 to include instruments of similar economic effect.
112. As far as additional/more stringent plans/thoughts for changes of the application of the discretion in future legislation is concerned 19 Member States have no changes, while 6 Member States clearly announced changes, 2 Member States in detail.
113. 1 Member State's legislator considers additional notification duties for holders of financial instruments that give the possibility (but not the right) to acquire shares with voting rights attached.
114. 1 Member State has published draft rules for public consultation requiring the disclosure of all instruments of similar economic effect to the holding of shares. According to the proposal, all instruments would need to be aggregated towards the existing thresholds. The introduction of additional thresholds is also under consideration.

Enforcement and Court Cases

115. As far as "significant" enforcement and court cases with regard to the exercise of a particular discretion are concerned on the one hand 22 Member States answered with no, only 5 Member States with not applicable but on the other hand, as far as "significant" enforcement and court cases with regard to the exercise of a particular "additional / more stringent measure" are concerned only 19 Member States answered with no, and 8 with not applicable.

PART 1 – NATIONAL OPTIONS AND DISCRETIONS

SECTION A - GENERAL PROVISIONS

This section contains questions on the general provisions.

This group of questions and the following under C, D, E, and F asks questions on periodic information.

Article 1(3) TD

116. In accordance with Article 1(3), Member States may decide not to apply the provisions of Article 16(3), 18(2)-(4) to securities issued by them, their regional or local authorities, which are admitted to trading on a regulated market.

117. There seems to be a number of Member States where the Member State and its regional and local authorities are treated differently with respect to the discretion included in Article 1(3) TD. UK does only apply this specific discretion regarding the securities issued by its regional and local authorities but not to securities issued by its Member State. BG stated that the national rules on issuers are also obligatory for securities issued by local authorities and the only case where this discretion is applied is for the securities issued by the Bulgarian government. BG also stated that it does not have regional authorities. IT mentioned that the provisions concerning regulated information do not apply to financial instruments other than equity issued or guaranteed by the Italian government.

Article 1(3) TD in relation to the application of Article 16(3) regarding securities which are admitted to trading on a regulated market issued by the Member States.

118. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned in Article 16(3) to securities which are admitted to trading on a regulated market issued by them³⁶.

Major findings

119. 16 Member States (AT,BE,BG,DE,EE,ES,FI,FR,IE,IT,LT,LU,LV,MT,PT,SE) have indicated that the securities which are admitted to trading on a regulated market issued by their Member State are exempted from the provisions mentioned in Article 16(3) TD. 13 Member States (CY,CZ,DK,EL,HU,IS,NL,NO, PL,RO,SI,SK,UK) indicated that the provisions mentioned in Article 16(3) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their Member State.

120. Some Member States mentioned that the requirements of Article 16(3) TD are also not applicable for securities issued by an EU Member State or issued by international organisations of a public nature of which one or more EU Member States are members. (DE, EE, IT). LT stated that the Member State, local, regional authorities do not fall in the definition of “issuer” under its national provisions. LV mentioned that besides securities issued by the Member State, its local and regional authorities, also the securities issued by their institutions or agencies are also exempted according to national law.

Article 1(3) TD in relation to the application of Article 16(3) regarding securities which are admitted to trading on a regulated market issued by the regional authorities

³⁶ Article 16(3) TD requires the issuer of securities admitted to trading on a regulated market to make public any new loan issues and in particular any guarantee or security in respect thereof without delay.

121. In accordance with Article 1(3), Member States may also decide not to apply the provisions mentioned in Article 16(3) to securities which are admitted to trading on a regulated market issued by their regional authorities.

Major findings

122. 15 Member States (AT, BE, DE, EE, ES, FI, FR, IE, LT, LU, LV, MT, PT, SE, UK) have indicated that the securities which are admitted to trading on a regulated market issued by their regional authorities are exempted from the provisions mentioned in Article 16(3) TD. 13 Member States (CY, CZ, DK, EL, HU, IS, IT, NL, NO, PL, RO, SI, SK) indicated that the provisions mentioned in Article 16(3) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their regional authorities. BG stated that they do not have regional authorities; therefore the correct answer for them would rather be not applicable (N/A). LT stated that there are no issued securities of local / regional authorities. MT stated that there are no securities issues and admitted to trading by regional authorities.

Article 1(3) TD in relation to the application of Article 16(3) regarding securities which are admitted to trading on a regulated market issued by the local authorities

123. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned in Article 16(3) to securities which are admitted to trading on a regulated market issued by their local authorities.

Major findings

124. 15 Member States (AT, BE, DE, EE, ES, FI, FR, IE, LT, LU, LV, MT, PT, SE, UK) have indicated that the securities which are admitted to trading on a regulated market issued by their local authorities are exempted from the provisions mentioned in Article 16(3) TD. 14 Member States (BG, CY, CZ, DK, EL, HU, IS, IT, NO, NL, PL, RO, SI, SK,) indicated that the provisions mentioned in Article 16(3) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their local authorities. DE stated that its local authorities do not issue securities. MT stated that there are no securities issues and admitted to trading by its local authorities.

Reasons

125. The most common reasons for applying this specific discretion are: historical reasons, the specialities of the local capital market, to be fully in line with the provisions of TD. The most common reasons provided for not applying this specific discretion was transparency.

Article 1(3) TD in relation to the application of Article 18(2) regarding securities which are admitted to trading on a regulated market issued by the Member States

126. In accordance with Article 1(3), Member States may decide also not to apply the provisions mentioned in Article 18(2)³⁷ to securities which are admitted to trading on a regulated market issued by them.

³⁷ According to Article 18(2) the issuer shall ensure all the facilities and information - necessary to enable debt securities holders to exercise their rights – are publicly available in the home Member State and that the integrity of data is preserved.

Major findings

127. 15 Member States (AT, BE, BG, EE, ES, FR, IE, IT, LT, LU, LV, MT, NO, PT, SE) have indicated that the securities which are admitted to trading on a regulated market issued by their Member State are exempted from the provisions mentioned in Article 18(2) TD. 14 Member States (CY, CZ, DE, DK, EL, FI, HU, IS, NL, PL, RO, SI, SK, UK) indicated that the provisions mentioned in Article 18(2) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their Member State.

Reasons

128. The following reasons were provided: the requirements of Article 18(2) TD are also not applicable for securities issued by an EU Member State or issued by international organisations of a public nature of which one or more EU Member State are members; or the Member State, local, regional authorities do not fall in the definition of “issuer” under national provisions.

Article 1(3) TD in relation to the application of Article 18(2) regarding securities which are admitted to trading on a regulated market issued by the regional authorities

129. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned in Article 18(2) to securities which are admitted to trading on a regulated market issued by their regional authorities.

Major findings

130. 13 Member States (AT, BE, EE, ES, IE, LT, LU, LV, MT, NO, PT, SE, UK) have indicated that the securities which are admitted to trading on a regulated market issued by their regional authorities are exempted from the provisions mentioned in Article 18(2) TD. 15 Member States (CY, CZ, DE, DK, EL, FI, FR, HU, IS, IT, NL, PL, RO, SI, SK) indicated that the provisions mentioned in Article 18(2) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their regional authorities. BG stated that they do not have regional authorities; therefore the correct answer for them would rather be not applicable (N/A).

Article 1(3) TD in relation to the application of Article 18(2) regarding securities which are admitted to trading on a regulated market issued by the local authorities

131. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned in Article 18(2) to securities which are admitted to trading on a regulated market issued by their local authorities.

Major findings

132. 13 Member States (AT, BE, EE, ES, IE, LT, LU, LV, MT, NO, PT, SE, UK) have indicated that the securities which are admitted to trading on a regulated market issued by their local authorities are exempted from the provisions mentioned in Article 18(2) TD. 16 Member States (CY, BG, CZ, DE, DK, EL, FI, FR, HU, IS, IT, NL, PL, RO, SI, SK) indicated that the provisions mentioned in Article 18(2) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their local authorities. MT stated that there are no securities issues and admitted to trading by its local authorities.

Reasons

133. The most common reasons for applying this specific discretion are: historical reasons, the

specialities of the local capital market, to be fully in line with the provisions of TD. Further reasons provided are: special rules apply to States (public entities) financial statements, as well as to the other information published by such entities; the discretion was applied based on existing separate regulation and supervision of public authorities' debt obligations; concerning regional authorities and local authorities, it is up to the issuer (i.e. the regional and local authorities) to decide whether it wishes to be submitted to the legal obligations governing the bondholders' general assembly which include publication and dissemination process (however the Competent Authority does not impose such requirements).

134. Some reasons provided for not applying this specific discretion were transparency and historical reasons. Further reasons provided are: creating equal treatment of all bondholders and to facilitate the conducting of general meetings; the public nature of the issuers and the specific legal framework and characteristics of the debt instruments issued by public authorities do not require application of this provision; the Member State, local, regional authorities do not fall in the definition of "issuer" under the national provisions; general approach for implementing TD was implementing the minimum provisions. HU and SK stated that the category of "meeting of debt securities holders" is not recognised by their national legislation.

Article 1(3) TD in relation to the application of Article 18(3) regarding securities which are admitted to trading on a regulated market issued by the Member States

135. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned in Article 18(3)³⁸ to securities which are admitted to trading on a regulated market issued by them.

Major findings

136. 15 Member States (AT, BE, BG, EE, ES, FR, IE, IS, IT, LT, LU, LV, MT, NO, SE) have indicated that the securities which are admitted to trading on a regulated market issued by their Member State are exempted from the provisions mentioned in Article 18(3) TD. 14 Member States (CY, CZ, DE, DK, EL, FI, HU, NL, PL, PT, RO, SI, SK, UK) indicated that the provisions mentioned in Article 18(3) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their Member State.
137. IT mentioned that the requirements of Article 18(3) TD are also not applicable for securities issued by an EU member state or issued by international organisations of a public nature of which one or more EU member states are members. LT stated that the Member State, local, regional authorities do not fall in the definition of "issuer" under its national provisions. SE stated that under Swedish law there is no restriction on where meetings of holders of debt securities may be held.

Article 1(3) TD in relation to the application of Article 18(3) regarding securities which are admitted to trading on a regulated market issued by the regional authorities

138. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned in Article 18(3) to securities which are admitted to trading on a regulated market issued by their regional authorities.

Major findings

139. 14 Member States (AT, BE, EE, ES, FR, IE, IS, LT, LU, LV, MT, NO, SE, UK) have indicated that the

³⁸ According to Article 18(3) if only holders of debt securities - whose denomination per unit amounts to at least EUR 50 000 - are to be invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

securities which are admitted to trading on a regulated market issued by their regional authority are exempted from the provisions mentioned in Article 18(3) TD. 14 Member States (CY,CZ,DE,DK,EL,FI,HU,IT,NL,PL,PT,RO,SI,SK) indicated that the provisions mentioned in Article 18(3) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their regional authority. BG stated that they do not have regional authorities; therefore the correct answer for them would rather be not applicable (N/A).

140. LT stated that there are no issued securities of local / regional authorities. MT stated that there are no securities issues and admitted to trading by regional authorities. SE stated that under Swedish law there is no restriction on where meetings of holders of debt securities may be held.

Article 1(3) TD in relation to the application of Article 18(3) regarding securities which are admitted to trading on a regulated market issued by the local authorities

141. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned in Article 18(3) to securities which are admitted to trading on a regulated market issued by their local authorities.

Major findings

142. 14 Member States (AT, BE, EE, ES, FR, IE, IS, LT, LU, LV, MT, NO, SE, UK) have indicated that the securities which are admitted to trading on a regulated market issued by their local authority are exempted from the provisions mentioned in Article 18(3) TD. 15 Member States (BG, CY, CZ, DE, DK, EL, FI, HU, IT, NL, PL, PT, RO, SI, SK) indicated that the provisions mentioned in Article 18(3) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their local authority.
143. MT stated that there are no securities issues and admitted to trading by its local authorities. SE stated that under Swedish law there is no restriction on where meetings of holders of debt securities may be held.

Reasons

144. One reason for applying this specific discretion was to be fully in line with the provisions of TD. Further reasons provided are: special rules apply to States (public entities) financial statements, as well as to the other information published by such entities; local authorities have the possibility to be submitted to the legal obligations governing the bondholders' general assembly which include publication and dissemination process.
145. One of the reasons provided for not applying this specific discretion was transparency. Further reasons provided are: equal treatment of all bondholders and to facilitate the conducting of general meetings; existence of a specific legislative framework regarding government bonds; the very "nature" of local authorities; public issuers should be able to benefit from the flexibility granted by Article 18(3); the Member State, local, regional authorities do not fall in the definition of "issuer" under its national provisions; benefits for issuers; general approach for implementing TD was implementing the minimum provisions. HU and SK stated that the category of "meeting of debt securities holders" is not recognised by their national legislation.

Article 1(3) TD in relation to the application of Article 18(4) regarding securities which are admitted to trading on a regulated market issued by the Member States

146. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned

in Article 18(4)³⁹ to securities which are admitted to trading on a regulated market issued by them.

Major findings

147. 14 Member States (AT, BE, BG, EE, ES, FR, IS, IT, LT, LU, LV, MT, NO, SE) have indicated that the securities which are admitted to trading on a regulated market issued by their Member State are exempted from the provisions mentioned in Article 18(4) TD. 15 Member States (CY, CZ, DE, DK, EL, FI, HU, IE, NL, PL, PT, RO, SI, SK, UK) indicated that the provisions mentioned in Article 18(4) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their Member State.

148. IT mentioned that the requirements of Article 18(4) TD are also not applicable for securities issued by an EU Member State or issued by international organisations of a public nature of which one or more EU Member States are members. LT stated that the Member State, local, regional authorities do not fall in the definition of “issuer” under its national provisions. SE stated that under Swedish law there is no restriction on the use of electronic means.

Article 1(3) TD in relation to the application of Article 18(4) regarding securities which are admitted to trading on a regulated market issued by the regional authorities

149. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned in Article 18(4) to securities which are admitted to trading on a regulated market issued by their regional authorities.

Major findings

150. 11 Member States (AT, BE, EE, ES, IS, LT, LU, LV, MT, NO, SE) have indicated that the securities which are admitted to trading on a regulated market issued by their regional authority are exempted from the provisions mentioned in Article 18(4) TD. 17 Member States (CY, CZ, DE, DK, EL, FI, FR, HU, IE, IT, NL, PL, PT, RO, SI, SK, UK) indicated that the provisions mentioned in Article 18(4) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their regional authority. BG stated that they do not have regional authorities; therefore the correct answer for them would rather be not applicable (N/A).

151. LT stated that the Member State, local, regional authorities do not fall in the definition of “issuer” under its national provisions. Further to that LT mentioned that there are no issued securities of local / regional authorities. MT stated that there are no securities issues and admitted to trading by regional authorities. SE stated that under Swedish law there is no restriction on the use of electronic means.

Article 1(3) TD in relation to the application of Article 18(4) regarding securities which are admitted to trading on a regulated market issued by the local authorities

152. In accordance with Article 1(3), Member States may decide not to apply the provisions mentioned in Article 18(4) to securities which are admitted to trading on a regulated market issued by their local authorities.

Major findings

153. 12 Member States (AT, BE, EE, ES, IS, LT, LU, LV, MT, NO, SE, UK) have indicated that the securities which are admitted to trading on a regulated market issued by their local authority are exempted from the provisions mentioned in Article 18(4) TD. 17 Member States (CY, BG, CZ, DE, DK, EL, FI, FR, HU,

³⁹ According to Article 18(4) the home Member State or the Member State chosen by the issuer pursuant to 18(3), shall allow issuers the use of electronic means for the purposes of conveying information to debt securities holders, if the decision to use electronic means is taken in a general meeting and meets certain conditions.

IE, IT, NL, PL, PT, RO, SI, SK) indicated that the provisions mentioned in Article 18(4) TD are also applicable to the securities which are admitted to trading on a regulated market issued by their local authority.

154. LT stated that the Member State, local, regional authorities do not fall in the definition of “issuer” under its national provisions. MT stated that there are no securities issues and admitted to trading by its local authorities. SE stated that under Swedish law there is no restriction on the use of electronic means.

Reasons

155. One reason for applying this specific discretion was to be fully in line with the provisions of TD.
156. One reason provided for not applying this specific discretion was transparency . Further reasons provided are: equal treatment of all bondholders and to facilitate the conducting of general meetings; the very “nature” of local authorities; local authorities have the possibility to be submitted to the legal obligations governing the bondholders; general assembly which include publication and dissemination process; special rules apply to States (public entities) financial statements, as well as to the other information published by such entities; benefits for public issuers; the Member State, local, regional authorities do not fall in the definition of “issuer” under national provisions. HU and SK stated that the category of "meeting of debt securities holders" is not recognised by their national legislation.

Article 1(4) TD

157. In accordance with Article 1(4), Member States may decide not to apply the provisions mentioned in Article 17⁴⁰ to their national central banks in their capacity as issuers of shares admitted to trading on a regulated market if that admission took place before 20 January 2005. Recital (4) of TD states that TD should be compatible with the tasks and duties conferred upon the European System of Central Banks (ESCB) and the Member States’ central banks by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank, and particular attention in this regard should be given to the Member States’ central banks whose shares are currently admitted to trading on a regulated market, in order to guarantee the pursuit of primary Community law objectives.

Major findings

158. 4 Member States (IS, IT, LT, LV) have stated that they have decided not to apply Article 17 TD to their national central bank as issuers of shares admitted to trading on a regulated market if this admission took place before 20 January 2005. 10 Member States (AT, BE, IE, MT, NL, NO, PL, SE, SI, UK) have indicated that they did apply Article 17 TD to their national central bank as issuers of shares admitted to trading on a regulated market if this admission took place before 20 January 2005 in case such issue has happened or simply because their central banks do not issue such shares. 13 Member States have indicated that their central banks do not issue shares at all (BG, CZ, DE, FI, DK, FR, HU, LU, PT, RO, SK) or shares which are traded on a regulated market (EE, FI). BE stated that the national central bank had to comply with the requirements of Article 17 TD, because of company law requirements. IT stated that a special regime is foreseen for central banks. LT stated that its central bank does not fall in the definition of “issuer” under its national provisions. RO indicated that due to the date of its accession to the EU (2007), the application of this specific discretion was not considered.

⁴⁰ Article 17 TD covers information requirements for issuers whose shares are admitted to trading on a regulated market.

Section B - Integration of securities markets

Periodic Information

Annual Financial Report

Article 4 (1) TD - Discretion to set a shorter deadline than 4 months for publishing annual financial reports

159. In accordance with Article 4 (1), TD, the deadline for publishing annual financial reports after the financial year end is 4 months.

Major findings

160. 26 Members (AT, BE, CY, CZ, DE, DK, EE, ES, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) have indicated that the deadline for publishing annual financial reports is not shorter than the period (4 months) established in the TD. Out of these 26 Member States 19 (AT, BE, CY, DE, DK, EE, HU, IE, IT, LT, LV, MT, NL, NO, PL, PT, RO, SI, SK) have stated at the latest 4 months after the end of the financial year. 4 other Member States (ES, FR, LU, UK) have stated that this period is 4 months. 3 Member States (BG, EL, FI) have indicated that the deadline for publishing annual financial report is shorter than the period (4 months) established in the TD.

161. BG has answered that the deadline is 90 days after the financial year end. In the case of consolidated financial reports the deadline is 120 days. EL has stated that the deadline for publishing annual financial reports is 3 months. FI has replied that the deadline is 3 months or four weeks before the AGM approves the annual financial report. DK has indicated that the deadline is no later than eight days prior to the Annual General Meeting, but no later than four months after the end of the financial year.

Article 4 (1) TD - Discretion to set a deadline longer than 5 years for keeping annual financial reports publicly available

162. According to Article 4 (1) TD, the issuer must insure that the annual financial report remains publicly available for at least five years.

Major findings

163. 28 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) have stated that the period is at least five years. 1 Member State (LU) has stated a fixed five years period. 1 Member State (MT) has established that the Listing Rules issued by the MFSA oblige an issuer to keep the annual financial report publicly available for a period of at least 5 years. In the case of listed companies registered in Malta, the annual financial report is available on the Registry of Companies' online system during the lifetime of the company.

Reasons

164. The most common reason to apply this specific discretion is to be fully in line with the provisions of the TD. Further reasons provided are: historical reasons; constant availability on the Competent Authority's website; creating a reasonable balance between the need to ensure prompt access to information and the need to give enough time to issuers to approve the annual financial statements and that financial reports older than 5 years are not assumed to be relevant information to investors.

165. Some of the Member States have indicated the following reasons to require or not require additional information: historical reasons, to implement the exact TD deadlines; shorter deadlines were considered to be sufficient.

Section C - HALF-YEARLY FINANCIAL REPORTS

Article 5(1) TD Discretion to set a shorter deadline than 2 months for publishing half yearly financial reports

166. According to Article 5(1), TD, the deadline for publishing half yearly financial reports should be as soon as possible after the end of the relevant period, but at the latest two months later.

Major findings

167. 28 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) have responded that the deadline for publishing half yearly financial report is not shorter than 2 months after the end of the half yearly period. 1 Member State (BG) has responded that the deadline for publishing half yearly financial reports is shorter than 2 months after the end of the half yearly period. BG has stated that the interim financial reports are on a quarterly basis, not on a half-year basis. The period for publishing is 30 days after the end of each quarter. If the issuer is obligated to draw up consolidated financial reports, the deadline is 60 days after the end of each quarter.

168. AT has replied that for the first six months, at the latest two months after the close of the reporting period. DE has stated that without undue delay, two months after the end of the relevant period at the latest. DK has answered that the publication of the interim management statement shall take place as soon as possible after expiry of the six-month period, but no later than two months after said period. IT has stated that within 60 days from the end of the first half of the financial year. NL has indicated that no later than two months after the end of the first six months of the financial year, an issuer shall draw up the semi-annual financial reporting and make this generally. PT has answered that within two months as of the end of the first six months of the financial year. RO has informed that the half-yearly financial reports must be available to the public within maximum two months from the closing of the reporting period. SE has stated as soon as possible but not later than two months after the end of the reporting period. SI has stated that for the first six months, but not later than within two months after the end of this period. SK has stated that for the first six months of its business year as soon as possible but not later than within two months after the end of this period. BE, FI, FR, DE, EL, IE, LU, LT, MT, NO, PL, ES, UK have stated that the period is two months.

Reasons

169. The most common reason provided by Member States was to implement the exact TD deadlines. Some of the Member States have also indicated the following reasons: historical reasons; a shorter deadline (30 days) was considered sufficient.

Article 5(1) of TD - Discretion to set a deadline longer than 5 years for keeping half-yearly financial reports publicly available

170. According to Article 5(1) of TD, the issuer shall ensure that the half-yearly financial report remains available to the public for at least five years.

Major findings

171. 29 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) have responded that they do not require issuers to ensure that the half-yearly financial reports remain available to the public for longer than five years.

172. BG has stated that the interim financial reports are on a quarterly basis. LV, SI, SK and UK have stated that the half –yearly financial report remains available to the public for at least five years. DE has replied that the half-yearly financial report remains available on the website of the Company Register at least five years.

Reasons

173. The most common reason provided by Member States was to implement the exact TD deadlines and the constant availability on the Competent Authority's website. Some of the Member States have also indicated the following reasons: half-yearly financial reports older than 5 years are not assumed to be relevant information to investors.

Section D - INTERIM MANAGEMENT STATEMENTS (IMS)

Article 6(1) TD

174. Without prejudice to Article 6 of Directive 2003/6/EC, an issuer whose shares are admitted to trading on a regulated market shall make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six month period of the financial year. Such a statement shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period. It shall contain information covering the period between the beginning of the relevant six-month period and the date of publication of the statement.

Major findings

175. 2 Member States (AT, FR) have responded that the deadline for publishing IMS is shorter than the requirement in the Directive. 23 Member States (BE, CY, CZ, DE, DK, EE, EL, FI, HU, IE, IS, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK ,UK) have responded that the deadline for publishing IMS is not shorter than the requirement in the Directive. 16 Member States (BE, DE, DK, EE, EL, FI, HU, IE, LU, MT, NL, PL, PT, SI, SK, UK) have stated that the deadline for publishing IMS is within in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period.

176. AT has stated that the issuer shall publish interim reports of the management board on the first and the third quarter of the financial year immediately but at the latest 6 weeks after the close of the reporting period. BG has stated that the issuers have more stringent requirements since they are obliged to publish quarterly financial reports. Therefore, as stated in article 6 (2) of the TD, they are not required to make public statements by the management provided for in article 6 (1) of the TD. CY has replied that IMS is disclosed in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period. ES has answered that the deadline is 45 days from the end of the first and third quarter of the year, and it shall contain information covering the period between the beginning of the year and the date of the end of the quarter (instead of the date of publication of the statement). FI has replied that between eight weeks from the beginning and six weeks before the end of the relevant half-yearly period (as in TD). FR stated the 45 days.

177. IT has responded that the deadline is 45 days from the end of the first and third quarter of the financial year. LV has indicated that no later than two months after the end of the respective reporting period. LT has stated that after the end of the 6 months of financial period but not later than within 2 months from the end of that period. NO has stated that the deadline for publishing the quarterly report is as soon as possible after the end of the quarter, but at the latest two months after. SE has stated that no earlier than ten weeks after the beginning and not later than six weeks before the end of the half year. RO has replied that the quarterly financial reports have to be published within 45 days after the end of the reporting period.

Reasons

178. One Member State, who has applied the option, has indicated that in the event that an issuer of shares does not prepare quarterly reports in accordance with IFRS pursuant to regulation 1606/2002/EC the issuer shall publish interim reports of the management board on the first and the third quarter of the financial year immediately but at the latest 6 weeks after the close of the reporting period.
179. Some of the Member States, who have not applied the option, have indicated the following reasons: to implement the exact TD deadlines, as it was considered to be adequate.

Article 6(2) TD

180. According to Article 6(2), TD, Member States require issuers to publish quarterly financial reports, in which case issuers shall not prepare interim management statements.

Major findings

181. 12 Member States (BG, CY, EE, EL, FI, LT, LV, NO, PL, PT, RO, SE) have responded that they require issuers to publish quarterly financial reports. 17 Member States (AT, BE, CZ, DE, DK, ES, FR, HU, IE, IS, IT, LU, MT, NL, SI, SK, UK) have responded that they do not require issuers to publish quarterly financial reports. 12 Member States (BG, DK, EL, ES, FI, LT, LV, NO, PL, PT, RO, SK) have indicated that this requirement is set in the national legislation. 17 Member States (AT, BE, CY, CZ, DE, EE, FR, HU, IE, IS, IT, LU, MT, NL, SE, SI, UK) have indicated that this requirement is not set in the national legislation. 10 Member States (CY, DE, EE, LT, LV, NO, PL, SE, SI, SK) have indicated that the requirements are set in the rules of the regulated market.
182. CY has stated that according to the rules of the Cyprus Stock Exchange only issuers whose shares are admitted to trading in the Main Market of the Stock Exchange are required to publish quarterly financial reports in accordance with IFRS. CZ has replied that it is allowed for regulated markets to establish a duty to make public quarterly financial reports (as alternative of interim reports), but no one of our both regulated markets have it done. For issuers as such we have similar regulation, but no one of our issuers have decided to do so. ES has stated that it happens on a voluntary basis, no issuer does it in Spain. FI has replied that issuers may decide to publish an IMS instead of an interim report if the criteria mentioned in the Securities Markets Act/Decree of the Ministry of Finance are fulfilled. LU has stated that the choice between quarterly financial report and interim management is left to the issuer.
183. SK stated that when an issuer who, under the rules of the regulated market or its own initiative, publishes quarterly financial reports is not required to make public interim management statements. PL has said that the Polish issuers are required to prepare quarterly financial reports. Issuers from the third countries are required to prepare interim management statements unless that country's regulations require the publication by the issuer of the quarterly financial reports. Issuers from other EEA countries may choose to prepare interim management statements instead of quarterly financial reports when national legislation requires such statements. These rules do not apply to issuers of debt securities. They may choose to prepare interim management statements or quarterly financial reports. In PT the requirement to publish quarterly financial reports applies to issuers of shares admitted to trading on a regulated market that surpass two of the following limits during two consecutive years: a) total balance sheet – Euro 100,000,000; b) total net sales and other revenues – Euro 150,000,000; c) average number of employees during the financial period – 150.”

Reasons

184. Some Member States, who have applied this option, have indicated the following reasons:

historical reasons; more effective supervision; quarterly information disclosed to investors should be more extensive in respect to larger public companies and integrating previous good practices into the transposition of TD.

185. Some Member States, who have not applied this option, have indicated the following reasons: issuers can choose to publish quarterly financial reports (if they do so, the quarterly report will have to be prepared in accordance with the rules laid down for half-yearly reports or in accordance with equivalent rules of the regulated market, in which case, they shall not be required to make public IMS); annual financial reports, half-yearly financial reports, interim management statements and reports on related parties' transactions are deemed to be sufficient to allow investors to make an informed assessment of the financial position of the issuers; implementing the exact provisions of TD. DE indicated that implementation in some segments of the regulated markets respective requirements exist (e.g. prime standard). Prime Standard is a EU-regulated segment for companies also wishing to position themselves vis-à-vis international investors.

Section E - Responsibility and Liability

Article 7 TD

186. According to Article 7, TD, Member States shall ensure that responsibility for the information to be drawn up and made public in accordance with Articles 4, 5, 6 and 16 lies at least with the issuer or its administrative, management or supervisory bodies and shall ensure that their laws, regulations and administrative provisions on liability apply to the issuers, the bodies referred to in this Article or the persons responsible within the issuers. Article 4 covers annual financial reports, Article 5 covers half-yearly financial reports, Article 6 covers interim management reports and quarterly financial reports while Article 16 TD sets requirements for issuers of securities admitted to trading on a regulated market to publish certain information (change in the rights attaching to the various classes of shares, change in the rights of holders of securities other than shares, new loan issues and in particular any guarantee or security in respect thereof).

Major findings

Annual Financial report

187. In 22 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IS, IT, LT, LU, NL, PT, RO, SI, SK, UK) the responsibility for the Annual financial report belongs to the issuer. In 13 Member States (BG, CY, EL, FI, IS, IT, LT, LV, NL, NO, PL, SI, SK) the responsibility for the Annual financial report belongs to the issuers management body. In 13 Member States (BG, CY, EL, ES, FI, IS, IT, LT, MT, NL, NO, PL, PT) the responsibility for the Annual financial report belongs to the issuers administrative body. In 7 Member States (BG, CY, EL, LT, PT, SI, SK) the responsibility for the Annual financial report belongs to the issuers' supervisory body.

Half-yearly financial report

188. In 22 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IS, IT, LT, LU, PT, RO, SE, SI, SK, UK) the responsibility for the half yearly financial report belongs to the issuer. In 14 Member States (BG, CY, EL, IS, IT, LT, LV, NL, NO, PL, PT, SE, SI, SK) the responsibility for the half yearly financial report belongs to the issuer's management body. In 12 Member States (BG, CY, EL, ES, IS, IT, LT, MT, NL, NO, PL, SK) the responsibility for the half yearly financial report belongs to the issuers administrative body. In 7 Member States (BG, CY, EL, LT, PT, SI, SK) the responsibility for the half yearly financial report belongs to the issuers' supervisory body.

Quarterly financial report

189. In 21 Member States (AT, BE, CY, DE, DK, EE, EL, ES, FI, HU, IE, IT, LT, LU, NL, NO, PT, RO, SE, SI, SK) the responsibility for the quarterly financial report belongs to the issuer. In 12 Member States (AT, BG, CY, EL, IT, LT, LV, NL, PL, SE, SI, SK) the responsibility for the quarterly financial report belongs to the issuers management body. In 9 Member States (BG, CY, EL, ES, IT, LT, MT, PT, SK) the responsibility for the quarterly financial report belongs to the issuers administrative body. In 7 Member States (BG, CY, EL, LT, PT, SI, SK) the responsibility for the quarterly financial report belongs to the issuers' supervisory body.

Interim Management Statement

190. In 21 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IS, IT, LT, LU, NL, PT, SE, SI, SK) the responsibility for the interim management statements belongs to the Issuer. In 11 Member States (CY, EL, IT, LT, LV, NL, PL, SE, SI, SK, UK) the responsibility for the interim management statements belongs to the issuers management body. In 10 Member States (CY, EL, ES, IS, IT, LT, MT, PL, PT, SK) the responsibility for the interim management statements belongs to the issuers administrative body. In 5 Member States (CY, EL, LT, SI, SK) the responsibility for the interim management statements belongs to the issuer supervisory body.

Information covered by Article 16

191. In 24 Member States (AT, BE, CY, CZ, DE, DK, EL, ES, FI, HU, IE, IS, IT, LT, LU, LV, MT, NO, PT, RO, SE, SI, SK, UK) the responsibility belongs to the issuer in general. In 11 Member States (BG, CY, DK, FR, IT, LT, PL, PT, RO, SI, SK) the responsibility belongs to the issuer's management body. In 9 Member States (BG, CY, EE, ES, IT, LT, PT, RO, SK) the responsibility belongs to the issuer's administrative body. In 9 Member States (BG, CY, IT, LT, NO, PT, RO, SI, SK) the responsibility belongs to the issuer's supervisory body.

192. Table

	Issuer	Administrative body	Management body	Supervisory body	No information provided
Annual financial report	18	11	10	6	7
Half-yearly financial report	20	11	13	7	4
Interim Management Statement	21	10	11	4	4
Quarterly Financial Report	19	10	12	6	5
Information covered by Article 16	23	9	13	9	1

Reasons

193. Member States provided the following reasons: issuers are obliged to publish quarterly financial reports, therefore, as stated in article 6(2) of the TD, they are not required to make public statements by the management provided for in article 6 (1) TD; historical reasons; it is based on national civil, corporate or commercial law liability regimes, ensuring compliance with the law by all parties

ultimately involved in the disclosure process; the legal nature and responsibilities of the issuer's bodies.

Section F - Exemptions

Article 8(2) TD/ Article 5 TD / Directive 2003/71/EC

194. Article 8(2) TD refers back to Article 5 TD. Pursuant to Article 5 of TD issuers of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest 2 months thereafter. According to Article 8(2) TD Member states as home Member States may have chosen not to apply Article 5 of TD to credit institutions whose shares are not admitted to trading on a regulated market and which have, in a continuous or repeated manner, only issued debt securities provided that the total nominal amount of all such debt securities remains below EUR 100.000.000 and that they have not published a prospectus under Directive 2003/71/EC. (Article 8 (2) of TD).

Major findings

195. 16 Member States (AT,BE,BG,CZ,DE,EE,EL,IE,IS,LT,LU,MT,NO,PL,SK,UK) stated that they do not apply Article 5 to credit institutions whose shares are not admitted to trading on a regulated market and which have, in a continuous or repeated manner, only issued debt securities provided that the total nominal amount of all such debt securities remains below EUR 100.000.000 and that they have not published a prospectus under Directive 2003/71/EC. 13 Member States (CY,DK,ES,FI,FR,HU,IT,LV,NL,PT,RO,SE,SI) indicated that they also apply Article 5 for such credit institutions.

Reasons

196. The reasons provided by Member States are the following: national legislation provides for other tools for protection of the investors in such issuers; contributing to transparency and keeping debt security holders better informed; ensuring more level playing field across issuers and a higher level of market transparency.

Article 8(3) TD -exemption from publishing half-yearly financial reports for issuers already existing at the date of the entry into force of Directive 2003/71/EC and which exclusively issue debt securities unconditionally and irrevocably *guaranteed by the home Member State*

197. Pursuant to Article 5 TD issuers of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest 2 months thereafter. Member states as home Member States may have chosen not to apply Article 5 of TD to issuers already existing at the date of the entry into force of Directive 2003/71/EC which exclusively issue debt securities unconditionally and irrevocably guaranteed by their Member State on a regulated market.

Major findings

198. 18 Member States (AT, BE, CY, CZ, DE, DK, EE, ES, FR, IE, IT, LT, LU, MT, NO, PT, SK, UK) have provided an exemption from publishing a half-yearly financial report for issuers already existing at the date of the entry into force of PD and which exclusively issue debt securities unconditionally and ir-

revocably guaranteed by the home Member State on a regulated market. 11 Member States (BG, EL, FI, HU, IS, LV, NL, PL, RO, SE, SI) do not provide such an exemption.

199. 1 Member State (IT) has the exemption only for issuers of debt securities unconditionally and irrevocably guaranteed by the Member State, but not by regional or local authorities.

Article 8(3) TD - exemption from publishing half-yearly financial reports for issuers already existing at the date of the entry into force of Directive 2003/71/EC and which exclusively issue debt securities unconditionally and irrevocably guaranteed by the regional authority of the home Member State

200. Pursuant to Article 5 TD issuers of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest 2 months thereafter. Member states as home Member States may have chosen not to apply Article 5 of TD to issuers already existing at the date of the entry into force of Directive 2003/71/EC which exclusively issue debt securities unconditionally and irrevocably guaranteed by their regional authorities on a regulated market.

Major findings

201. 17 Member States (AT, BE, CY, CZ, DE, DK, EE, ES, FR, IE, LT, LU, MT, NO, PT, SK, UK) have provided an exemption from publishing a half-yearly financial report for issuers already existing at the date of the entry into force of PD and which exclusively issue debt securities unconditionally and irrevocably guaranteed by their regional authorities on a regulated market. 12 Member States (BG, EL, FI, HU, IS, IT, LV, NL, PL, RO, SE, SI) do not provide such an exemption.

202. In one Member State there are no securities issues and admitted to trading by regional authorities (MT). Another Member State has the exemption only for issuers of debt securities unconditionally and irrevocably guaranteed by the Member State, but not by regional or local authorities (IT).

Article 8(3) TD - exemption from publishing half-yearly financial reports for issuers already existing at the date of the entry into force of Directive 2003/71/EC and which exclusively issue debt securities unconditionally and irrevocably guaranteed by the local authority of the home Member State

203. Pursuant to Article 5 TD issuers of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest 2 months thereafter. Member states as home Member States may have chosen not to apply Article 5 of TD to issuers already existing at the date of the entry into force of Directive 2003/71/EC which exclusively issue debt securities unconditionally and irrevocably guaranteed by their local authorities on a regulated market.

Major findings

204. 18 Member States (AT, BE, CY, CZ, DE, DK, EE, ES, FR, IE, IS, LT, LU, MT, NO, PT, SK, UK) have provided an exemption from publishing a half-yearly financial report for issuers already existing at the date of the entry into force of PD and which exclusively issue debt securities unconditionally and irrevocably guaranteed by their regional authorities on a regulated market. 11 Member States (BG, EL, FI, HU, IT, LV, NL, PL, RO, SE, SI) do not provide such an exemption. 2 Member States did not have issuers already existing at the date of the entry into force of Directive 2003/71/EC which exclusively issue debt securities unconditionally and irrevocably guaranteed by one of its local authorities on a regulated market (MT, LT). 11 Member States mention legal reasons. They either cite the provision of their national law that regulates that no publication of a half-yearly financial report is required or just

mention that no obligation to publish such report does exist (AT, BE, DE, EE, LT, LU, NO, PT, SK, UK). 1 Member State has mentioned practical reasons due to the requirements of the capital markets (IE). 1 Member State has the exemption only for issuers of debt securities unconditionally and irrevocably guaranteed by the Member State, but not by regional or local authorities (IT).

Reasons

205. Some Member States have given reasons for applying or not this particular discretion. These reasons vary from political reasons, easing for issuers, decreasing administrative burdens for issuers and major shareholders; appropriateness for local market; no such issuers existing, similar obligation already existing before the transposition of the TD, no need of a half-yearly report due to nature of instruments or the needs of the domestic market. LT declared that there are no such companies in the market. Moreover such companies wouldn't be considered as the issuers under the meaning of the Law on Securities (according to the exemption in the Prospectus Directive). MT noted that no issuers existed at the date of the entry into force of Directive 2003/71/EC which exclusively issued debt securities unconditionally and irrevocably guaranteed by the Government of Malta.

Section G - Notification of the acquisition or disposal of major holdings

Article 9(4) of TD – Article 5 of L2D

206. Article 9(4) of TD regulates the usual short settlement cycle. This cycle may be shortened, since Article 5 of L2D regulates that the maximum length of the usual 'short settlement cycle' shall be three trading days following the transaction.

Major findings

207. 28 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) do not set the maximum usual 'short settlement cycle' at less than 3 trading days following the transaction. Only 1 Member State (HU: T + 2 calendar days) sets the maximum usual 'short settlement cycle' at less than 3 trading days following the transaction.

Reasons

208. Reasons provided by Member States that have not shortened the cycle are mainly that 3 trading days are a reasonable timeframe, a shorter period has not been considered to be necessary, implementation in line with the TD or that the requirements of the TD are sufficient. The shortening of the cycle in HU has historical reasons.

Article 9(5) of TD / Article 12 (2) TD / Article 6(1) of L2D

209. Article 12 (2) TD sets up a term of no more than 4 trading days to fulfil the notification obligations vis-à-vis the issuer. Article 9 (5) TD sets up exceptions from the notification obligation for market makers. Market makers who conduct, intend or cease to conduct market making activities on the issuer concerned and want to benefit from the exemption as laid down in Article 9 (5) TD have to notify this vis-à-vis the supervisory authority pursuant to Article 6 (1) of L2D.

Major findings

210. In 13 Member States (AT, CY, DK, EL, FI, HU, IS, NO, PT, RO, SE, SI, UK) the term contained in Article 12 (2) TD has been shortened and in 16 Member States (BE, BG, CZ, DE, EE, ES, FR, IE, IT, LT, LU, LV, MT, NL, PL, SK) it is not shortened.

211. AT stated that according to Section 3 para. 1 of the Transparency Regulation (a regulation based on the ASEA issued by the Austrian Financial Market Supervisory Authority) the time limit is two trading days. CY noted that the market maker must notify as soon as possible and not later than within the next working day. EL stated that the notification must be made within three days (this is the general rule). FI declared that the notification must be made without delay. HU noted that the market maker should notify within the normal notification deadline. The market maker should notify the HFSA already before it intends to conduct or start to conduct market making activities if it wants to benefit from the exemption. IE declared that the notification to the competent authority should be effected as soon as possible but not later than 4 trading days as per Article 12(2). IS noted that the market maker has to notify the competent authority as soon as possible, no later than on the trading day following the date on which the market maker starts to conduct the market making activities. NO described that the market maker shall notify without undue delay. PT declared that the market maker who conducts or intends to conduct market making activities must notify CMVM of such fact within 4 days in order to benefit from the market-makers exemption. However, in case a market-maker who already benefits from such exemption ceases to conduct market making activities on the issuer concerned, it must inform CMVM as soon as it takes such decision.
212. RO noted that the period for notification has been set out at three business days and was maintained it for all cases of notifications where Romania is the home Member State. SE noted that the market maker shall notify the Competent Authority no later than the trading day after the trading have commenced. SI stated that Article 4 of the Agency's by-law applies for this notification. The time limit as defined in the secondary legislation is "as soon as possible" and not later than 4 days after the conclusion of contract for market makers activities". UK mentioned that the market maker must notify the FSA within 2 days in relation to its intending to act (or cease to act) as market maker for a UK stock and within 4 days for a non-UK issuer stock. These timescales reflect the timescales for all investors notifying of major shareholdings thus these timings are for consistency and clarity.

Reasons

213. 7 Member States mention systemic reasons in order to have a consistent regime for the notification of major shareholdings. Furthermore Member States provided the following reasons: historical reasons; the same deadline applies to the notification that the market maker wants to benefit from the notification exemption of Article 9 (5) TD as for major shareholding notifications; transparency; to avoid infringement proceedings; importance of obtaining information on the cessation of market-making activities as soon as possible for purposes of supervision of market activities.
214. Some other Member States basically argue that they did not want to impose additional requirements and that the timeframe given by the TD seemed to be reasonable. BE stated that the legislator did not want to impose additional requirements.

Article 9(5) of TD / Article 6(2) of L2D

215. Pursuant to Article 9 (5) TD and Article 6(2) L2D market makers may be required to hold shares or financial instruments held for market making activity purposes in a separate account for the purposes of identification if the market maker is otherwise not able to identify the shares or financial instruments used for that purpose.

Major findings

216. 8 Member States (BG, FR, HU, IT, MT, PL, PT, SI) require market makers to hold shares or financial instruments held for market making activity purposes in a separate account for the purposes of identification and 21 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, IE, IS, LT, LU, LV, NL, NO, RO, SE, SK, UK) do not.

Reasons

217. As to the reasons for holding such financial instruments in different account 6 Member States did so due to better identification and monitoring possibilities and/or legal reasons. In 3 Member States out of the 5 who require different accounts due to identification purposes, the above mentioned financial instruments only have to be held in different accounts upon request, but not automatically. Member States who answered with “No” mainly take the view that the minimum requirements of the TD are sufficient. 3 Member States have also implemented a possibility to request the use of different accounts in case the market maker is unable to identify the shares or financial instruments. ES stated that market makers must comply with the EU Rule 1287/2006 requirements and must hold separated accounts/records for proprietary and third party positions. There is nothing specific for market making activities which is considered part of the proprietary trading activity. IT noted that according to Italian law, intermediaries shall hold assets in separate accounts for each activity carried out. This rule applies also to market makers in order to ensure level playing field and adequate identification and protection of client assets. IT also declared that market makers have the possibility to keep the shares held for market making activity purposes in a separate account or to use other verifiable way.
218. NO stated that the legislator has not seen the need for a separate account, but it is the experience that the market makers operate with a separate account, and they are also expected to do so. RO noted that they have implemented into national legislation the exact wording of Article 6 (2) of L2TD that states that only if the market maker is not able to identify the shares or financial instruments concerned, he may be required to hold them in a separate account for the purposes of that identification. However it is not compulsory for market makers in any case to hold the shares or financial instruments held for market making activity purposes, in a separate account for the purposes of identification. SE stated that the stock exchange has rules on segregation of accounts for market makers. The stock exchange has requirements on market makers to keep separate accounts but there are no rules in legislation or regulation.
219. In 10 Member States market makers have to hold different accounts only in cases where they are not able to identify the shares or financial instruments. In 2 Member States (HU, SE) it seems to be an obligatory rule for market makers to hold different accounts. IE noted that for tax reasons, it would be the practice for market makers to hold the shares or financial instruments in separate accounts or to otherwise be able to identify them. HU explained that the market maker should have a separate register on the financial instruments related to its market making activity, in order to benefit from the exemption.

Article 9(6) of TD

220. Article 9(6) TD states that Member States may provide that voting rights of a credit institution or investment firm held in the trading book, shall not be counted provided that these voting rights do not exceed 5% and provided that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the issuer.

Major findings

221. 20 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, FR, HU, IE, IS, IT, LU, LV, MT, NL, NO, SE, UK) indicated that they have implemented the trading book exemption, 9 Members (BG, ES, FI, LT, PL, PT, RO, SI, SK) stated that they have not implemented this exemption. These 20 Member States (with the exception of CZ and IE) stated that all the voting rights held in the trading book form the basis for disclosure and aggregation with other holdings in case of exceeding 5%. All these 20 Member States reported that they aggregate non-exempt holdings with the holdings held in the trading book also where the non-exempt holdings remained below the minimum threshold.

Reasons

222. Member States provided the following reasons: implementing the exact provisions of TD into national regulation; regarding both (i) the intention of the holder and (ii) the classification of the trading book position for accounting purposes, are irrelevant. ES stated that according to Spanish company law, nothing prevents the holder of the relevant trading book position from exercising the corresponding voting rights in a General Meeting. This is also applicable for the connected take over relevant obligations in Spain. Additionally Spanish financial institutions have traditionally been stable major holders: around the 15 % of the aggregated voting rights of all Spanish listed companies in 2008 and 2009. They are very often represented in the board of directors and thus involved in the management of the company. This means that, in general, major holdings are not held for trading purposes. For the sake of full transparency of the total amount of their voting rights, it was decided not to implement the trading book exemption. IT explained that by considering the low amount of the threshold and the condition that the voting rights are not to be exercised, the exemption ensures that intermediaries and investors are not burdened by unnecessary information.

Section I.a - Procedures on the notification and disclosure of major holdings

Article 12(2) of TD

223. Article 12(2) TD states that the notification to the issuer shall be effected as soon as possible, but no later than 4 trading days, the first of which shall be the day after the date on which the shareholder, or the natural person or legal entity learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard of the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect or is informed about the changes in the proportion of voting rights (Article 9 (2) TD).

Major findings

224. 13 Member States (AT, CY, DK, EL, FI, HU, IE, IS, NL, NO, RO, SE, UK) has indicated that it has set a shorter maximum terms, compared to the maximum period set by the Directive. 16 Member States (BE, BG, CZ, EE, DE, ES, FR, IT, LT, LU, LV, MT, PL, PT, SI, SK) stated that they stick to the 4 days term as described in Article 12 (2) TD.

225. AT stated that the notification shall be done within two trading days. CY explained that the notification shall be effected as soon as possible but not later than within the next working trading day a) from the day (i) that the transaction was made or (ii) That the person responsible for the notification, learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition disposal or possibility of exercising voting rights takes effect; b) From the date that the person responsible for notification learns or having regards to the circumstances should have learned of the event that resulted in the change of breakdown of the issuer's voting rights. DK stated that the notification shall be made as soon as possible. As soon as possible shall mean: 1) Within the trading day for transactions entered into a stock exchange within the trading day for transactions entered into on a stock exchange, an authorised market place or a similar regulated market within the European Union or countries with which the Community has entered into an agreement for the financial area or an alternative market place, or 2) in other circumstances within the trading day on which the holding, cf. subsection (1), is established or changed. (4) Notwithstanding subsection (3), no. 1, the notification will be deemed as in due time, if the notification is issued within the trading day on which the shareholder or the natural or legal person learns of the acquisition or the authority to exercise voting rights, however no later than two trading days after the transaction. (5) With regard to a company as mentioned in section 1(2), the notification shall be deemed in due time, notwithstanding subsection 3(2), if the notification is issued within the trading day on which the shareholder or the natural or legal person has knowledge of this or is advised of this. Advice shall be deemed to have taken place when the agree-

gate number of voting rights or the total capital, respectively are published in accordance with “bekendtgørelse om udstederes oplysningsforpligtelser” (executive order on issuers' duty to provide information). FI noted that the notification shall be made without undue delay.

226. EL stated that the notification shall be made within 3 days after the trading day. HU explained that the notification should be effected immediately, but not later than two calendar days. IS stated that the notification should be made as soon as possible, but no later than on the trading day following the date on which the notification requirement arose. IE stated that the deadline for the notification is generally not later than two working days. NO stated that the notification shall be made immediately. RO noted that the investors are required to notify the issuer within three business days. SE indicated that the deadline for making the notification is one trading day. NL stated that the notifications shall be made forthwith. UK indicated 2 days as a deadline for notification for UK companies.

Reasons

227. Member States provided the following reasons regarding the application of this discretion: implementing the exact provisions of TD, time period was considered adequate, historical reasons.

Article 12 (2) of TD – Article 9 of L2D

228. Article 12(2) TD requires that notifications on major shareholdings should be made to the issuer as soon as possible but no later than four trading days, whereby the first day should be the day after the date on which the shareholder learns of the acquisition or disposal or of the possibility of exercising voting rights or on which should have learned of it. Article 9 L2D states that the shareholder shall be deemed to have knowledge of the acquisition, disposal or possibility of exercising the voting rights no later than two trading days following the transaction.

Major findings

229. 14 Member States (AT, BE, CY, CZ, DK, EE, ES, LT, LU, NL, PT, RO, SI, SK) indicated explicitly that the date for getting knowledge of the acquisition, disposal or possibility of exercising the voting rights is not later than four trading days following the day of the transaction. Some Member States however stated that such a knowledge should be considered to be acquired on the day of the transaction or the following day.

230. FI, FI, DE, IS require shareholders to disclose on the day of conclusion of the transaction /acquisition//date of transfer of the legal ownership. DE indicated the date of transfer of legal ownership. BG made reference to Article 13, paragraph 2 of Ordinance 39, which says that the person shall be deemed to have knowledge of the acquisition, transfer or possibility to exercise voting rights no later than two trading days following the date of conclusion of the transaction. EL pointed out the date of the trade, or the date that/when the corporate event of article 9(2) of the TD was disclosed by the issuer. EL declared that the date for getting knowledge for the acquisition and disposal is the day of the transaction/acquisition. ES explained that (a) for transactions executed in a regulated market, the investor is deemed to have knowledge of the acquisition, disposal, or possibility to exercise the corresponding voting rights within D+2. This timeframe is consistent with the MiFID obligations applicable to intermediaries that must notify to the relevant investor the executed transactions within D+1 (Article 40 of level 2 Directive 2006/73/CE), and (b) for transactions out of regulated markets, the day after the date in which the transaction produces effect.

231. FI stated that where the duty of disclosure arises as a result of the shareholder being party to an agreement which, when affected, results in reaching or exceeding the threshold provided for or the portion of holdings falling below the threshold provided for, the disclosure shall, be made no later than on the date of the conclusion of the agreement. (Chapter 2, section 9, subsection 3 of the Securities Markets Act) Otherwise there is no exact definition for that, but the general rule is the date of the trade. FR explained that the notification should be sent to the AMF and to the company within four trading days from the crossing of the threshold (as stipulated by the TD, “should have learnt”). HU

stated that not later than T+3. IS indicated the date of the acquisition. IT stated that the starting date for the notification deadline is the day on which the transaction giving rise to the notification obligation was executed, irrespective of the compliance date, or the day on which the entity required to notify has been informed of the relevant transaction. MT provided that the notification period starts when the transaction is executed. In case that the transaction is subject to conditions which are not in the control of the parties, the transaction is regarded to be effective when such conditions are satisfied. NO pointed out that the start of the notification period is once the transaction has been carried out, or once the circumstance that leads to the notification has happened. When the notification requirement is based on other circumstances, such as e.g. an increase of capital, other time limits may apply.

232. RO indicated that in the case of a capital increase or decrease, the term "date of transaction" is considered as the date when the new capital is registered with the Central Depository ("the registry"). SE provided that the date depends on the occurrence: 1. For the purchase or sale of shares, the notification date for filing with Finansinspektionen and the issuer should be the day after the trading day; 2. For circumstances regarding shares as referred to in Q 38, points 1-8, the notification date is the day after the changes in shareholdings have occurred; 3. if any of the circumstances as referred to in Q 38 section 9-11 are relevant, then the notification day is the day after the notifier has received knowledge of the holdings or changes in holdings. UK stated that an acquisition or disposal of shares is to be regarded as effective when the relevant transaction is executed unless the transaction provides for settlement to be subject to conditions which are beyond the control of the parties in which case the acquisition or disposal is to be regarded as effective on the settlement of the transaction.

Reasons

233. EL noted that it is regarded that every shareholder is deemed to have knowledge the same day of the crucial transaction; however he can prove that he got aware of it within two days after the transaction took place. UK indicated that an acquisition or disposal of shares is to be regarded as effective when the relevant transaction is executed unless the transaction provides for settlement to be subject to conditions which are beyond the control of the parties in which case the acquisition or disposal is to be regarded as effective on the settlement of the transaction.

Section I.b.

Procedures on the notification and disclosure of major holdings

Article 12(6) TD

234. Article 12 (6) TD stipulates that issuers are required to publish the information contained in the notification no later than three trading days after the receipt of the notification of the shareholder.

Major findings

235. 10 Member States (AT, CY, DK, EL, FI, HU, IE, IS, LV, UK) indicated that they have shorter terms than three trading days. 5 Member States (CY, IE, IS, LV, UK) pointed out that this period is no later than 1 day. 3 Member States (AT, EL, HU) stated that this period is not later than 2 days. CY, DK and FI noted that the issuer is required to publish as soon as possible (in general within the trading day)/ without undue delay.
236. AT stated that the publication shall be made within two trading days after the receipt of the notification. CY indicated that the issuer shall make the publication as soon as possible but before the end of the next working day following the receipt of each notification. DK indicated that the publication shall be made as soon as possible, but in general within the trading day. FI stated that the publication shall take place without undue delay. EL indicated that the publication shall be made within 2 days. HU noted that the issuer shall publish immediately, but not later than two calendar days. IS pointed out that the issuer shall publish, as soon as practicable after receipt of a notification and no later than at

12:00 hours on the trading day immediately following its receipt of the notification, make public all the information contained in the notification. IE stated that the publication should generally be made not later than the end of the trading day following receipt of the notification. LV indicated that the deadline for publication is 1 trading day. UK pointed out that an issuer not falling within (2) must, in relation to shares admitted to trading on a regulated market, on receipt of a notification as soon as possible and in any event by not later than the end of the trading day following receipt of the notification.

Reasons

237. Member States considered the relevant TD requirements to be sufficient; implemented the exact provisions of TD into national law; gave historical reasons for their handling of the pertinent term, and considered it important to avoid putting additional administrative burdens on the issuer.

Article 12(7) TD – competent authority publishing major shareholding notification within three trading days

238. According to Article 12(7) TD, the home Member State may exempt issuers from the requirement in paragraph 6 if the information contained in the notification is made public by its competent authority upon receipt of the notifications but within three trading days under the conditions laid down in article 21 of the TD (publication of regulated information). This provision makes it possible that Member States provide for a stricter deadline for the publication by their competent authorities.

Major findings

239. 23 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IS, IT, LT, LU, MT, PL, PT, RO, SI, SK, UK) indicated that they do not set a stricter deadline for their Competent Authorities. 5 Member States (FR, LV, NL, NO, SE) indicated that they set a different deadline for their competent authorities regarding publication of major shareholding notifications. 1 Member State (BG) indicated that this option is not transposed in its national legislation.

240. DK informed that the competent authorities do not publish major shareholding notifications and cannot exempt the issuer to do so. NO stated that it is not its authority that publishes the notifications, but the regulated market, Finanstilsynet has designated the regulated market to publish major shareholders notifications on our behalf. However, the publication remains the responsibility of the issuer. PL stated that it is not the duty of the authority to publish the notifications but the issuer's. SK indicated that where the National Bank of Slovakia makes public this information no later than three trading days after receiving the notification, the issuer shall be exempted from the obligation to make this information public.

Reasons

241. Those Member States who did not opt for a publication by the authority mentioned an additional publication (beside the OAM) was not deemed necessary and stated that it implemented the exact TD provisions. Member States who opted for the publication by the authority mainly see this as an effective mechanism of control and also stated (cost-) effectiveness (if the information is made available in the central storage mechanism, additional publication by the Competent Authority) was not deemed necessary.

Article 12(7) TD – exempting issuers from publishing major shareholding notifications if publication was made by the competent authority

242. Article 12 (7) TD regulates that issuers can be exempted from the obligation to publish major shareholding notifications in case the competent authority publishes such notification.

Major findings

243. Out of the 8 Member States (CZ, ES, FR, IT, LV, NL, NO, SE), which indicated that major shareholding notifications are published by their competent authorities, 7 Member States (CZ, ES, FR, IT, NL, NO, SE) indicated that in such cases they exempt issuers from the obligation to publish major shareholding notifications.

Reasons

244. Member States who opted for a publication by the authority without requiring the issuer for a publication mainly do so in order to avoid duplication of publications and to reduce the administrative burden of the issuer.

Article 14(1) TD

245. Where an issuer of shares admitted to trading on a regulated market acquires or disposes of its own shares, either itself or through a person acting in his own name but on the issuer's behalf, does your Member State as the home Member State ensure that the issuer makes public the proportion of its own shares within a time limit shorter than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights. Article 14(1) TD allows the home Member State to set out a shorter deadline for the publication of the proportion of its own shares by the issuer.

Major findings

246. 17 Members (BE, BG, CZ, DE, EE, ES, FR, IE, IT, LT, LU, LV, MT, PL, RO, SK, UK) have not applied this discretion and provide that, when the proportion of its own shares held by the issuer reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights, that proportion needs to be made public no later than four trading days following such acquisition or disposal, as set out in Article 14, paragraph 1, of the TD. By contrast, 12 Members (AT, CY, DK, EL, FI, HU, IS, NL, NO, PT, SE, SI) have applied this discretion and require the issuer to make public the proportion of its own shares within a time limit shorter than four trading days following such acquisition or disposal. The 12 Member States (AT, CY, DK, EL, FI, HU, IS, NL, NO, PT, SE, SI) that reported to have applied this particular discretion, and set a shorter timeframe within which the issuer shall make public the proportion of its own shares provided the following further details of those timeframes. Some Member States request the publication to be made immediately (NL, NO, PT), as soon as possible (DK) or without undue delay (FI), as soon as possible after the conclusion of a deal or at least before the beginning of the next trading day (SI), as soon as possible and no later than before noon on the trading day immediately following the acquisition or disposal (IS, SE), as soon as possible and, at the latest, within the next working day following the day of the acquisition or disposal (CY). Moreover three Member States require the publication within 2 days: within 2 trading days (EL) or without delay and, at the latest, within 2 trading days (AT) or within 2 calendar days (HU).

247. AT made reference to Section 93 para. 3 ASEA, where the time limit is set as "without delay, at the latest within 2 trading days". CY stated that issuers shall disclose as soon as possible and the latest within the next working day following the day of the acquisition or disposal. IS made reference to Article 93 of its national law, which states: "Where an issuer acquires or disposes of its own shares, it shall make public the proportion of its own shares if the acquisition or disposal results in the proportion reaching, exceeding or falling below the thresholds of 5% or 10% of the voting rights. The proportion shall be calculated on the basis of the total number of shares to which voting rights are attached, even if the exercise of the rights is suspended. Information under paragraph 1 shall be made public as

soon as possible and no later than before 12:00 hours on the trading day immediately following the acquisition or disposal. NL noted that the regular notification obligation (5% threshold) applies for the acquisition or disposal of own shares as for regular acquisition or disposal of shares. PT indicated that issuers shall immediately inform the public of the acquisition or disposal of own shares, whenever as a result thereof the proportion of same exceeds or falls below the thresholds of 5% and 10% [Article no. 249/2-f Portuguese Securities Code]. SE pointed out that the information shall be made public not later than 12.00 on the trading day after the issuer acquires or disposes of its own shares. SI made reference to Article 19 of the Agency's by-law, which requires that issuers should make public the changes in proportion of their own shares as soon as possible after the conclusion of a deal or at least before the beginning of the next trading day.

Reasons

248. Member States applying this particular discretion, provided the following specific reasons: consistency with the timeframe for notification of major holdings by other shareholders; achieving immediate notification to the public; guaranteeing market transparency and facilitate supervision of market integrity and consistency with existing legislation. Those Member States that reported not to have applied this particular discretion, indicated the following reasons: no need to apply a shorter timeframe, being the one set out in Article 14 of the Directive a “reasonable” timeframe; implementing the exact (minimum) provisions of the Directive; consistency with the timeframe for notification of major holdings by other shareholders and the legislator's decision. SK also noted that the way of implementing the Transparency Directive into national legislation was based on the negotiations of a working group comprising of the representatives of national competent authorities and market players. It mainly reflects the needs of domestic market (and also often the wording is the same as in TD). No special analysis has been carried out. (The National Bank of Slovakia is not the legislator body responsible for implementing TD).

Article 15 of TD

249. Article 15 of the TD provides that, for the purpose of calculating the thresholds for notification of major holdings under Article 9, the home Member State shall at least require the disclosure to the public by the issuer of the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred. This way Article 15 of the TD allows the home Member State to set out a higher frequency for the disclosure of the total number of voting rights and capital by the issuer.

Major findings

250. 23 Member States (AT, BE, BG, CY, CZ, DE, DK, EL, ES, FR, IE, IS, IT, LT, LU, LV, MT, NO, PT, RO, SE, SI, SK,) have not applied this discretion and require, as home Member State, that, for the purpose of calculating the thresholds provided for in Article 9, the total number of voting rights and capital is to be disclosed by the issuer at the end of each calendar month during which an increase or decrease of such total number has occurred, as set out in Article 15 of the TD. However, 1 Member (FR) recommends the issuer to declare the new total number of shares and voting rights as soon as possible and to notify the respective new thresholds. 6 Members (EE, FI, HU, NL, PL, UK) have, instead, applied this discretion and require the total number of voting rights and capital to be disclosed by the issuer more frequently than as set out in Article 15 of the TD. As to the 6 Members (EE, FI, HU, NL, PL) that have applied this particular discretion, the frequency by which the total number of voting rights and capital is to be disclosed by the issuer is the following: EE stated that the issuer is required to disclose the changes in the total number of voting rights and capital immediately. FI pointed out that the issuers are required to disclose information when the number of shares and voting rights is changed. HU indicated that disclosure shall be made at each month end. NL stated that the issuer must disclose each change in its capital to the AFM immediately if the capital has changed by 1% or more as compared to the previous disclosure. A periodic total disclosure per quarter is sufficient if the changes in that quarter together amount to less than 1% of the capital. In a periodic total disclosure it is only necessary to

disclose the total change and not each individual change. The (other) changes that have already been disclosed in the meantime are exempt from this periodic total disclosure.

Reasons

251. The 5 Members that have applied this particular discretion, the following reasons were indicated: investor protection; easing the calculation of thresholds; when the amount of own shares is also published, influence could be also calculated. Those Member States that have not applied this particular discretion, reported the following reasons: implementing the exact (minimum) provisions of the Directive; no need to apply a higher frequency, the one set out in Article 15 of the Directive sufficient; the changes in the capital are subject to announcement within maximum 7 days after the entry in the Trade Register; issuers are recommended to declare the new total number of shares and voting rights as soon as possible (even if Article 15 of the TD provides for a delay until the end of the month) and to notify the respective new thresholds; the information is given to the market soon after the process of increasing or decreasing of voting rights has been fully completed and formalised according to Italian company law; a higher frequency would be excessively burdensome for the issuers or the shareholders would have to continuously monitor corporate actions. SK also referred to the outcome of the negotiations of a working group comprising of the representatives of national competent authorities and market players, which mainly reflects the needs of domestic market.

Section M

Home Member State control

Article 19(1) of TD, first subparagraph

252. Article 19(1) TD requires issuers, or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market to file regulated information with the competent authority of the home Member State. The competent authority may decide to publish such filed information on its internet site.

Major findings

253. 10 Member States (BG, CZ, DK, ES, HU, IT, NL, PT, RO, SE) indicated that their Competent Authority as the Competent Authority of the home Member State decided to publish on its Internet site regulated information that the issuer, or any person without the issuer's consent, having requested the admission of its securities to trading on a regulated market filed with the Competent Authority under Article 19(1) of the TD. 19 Member States (AT, BE, CY, DE, EE, EL, FI, FR, IE, IS, LT, LU, LV, MT, NO, PL, SI, SK, UK) indicated that their Competent Authorities do not publish such information on their internet sites.

254. SK, however, stated that the National Bank of Slovakia may decide to publish such filed information on its website. Among the 18 Member States that have indicated that their Competent Authorities do not publish on their internet sites regulated information filed with them under Article 19(1) of TD, 1 Member State (PL) stated that their national legislation does not provide this possibility for their Competent Authorities, while 15 Member States (AT, BE, CY, DE, EE, EL, FI, IE, IS, LT, LU, LV, NO, SI, UK) indicated that it is the decision of the Competent Authority not to publish such information on its website. FR indicated that this aspect is not addressed by its national legislation. MT indicated that there is no provision which specifically provides that the Listing Authority may publish regulated information on its internet site however the Listing Authority has the general power to require the issuer to provide the Authority with information for publication. Some Member States (EL, FI, FR, LV, MT, PT) stated that the information is already available through the officially appointed mechanism, therefore there is no need to present them on the Competent Authority's web-site and in some of these Member States the OAM is managed by the Competent Authority and being available through the Competent Authority's web-site. Some Members stated that their Competent Authorities decided to

publish regulated information on its internet site in order to guarantee equal and easy access to information for all interested parties (BG, IT, RO); SE underlined the importance of providing information to the market. BG stated that it is obliged by law to publish the regulated information, filed with the FSC, in its Register of public companies. By guaranteeing an equal access to information for all interested parties, the FSC achieves one of its strategic goals – the enhancement of the transparency and the confidence in the non-banking financial sector.

Article 19(1) of TD, second subparagraph

255. Where it proposes to amend, the issuer shall communicate the draft amendment of its instrument of incorporation or statutes to the competent authority at the latest on the date of calling the general meeting which is to vote on or be informed of the amendment.

Major findings

256. 22 Member States (BE, BG, CZ, DE, EE, EL, ES, FR, IE, IS, IT, LT, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK) indicated that they require that the draft amendment of the instrument of incorporation or statutes of the issuer should be communicated to the Competent Authority of the home Member State and to the regulated market to which its securities have been admitted to trading before the date of calling the general meeting which is to vote on, or be informed of the amendment. 7 Member States (AT, CY, DK, FI, HU, LU, NO) indicated that they do not require that the draft amendment of the instrument of incorporation or statutes of the issuer should be communicated to the Competent Authority of the home Member State and to the regulated market to which its securities have been admitted to trading before the date of calling the general meeting which is to vote on, or be informed of, the amendment.

257. BG, IT, LV stated that the relevant draft amendments should be provided *no later than 30 days before the general meeting*. PL stated that the information should be provided *at the latest 26 days before the general meeting* which is to vote on the draft amendments. DE, FR, IE, IS, UK stated that the information should be provided *without delay but at the latest on the date of calling the general meeting*. PT, SE stated the information should be provided *at the latest on the date of calling the general meeting*. SI indicated that the information should be provided as soon as possible and the day of the general meeting at the latest. LT did not specify a clear deadline, but stated that the information should be provided not later than the shareholders are provided with a possibility to familiarise themselves with the draft. MT stated the Competent Authority's approval is required before the issuer circulates the amendments for the approval of the general meeting. In the case of an issuer of debt securities the notice of a general meeting should be given at least 14 days before the meeting and in the case of an issuer of equity securities the notice of a general meeting should be given at least 21 days before the meeting.

Reasons

258. Member States provided the following reasons for applying this particular discretion: implementing the exact (minimum) provisions of the Directive, to avoid provisions incompatible with the statute of traded companies, to ensure that the Competent Authority and regulated market are in a position to access information on major corporate transactions in advance and possibly use this information for supervisory purposes and historical reasons; equal access of shareholders to important information regarding the fundamentals of the issuers in order to have the opportunity to object if their interests would be harmed. Some Member States provided that the exemption is applied for information disclosed in accordance with Article 12(6) of TD but not for information disclosed in accordance with Article 6 of Directive 2003/6/EC because for information disclosed in accordance with Article 12(6) of TD is anyway reported to the competent authority and the issuer simultaneously.

Article 19(2) TD) / Article 12(6) TD / Article 6 of Directive 2003/6/EC

259. Article 19 (2) provides that the home Member State may exempt an issuer from the requirement under paragraph 1 (filing regulated information with the competent authorities) in respect of information disclosed in accordance with Article 6 of Directive 2003/6/EC (inside information) or Article 12(6) of TD (making public major shareholding notifications by the issuer).

Major findings

260. 6 Member States (BE, CY, EE, EL, ES, SI) indicated that as the home Member State, they exempt issuers from the requirement under Article 19(1) of TD in respect of information disclosed in accordance with Article 6 of Directive 2003/6/EC or Article 12(6) of TD. 2 Member States (BG,FR) do not exempt an issuer from these requirements as regards information disclosed in accordance with Art. 6 of MAD, but exempts them as regards major shareholders notifications that are filed with the AMF by the shareholders. 23 Member States (AT, CZ, DE, DK, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SK, UK) indicated that they do not exempt issuers from the requirement under Article 19(1) of TD in respect of information disclosed in accordance with Article 6 of Directive 2003/6/EC or Article 12(6) of TD.

261. BE stated that the exemption is applied only for information disclosed in accordance with Article 12(6) of TD. BE also stated that information disclosed in accordance with article 6 of MAD constitute regulated information as defined by article 2 (1) (k) of the Transparency Directive and shall be filed with the competent authority, while major shareholders notifications are filed with the CBFA by the shareholders. CY stated that the discretion was exercised only as regards Article 6 of 2003/6/EC in order to avoid the double filing of regulated information (insider information) by the issuer to the Commission. The discretion was not exercised as regards Article 12(6) of TD, in order for the Commission to have the capability of verifying that the information notified to the issuer in accordance with articles 9, 10 and 13 is the same as the information filed by the issuer to the Commission.

Reasons

262. The Member States applying this discretion provided the following reasons: to avoid the double filing of regulated information (insider information) by the issuer to the Commission. Some Member States provide that the exemption is applied for information disclosed in accordance with Article 12(6) of TD but not for information disclosed in accordance with Article 6 of Directive 2003/6/EC because for information disclosed in accordance with Article 12(6) of TD is anyway reported to the competent authority and the issuer simultaneously. .

263. The Member States not applying this certain discretion provided the following reasons: compliance with Art. 6 MAD results in meeting the requirements according to Art. 19(1) TD; all regulated information should be channelled to the Competent Authority in order to exercise checks before the information is disseminated to the public and ensure that any notification to the public is complete and accurate; all information should be able to be retrieved from the same source and manner; to allow an appropriate supervision of the issuer's compliance with its obligations under MAD; adequate protection of investors; regulated information is disclosed in a manner ensuring that the investors from all over the European Community have fast access, to the information on a non-discriminatory basis and through the OAM which is operated by Competent Authority.

Section O - Access to regulated information

Article 21 (2) TD

264. Article 21(2) provides for the possibility to appoint more than one officially appointed mechanism in a Member State.

Major findings

265. 5 Member States (DK, EL, IT, NO, SI) have explicitly indicated that there may be more than one officially appointed mechanism for the central storage of regulated information, however no Member State has raised that there would be limitations in their national laws on the number of officially appointed mechanisms. 24 Member States (AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK, UK) have indicated that for the time being, they have only one officially appointed mechanism for the central storage of regulated information and no Member State has reported that it has more than one officially appointed mechanism for the central storage of regulated information.

Reasons

266. The most common reasons given by Member States to only have one appointed mechanism for the central storage of regulated information are: security, comfort ability, efficiency / circumstances of the market, strict implementing the exact (minimum) provisions of TD. The reasons provided by Member States to have more than one appointed mechanism for the central storage of regulated information are: cost efficiency and benefits of competition.

Section P

Third countries

Article 23(1) TD / Articles 4 to 7 / Articles 12(6), 14, 15, 16 to 18 TD

267. Article 23(1) TD provides the possibility for home Member States to exempt third country issuers from the requirements under Articles 4 to 7, 12(6), 14, 15 and 16 to 18 in case equivalence is established.

Major findings

268. 21 Member States (AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, IE, IS, LV, MT, NO, PL, PT, SE, SI, SK, UK) indicated that their competent authority as the competent authority of the home Member State exempt issuers, whose registered office is in a third country from requirements under Articles 4 to 7 and Articles 12(6), 14, 15 and 16 to 18 of TD, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent. 8 Member States (EE, FR, HU, IT, LT, LU, NL, RO) have indicated that their Competent Authority does not grant such exemptions for issuers, whose registered office is in a third country.

269. NO can only exempt issuers from requirements under articles 4 to 7 of TD. PT stated that its regulation does not expressly cover equivalence requirements for Articles 7 and 16 of TD. SE indicated that Art 16 is not exempted for third country issuers. Among the 7 Member States that have indicated that their Competent Authority does not grant such exemptions for issuers, whose registered office is in a third country, 4 Member States (HU, LT, NL, RO) stated that their national legislation does not allow their Competent Authorities to grant such exemptions, while 4 Member States (EE, FR, IT, LU) indicated that their Competent Authorities have this possibility provided by their national provisions (in IT, with the exception of Articles 12(6) and 15 TD), but the Competent Authority decided not to grant such exemptions for issuers, whose registered office is in a third country. NL stated that such an exemption can only be granted based upon a decision of the European Commission and by Ministerial decree.

Reasons

270. The reasons provided for applying this discretion was implementation the exact provisions of TD avoiding unnecessary burdens for third country issuers, investor protection. SE stated that the reason why article 16 is not exempted for third country issuers is that the information related to the said article may consist of price sensitive information and should therefore be disclosed on equal requirements for all issuers whose securities are admitted to trading on a regulated market. LT, FI, RO and SK indicated that there are no third country issuers on their regulated markets.

Article 19, second subparagraph L2D / Article 23(1) TD / Article 12(2) TD / Article 12(6) TD

271. The second subparagraph of Article 19(2) L2D states that the time frames for the notification to the issuer and for the subsequent disclosure to the public by the issuer may be different from those set out in Article 12(2) and Article 12(6) TD (major shareholding notifications).

Major findings

272. 10 Member States (BG, DE, EE, EL, FR, IS, LU, LV, MT, PT) indicated that with regard to third countries equivalence, the time frames for the notification to the issuer and for the subsequent disclosure to the public by the issuer may be different from those set out in Articles 12(2) and 12(6) of TD. 19 Member States (AT, BE, CY, CZ, DK, ES, FI, HU, IE, IT, LT, NL, NO, PL, RO, SE, SI, SK, UK) indicated that with regard to third countries equivalence, the time frames for the notification to the issuer and for the subsequent disclosure to the public by the issuer may not be different from those set out in Articles 12(2) and 12(6) of TD.

273. BG stated that the FSC considers the requirements laid down in the legislation of a third country as equivalent, when the time period for disclosing this information to the public by the issuer from that country *is shorter than seven trading days*. DE noted that both time frames in total have to be equal or *shorter than seven trading days*. EE stated that the EFSA may make a decision concerning such different terms based on the issuer's request. Information concerning such decisions shall be published on the website of the EFSA. EL stated that the in case of Art 12(6) the timeframe should be the same with national law provision (five trading days in general), which, however, is shorter than the TD provision. IS stated that the time frames to notify the issuer and the subsequent disclosure to the public must be total 7 days or less. LU declared that the provisions of the Level 2 Directive have been literally transposed, but have not been used in practice. LV declared that the overall term for receiving and disseminating the information about the acquisition or termination of a qualifying holding is *seven trading days or less*.

Reasons

274. The reasons mentioned by Member States for implementing this discretion were: the implementation of the exact provisions of the Directive; allowing flexibility / level playing field, to ensure non-discriminatory access to information by investors.

Section Q - Competent Authorities

Article 24 (1) second subparagraph - Designation of a Competent Authority other than the central Competent Authority

275. In accordance with the second subparagraph of Article 24(1) TD, Member States may designate a Competent Authority other than the central Competent Authority for the purpose of the examination

of information in accordance with the relevant reporting framework and take appropriate action in the case of discovered infringements (Article 24(4) (h)).

Major findings

276. 4 Member States (DK, IE, IS, UK) designated a Competent Authority other than the central competent authority referred to in the first subparagraph of Article 24(1) of the TD. 1 Member State (AT) noted that the competence for this provision is with the civil courts, but no formal designation has been made by AT.

277. AT stated that Austria has not designated a Competent Authority. When implementing the TD into Austrian national law, the legislator has argued that civil courts are competent in any case and that double competencies should be avoided. However, plans to establish an enforcement authority are still being discussed by the Ministry of Finance. Further details are not yet available at this point in time. Until the designation of such authority, the competence will remain with the civil courts. DK pointed out that the Danish Securities Council is responsible for compliance with regulations regarding financial information in annual reports and interim financial statements and the Finanstilsynet and the Danish Commerce and Companies Agency act as secretariat for and on behalf of the Danish Securities Counsel. IE noted that the Irish Auditing and Accounting Supervisory Authority (IAASA) is the Competent Authority for the purposes of Article 24(4) (h) of the TD. IS explained that the Register of Annual Accounts shall assess whether information under Chapter VII (Chapter VII. Periodic information requirements for issuers) is prepared in accordance with appropriate accounting standards. UK stated that the FSA has directly powers with regards to periodic information, except with regard to article 24 (4) (h) where the power is shared between the FSA and the FRRP.

Reasons

278. The main reasons provided for Members who have designated a Competent Authority other than the Central Competent Authority and for Member States who have not designated a Competent Authority other than the Central Competent Authority: civil law provisions; historical reasons; higher effectiveness and/or efficiency; implementing the exact provisions of TD; conferring safety to the supervisory and regulatory activity.

Article 24(2) TD - Delegation of Tasks

279. In accordance with Article 24 (2) Member States may allow their central Competent Authority to delegate tasks. Any delegation of tasks shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out.

Major findings

280. 4 Member States (IE, IS, RO, UK) allow their central Competent Authority to delegate tasks. The details provided by the Member States in relation to the tasks delegated are. IE delegated monitoring aspects including conducting ex-post reviews of financial reports and major shareholdings. IS allows a regulated market to obtain information from market members for supervisory tasks entrusted to the regulated market. RO delegated mainly technical tasks. UK delegated the examining and monitoring tasks to the FRRP. IE stated that the Financial Regulator delegated specific tasks to Irish Stock Exchange. These tasks consist of monitoring aspects including conducting ex-post reviews of interim management statements and major shareholding notifications. The Exchange acts as a point of receipt for filings and maintenance of all regulated information in this field. The responsibility of supervision and the powers of supervisory power remain with the Financial Regulator. IS explained that the Financial Supervisory Authority may entrust a regulated market with supervisory tasks under this Act. The Financial Supervisory Authority may provide a regulated market with information concerning such supervisory tasks. A regulated market may obtain information from the members of the market in question for supervisory tasks entrusted to the regulated market under this paragraph. The authorisation to charge a fee for individual tasks granted to the Financial Supervisory Authority under this

Act shall apply to a regulated market entrusted with the tasks in question. RO noted that this option was implemented having in mind that the centralized supervisory, regulatory and enforcement nature of one capital market Competent Authority shall be in line with the power for allowing to delegate the tasks, especially the technical ones. The provisions of the national law shall stipulate the conditions for delegation of tasks. UK provided that the FSA has delegated the examination and monitoring to the Financial Reporting Review Panel (FRRP). The FRRP is also authorised to apply to court in respect of defective accounts, but the FSA still has the power to take appropriate enforcement measures in case of discovered infringements (second part of Article 24(2)).

Reasons

281. 12 Member States indicated the following reasons for their decisions: historical reasons; legal provisions or constitutional constraints; the sovereignty of the Competent Authority / the existence of only one Competent Authority; delegation was not considered appropriate. In some Member States national law does not provide for the Competent Authority to delegate its legal functions; or should explicitly provide for the designation of another Competent Authority. Other reasons are: historical reasons; It was also highlighted in some cases that even when delegation was possible, the delegation power was allowed under a restricted time period.

Section R **Penalties**

Article 28(1) TD - Administrative measures, civil and/or administrative penalties

282. In accordance with Article 28 (1), Member States shall ensure, in conformity with their national law, that at least the appropriate administrative measures may be taken or civil and/or administrative penalties imposed in respect of the persons responsible where the provisions adopted in accordance with the TD have not been complied with.

Major findings

283. All Member States responded that they provide that appropriate administrative measures may be taken or imposed in respect of the persons responsible, where the provisions adopted in accordance with TD have not been complied with. All Member States with the exception of 1 (BG) responded that they provide that civil and/or administrative penalties may be taken or imposed in respect of the persons responsible, where the provisions adopted in accordance with TD have not been complied with. The information provided by Member States in relation to the Authorities' powers regarding measures/penalties includes, but is not limited to, the following categories:

284. Fine/pecuniary penalty (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IS, IT, LU, LV, MT, NO, PL, PT, RO, SI, SK, UK)

285. Criminal prosecution, criminal penalties and / or imprisonment (DK, FI, FR, HU, IS, IT, LU, MT, PL, RO, UK). MT clarified that no proceedings of an offence can be commenced without the consent of the Attorney General.

286. Suspension and/or prohibition of trading, listing and/or offering of securities on at least a temporary basis (BG, CY, DK, EL, ES, FI, HU, IS, IT, NO, MT, PT, SK).

287. Suspension of voting rights on at least a temporary basis (DE, IT, LU, NO, PT)

288. Table (R1, R3, R5)

	YES		NO	
Appropriate administrative measures	29	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK	0	
Civil and/or administrative penalties	28	AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK	1	BG

289. Table

	Details	
AT	According to Section 48 para 1 last subparagraph, an administrative fine of up to EUR 30,000 may be imposed.	Civil and/or admin. Penalties
BE	See CESR Report on the mapping of supervisory powers, administrative and criminal sanctioning regimes of MS in relation to the TD (CESR/09-058).	Approp. admin. Measure Civil and/or admin. Penalties
BG	The FSC has the statute of a penalizing administrative authority and has the powers to impose only administrative measures and sanctions but not civil or criminal ones. In case of an established committed administrative violation, the FSC issues a penal decree whereby the relevant administrative sanction is imposed on the offender. In the process of individualization of the sanction the following issues are taken into consideration: whether it is the first or the second/third etc. violation committed by the offender, whether the offender has committed previously other violations of the relevant legislation and what is the type of these violations, what is the financial status of the offender, what is the intended effect upon the offender. The measures, which can be imposed on the offenders, are fines, pecuniary sanctions and coercive administrative measures. The fines and the pecuniary sanctions are imposed respectively on natural persons and entities for infringement of the provisions of the Law on Public offering of Securities that implement the provisions of the TD. Once the penalty warrant is stable and there are no further possibilities for appeal, the fine or the pecuniary sanction is subject of payment. An interest is imposed for each day of delay in payment. The fines and the pecuniary sanctions are listed in detail in art.221 from the Law on Public Offering of Securities. When it is established that supervised persons carry out activities in contravention of the Law on Public Offering of Securities, its implementing measures, decisions of the FSC, as well as where the exercising of control activity by the FSC is prevented or the interests of investors are jeopardized, the FSC may: 1. oblige them to take specific measures needed to prevent and remove	Approp. admin. Measures

	<p>the offences, their prejudicial effects or the threat to the interests of investors, within a time limit set by the FSC;</p> <p>2.convene, with an agenda determined by the FSC, a general assembly and/or schedule a meeting of the governing or supervisory bodies of the persons supervised by the FSC in view of passing resolutions on the measures to be taken;</p> <p>3.inform the public of any activities that jeopardize investors' interests;</p> <p>4.suspend, for a period of 10 consecutive working days or definitively, the sale or the carrying out of transactions in certain securities;</p> <p>5.refuse to give a confirmation for the prospectus of a new issue of securities;</p> <p>6.order in writing a supervised person to remove one or more persons authorised to manage and represent the corresponding person and divest such person of his managerial and representation rights until his removal;</p> <p>7.appoint questor in the cases provided for in this law;</p> <p>8.appoint a registered auditor who should conduct a financial or other audit of a supervised person, in accordance with requirements set by the deputy chairman. The expenses shall be covered by the audited person;</p> <p>9.take a decision for temporary suspension of the redemption of shares of an open-end investment company, or units of mutual funds;</p> <p>10.revoke the license of the supervised entity to carry out activities</p> <p>In case of infringement by a bank, the FSC may apply the measures under item 1 and item 5. It can also propose to the Bulgarian National Bank (BNB) to apply some of its administrative measures (art. 103 (2) of the Law on Credit Institutions). The BNB must communicate its decision to the FSC within one month as from receipt of the proposal of FSC. The FSC may propose to the BNB to withdraw a bank's license only if the corresponding entity systematically violates the provisions of the Law on Public offering of Securities or of its implementing measures. In cases of non-compliance with the coercive administrative measure, a pecuniary administrative measure is imposed.</p>	
CY	<p>Mainly the appropriate administrative measures are considered to be: the imposition of an administrative fine, the power to require the issuer to disclose to the public the information required under 24(4) (a), the power to suspend, or request the relevant regulated market to suspend, trading in securities of an issuer, and the power to prohibit trading on a regulated market.</p>	Ap-prop. admin. Measures
CY	<p>Civil liability is attributed according to the Law which provides that: A person who infringes the Law has an obligation to compensate any person who suffered damage or loss of profit or both, due to its act or omission, infringing its obligations which arise from Law. Administrative penalties are imposed for a violation of: - articles 4, 5 and 6 of the TD up to €170.000 - articles 12(6), 14, 15, 19(1)-1st para. and 16 of the TD up to €85.000, - articles 17 and 18 of the TD up to €85.000, - articles 9,10, 11,12, 13 of the TD up to €85.000 - any other article of the TD up to €85.000</p>	Civil and/or admin. Penalties
	<p>In our country, we use appropriate administrative measures such as prohibitions or orders.</p>	Ap-prop. admin. Measures
CZ	<p>In our country, standard civil penalties (like compensation for damages) and administrative penalties (like administrative fines) are used.</p>	Civil and/or admin.

		Penalties
	Measures of German administrative law can be taken.	Appropriat. admin. Measures
DE	Monetary fines can be applied.	Civil and/or admin. Penalties
DK	Administrative penalties are imposed for a violation of: articles 4,5,6,9,10,11,12,13 and 14 of the TD up to Euro 2.500.	Appropriat. admin. Measures Civil and/or admin. Penalties
	The EFSA may require information to be published or publish the information itself, issue precepts.	Appropriat. admin. Measures
EE	For breach of TD requirements, the EFSA may impose administrative sanctions, i.e. fines with maximum amount of approximately 32 000 EUR for legal persons and 1150 EUR for natural persons.	Civil and/or admin. Penalties
EL	Fine up to 1.000.000 Euros, reprimand, delisting of shares.	Appropriat. admin. Measures Civil and/or admin. Penalties
ES	Sanctions/measures that can be imposed on wrongdoers are regulated basically in articles 102 to 107 of the Spanish Securities Market Law. These sanctions/measures include: Pecuniary sanctions for a maximum amount of up to the highest of the following amounts: five times the gross profit obtained as a result of the acts or omissions comprising the infringement; 5 per cent of the infringing firm's own funds; five per cent of the total funds, owned by the firm or third parties, that were used in the infringement; or 600,000 euro. Suspension or restriction of the type or volume of transactions which the offender may carry out in the securities markets for a limited period of time.	Appropriat. admin. Measures Civil and/or admin. Penalties

	<p>Suspension of membership of an official secondary market or multilateral trading facility for a limited period of time.</p> <p>Exclusion of a financial instrument from trading on an official secondary market or multilateral trading facility.</p> <p>Withdrawal of authorisation in the case of investment firms, public debt market registered dealers and other firms registered at the National Securities Market Commission. In the case of investment firms authorised by another EU Member State, the sanction involving withdrawal shall be replaced by prohibition from commencing new operations in Spanish territory.</p> <p>Suspension of the offender from directorships or executive posts in a financial institution for a limited period of time.</p> <p>Removal of the offender from directorships or executive posts in a financial institution and disqualification from holding directorships or executive posts at the same institution for a limited period of time.</p> <p>Removal of the offender from directorships or executive posts in any financial institution and disqualification from holding directorships or executive posts at any other institution for a limited period of time.</p>	
FI	See our response to the Review Panel mapping on supervisory powers and sanctions.	<p>Appropri. admin. Measures Civil and/or admin. penalties Additional Measures/penalties</p>
FR	The maximum administrative fine is 10,000,000 Euros.	<p>Appropri. admin. Measures Civil and/or admin. Penalties</p>
IS	The Financial Supervisory Authority may impose administrative fines on any party violating the TD art.	<p>Appropri. admin. Measures</p>
	<p>The Financial Supervisory Authority may impose administrative fines on any party violating the TD art. AND.</p> <p>2) Violation of the following provisions is subject to fines or up to two years' imprisonment, if there are no more severe sanctions under other legislation: a) notification requirement; b) notification requirement in</p>	<p>Civil and/or admin. Penalties</p>

	special circumstances; c) notification requirement regarding own shares.	
IT	<p>Consob may make public the fact that parties obliged to disclose regulatory information do not comply with such obligations. Consob may: suspend or require that the regulated market concerned suspends the trading of securities or closed-end funds for maximum ten days on each occasion, if there are grounds to suspect that disclosures regarding regulatory information have been violated by the party under obligation to disclose such regulated information;</p> <p>Prohibit trading on a regulated market if it is confirmed that the above provisions have been violated.</p> <p>When the offender exercises a professional activity, Consob shall transmit the sanctioning measure to the competent professional bar/body. The measure imposing sanctions shall be published in abridged form in the Bulletin of (...) Consob. Taking into account the nature of offences and the interests involved, (...) Consob may establish further methods of publicizing the measure, charging the related expenses to the offender or excluding publication of the measure where such publication may place the financial markets at serious risk or cause disproportionate damage to the parties. In order to ensure that the information provided to the public is correct, Consob may require the issuers and relevant controlling and controlled persons, to communicate data and documents establishing the relevant modalities. Consob, where it has a well-founded suspicion of serious irregularities in the performance of the supervisory duties of the internal boards of an issuer may report the facts to the Courts pursuant to Article 2409 of the Civil Code, the costs of the inspection shall be borne by the company.</p>	Appropriat. admin. Measures
IT	Failures by issuers to publish periodic information and information for holders of securities admitted to trading on a regulated market according to Italian law shall be punished by a pecuniary administrative sanction of between five thousand euro and five hundred thousand euro. The same pecuniary sanction shall apply in case of failure to comply with the Italian provisions on dissemination and storage of regulated information by persons authorised by Consob to manage the storage mechanisms. Failure to notify information about major shareholdings shall be punished by an administrative pecuniary sanction from twenty-five thousands euro to two million and five hundreds euro. A delay not exceeding two months in the above-mentioned notification shall be punished by an administrative pecuniary sanction ranging between five thousand euro and five hundred thousand euro.	Civil and/or admin. Penalties
LU	The CSSF may issue injunctions. In addition, the law provides for the automatic suspension of voting rights of shareholders of Luxembourg issuers which did not comply with their major holdings notification obligations. Courts may cancel any general assembly decision where such suspended voting rights have nevertheless been used.	Appropriat. admin. Measures
	The CSSF may take the administrative measures provided for by the TD and impose administrative fines ranging from EUR 125 to EUR 12500.	Civil and/or admin. Penalties
LV	Article 148 of the FIML states the following: (5) As to other violations of this Law or any regulatory provisions issued pursuant to this Law, the Commission shall be entitled to warn the person that has violated the regulatory provisions or impose a penalty of up to 10 000 lats on that person. (7) For a failure to comply with the requirements of Subparagraph 5 of Paragraph 2, Subparagraph 6 of Paragraph 3 and of	Appropriat. admin. Measures

	Paragraph 7 of Article 54 and of Articles 56 and 57 hereof, the Commission shall be entitled to issue a warning to an issuer or impose a penalty of up to 10 000 lats. Article 64.3 of the FIML states the following: (4) The Commission shall be entitled to publish information on the measures taken and sanctions imposed on an issuer, a shareholder, a holder of financial instruments or a person referred to in Paragraph 2 of Article 60 hereof for violating the requirements of regulatory provisions, except when such disclosure of information may cause serious disruptions in the financial instruments market or cause disproportionate damage to the parties involved.	
	Publication of statement censoring the applicant or issuer Suspension of admission to trading for a maximum period of 10 consecutive working days on any single occasion Prohibition or suspension of advertisements for a maximum period of 10 consecutive working days on any single occasion. Suspension of trading on a regulated market for a maximum period of 10 consecutive working days on any single occasion. Prohibition of trading on a regulated market • Cancellation of listing	Appropriat. admin. Measures
MT	An administrative penalty not exceeding €93,174.94 Application by the Malta Financial Services Authority (MFSA) to the court for it to give the necessary orders to restrain a contravention by any person of any Listing Rule, to restrain the said person from disposing or otherwise dealing with any assets, to order the person liable for infringement of the Listing Rules to pay compensation. • Fine (multa) not exceeding €465,874.68	Civil and/or admin. Penalties
	Finanstilsynet may issue a corrective order or order fulfilment. Finanstilsynet may suspend or require that the regulated market concerned suspends certain financial instruments from trading if called for on special grounds.	Appropriat. admin. Measures
NO	Finanstilsynet may impose a violation charge or a cumulative daily fine.	Civil and/or admin. Penalties
PL	It is possible to impose an administrative sanction on a member of the management board and/or issuer, including the administrative fine	Appropriat. admin. Measures Civil and/or admin. Penalties
PT	In addition to the applicable fines described below and notwithstanding those set out in the General Legal Framework applicable to administrative offences, the following accessory sanctions may be imposed on the offenders: Apprehension and loss of the object of the offence, including the benefit obtained by the offender with the practice of the offence; Temporary suspension of the exercise by the offender of the profession or the activity to which the offence refers; Disqualification from the exercise of the function of administration, management, control, supervision and, in general, representation of	Appropriat. admin. Measures

	<p>any financial intermediary within the scope of any or all activities of intermediation in securities or other financial instruments; Publication by the CMVM, at the expense of the offender and in places suitable for the accomplishment of the aims of general prevention of the legal system and protection of securities or other financial instruments markets, of the sanction imposed in view of the offence; Revocation of the authorisation or cancellation of the registration necessary for the performance of the activities of financial intermediation in securities or in other financial instruments. Moreover, CMVM may order the management entity of the regulated market or the MTF to suspend the financial instruments from trading when the issuer's circumstances imply that the trading is detrimental to the interests of the investors or if the management entity of the regulated market did not do so on a timely basis, as well as to exclude the financial instruments from trading when the breach of the applicable laws or regulations is proved. Voting and financial rights may be suspended when a major holding is deemed non-transparent by CMVM.”</p>	
	<p>Non-compliance with the provisions adopted in accordance with TD constitutes an administrative offence, which may punished with following fines: Between €25,000 and €5,000,000 when classified as very serious offence; Between €12,500 and € 2,500,000, when classified as serious offence; Between €2,500 and €500,000, when classified as minor offence; However, if the double of the economic gain is more than the maximum value of the fine applicable, then the highest value shall prevail.</p>	<p>Civil and/or admin. Penalties</p>
RO	<p>In accordance with our national law, the offences are sanctioned by: a) warning; b) fine; c) complementary sanctions, applied as the case may be: 1. suspension of authorisation; 2. withdrawal of authorisation; 3. temporary prohibition from carrying our certain activities and services which are subject to this law. The national law provides that breaching the legal provisions (related to market abuse, the intentional accessing by unauthorised persons of the electronic trading, clearing and settlement systems) is considered a crime and is punished with imprisonment or with a fine in the limits imposed in the national law.</p>	<p>Approp. admin. Measures Civil and/or admin. Penalties</p>
SE	<p>Finansinspektionen has no power to issue civil penalties. Regarding TD Finansinspektionen may only intervene against issuers.</p>	<p>Approp. admin. Measures Civil and/or admin. Penalties</p>
	<p>Administrative measures are the ones from Article 24, paragraphs 4 and 5 of the TD.</p>	<p>Approp. admin. Measures</p>
SI	<p>According to Articles 558 and 559 there are monetary fines defined for violation of the TD provisions as required by the ZTFI. Monetary fines are addressed to issuers (fines ranging from 25.00 to 125.000 €) and</p>	<p>Civil and/or admin.</p>

	their competent persons (fines up to 4100 €). In cases of severe violation of the TD provisions in the ZTFI maximum fine up to 370.000 € could be decided by the Agency).	Penalties
SK	According to the Art. 144 (4) of Securities and Investment Services Act: "If the National Bank of Slovakia finds any shortcomings in the operation of an issuer of securities, an offeror of securities, a person asking for admission to trading on a regulated market, a person discharging managerial responsibilities within an issuer and any person closely associated with him, or a person making a public offer of assets, consisting of non-compliance with the obligations laid down in this Act or the evasion of other provisions of this Act or separate laws defining the obligations of supervised entities, the National Bank of Slovakia may take the following steps according to the gravity and nature of the shortcomings and the degree of culpability: a) impose sanctions on the issuer, the offeror of securities, the person asking for admission to trading on a regulated market, the person discharging managerial responsibilities within an issuer and any person closely associated with him, or the person making a public offer of assets, in accordance with paragraph (1),(a), (e) and (i); b) suspend the offeror of securities or the person making a public offer of assets from issuing securities, for a period of up to ten working days, or from selling assets, for up to one year; c) ban the issuer, the offeror of securities, or the person making a public offer of assets from issuing securities or selling assets." (1a-impose measures designed to eliminate the shortcomings;1e-charge a fine between EUR 332 and EUR 663 878;1i-order the publication of a correction of incomplete, incorrect or untrue information)	Approp. admin. Measures Civil and/or admin. penalties
UK	The FSA has powers to provide private and public warnings, civil fines and potentially undertake criminal prosecutions.	Approp. admin. Measures Civil and/or admin. Penalties

Reasons

290. Member States provided the following reasons for the application of these discretions, including, but are not limited to, the following categories: deterrence, prevention and / or sanction; legislative decision; measures/sanctions are adequate and appropriate; needs of the domestic market; transparency. A smaller number of Member States provided reasons for not applying further discretions beyond those they use; these reasons include: existing measures/sanctions are sufficient and / or effective; national prosecutor handles civil and criminal penalties. BE and FI made reference to ESMA Report on the mapping of supervisory powers, administrative and criminal sanctioning regimes of MS in relation to the TD (CESR/09-058).

Article 28(2) - Disclosure to the public of measures taken and/or penalties imposed by the competent authority

291. In accordance with Article 28 (2), Member States shall provide that the Competent Authority may disclose to the public every measure taken or penalty imposed for infringement of the provisions of the

TD, save where such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Major findings

292. 27 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NO, PL, PT, RO, SE, SK, UK) responded that their Member State provided that their Competent Authority may disclose to the public every measure taken or penalty imposed for infringement of the provisions adopted in accordance with TD.

293. ES noted that every measure taken or penalty imposed for serious and very serious infringements of the provisions adopted in accordance with the Transparency Directive is always public on the Spanish National Official Gazette (Art. 102, 103 and 104 of the Spanish Securities Market Law 24/1988. The CNMV is also required to maintain a public register where these sanctions are filed and, if firm in the administrative proceedings, must be disclosed. IT stated that the measure imposing sanctions shall be published in abridged form in the Bulletin of (...) Consob. Taking into account the nature of the offences and the interests involved, (...) Consob may establish further methods of disclosing the measure, charging the related expenses to the offender. Consob may exclude publication of the measure where such publication may place the financial markets at serious risk or cause disproportionate damage to the parties. Where the offender is employed by a company/entity such company/entity shall be jointly and severally liable with them for payment of the sanction. The company/entity shall exercise the right of recourse against those responsible for the offences. SK made reference to Article 37 (3b) of the Act on Supervision of the Financial Market: "(3) The National Bank of Slovakia may inter alia also disclose b) information about sanctions imposed and remedial measures taken".

Reasons

294. The reasons provided for applying this discretion include, but are not limited to, the following categories: discipline, elimination of activities that contravene the law, deterrence and/or sanctioning; effective reputational incentives; efficiency and legal security; experience from and/or existing national legislation and/or legislators' decision; service provided to the public; transparency; usefulness. The reasons provided for not applying the discretion include: follow national information disclosure systems or other national approach to disclosure.

Section S - TRANSITIONAL AND FINAL PROVISIONS

Transitional provisions

Article 30(3) TD

295. In accordance with Article 30(3) of TD, where an issuer is incorporated in a third country, the home Member State may exempt such issuers in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from drawing up its financial statements in accordance with Article 4(3) and its management report in accordance with Article 4(5) by fulfilling certain criteria.

Major findings

296. 8 Member States (AT, CY, EE, EL, IE, IS, LU, UK) stated that, in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005, they have exempted issuers who are incorporated in a third country, from drawing up their

financial statements in accordance with Article 4(3) and its management report in accordance with Article 4(5) as long as they fulfil the conditions laid down under Article 30(3) (a) – (c) of TD. 21 Member States (BE, BG, CZ, DE, DK, ES, FI, FR, HU, IT, LT, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK) indicated that they have not granted such exemptions for issuers who are incorporated in a third country.

Reasons

297. The reasons provided by Member States are the following: increasing transparency; the similar treatment of third country issuers without considering the date of admission to trading. BG mentioned that the date of its accession to the EU was later than 1 January 2005, as foreseen by Art. 30 (3) TD; LT, LV, SE and SK stated that there were no third country issuers.

Article 30(4) TD

298. According to Article 30(4) TD, the home Member State may exempt issuers in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from disclosing half-yearly financial report in accordance with Article 5 for 10 years following 1 January 2005, provided that the home Member State had decided to allow such issuers to benefit from the provisions of Article 27 of Directive 2001/34/EC at the point of admission of those debt securities.

Major findings

299. 6 Member States (CY, EE, EL, IE, LU, UK) have indicated that in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005, they exempt issuers from disclosing half-yearly financial report in accordance with Article 5 for 10 years following 1 January 2005, provided that the home Member State had decided to allow such issuers to benefit from the provisions of Article 27 of Directive 2001/34/EC at the point of admission of those debt securities. 23 Member States (AT, BE, BG, CZ, DE, DK, ES, FI, FR, HU, IS, IT, LT, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK) reported that they do not exempt issuers from disclosing half-yearly financial report in accordance with Article 5.

Reasons

300. The reasons provided by Member States are the following: increasing transparency; similar treatment of issuers without considering the date of admission to trading. BG mentioned that the date of its accession to the EU was later than 1 January 2005, as foreseen by Art. 30 (4) TD. LV and SE stated that there were no such issuers. NO stated that issuers who only have debt instruments guaranteed by the Norwegian State, and who fulfil the requirements mentioned above in S4, are exempted. Issuers founded before the date of entry into force of the Prospectus Directive who only had debt instruments guaranteed by a Norwegian municipality or county municipality may also be exempted.

Section T - General additional questions - Satisfaction

This last group of question asks questions regarding satisfaction, difficulties encountered, effectiveness, plans to change, enforcement and court cases.

Satisfaction

301. This section of the Report summarizes the responses provided by Member States for the questions which requested information on their satisfaction with the application of the specific TD discretions on the national level.

Major findings

302. None of the Member States expressed any dissatisfaction with the practical application of the discretions in their Member States. 19 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, NL, NO, PL, SI, UK) specifically expressed their satisfaction. FR mentioned that additional improvements could be made in order to improve SME's visibility. The emphasis should be placed on measures that will deliver greater visibility on small and listed companies, particularly for analysts. Attention should also focus on adjusting some of the Directive's requirements, especially as regards dissemination, but without adversely affecting investors. The AMF is of the view that a longer period for half-yearly reporting would create a regulatory environment that is more conducive to the listing of all types of issuers. These adjustments must be made in a balanced manner in order to improve visibility and limit the ensuing costs for these companies while preserving the quality of disclosure to the market.

Difficulties encountered

303. This section of the Report summarizes the responses provided by Member States for the questions which requested information on the difficulties encountered with regard to the application of the specific TD discretions on the national level.

Major findings

304. Only 2 Member State (HU, IE) described certain difficulties, whilst 19 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, FI, FR, LT, LU, LV, MT, NL, NO, PL, SI) stated that they did not encounter any difficulties. 2 Member States (ES, SK) have not implemented discretions in the national law. 2 Member States (PT, RO) indicated that they had no major difficulties. 3 Member States (IT, SE, UK) indicated 'not applicable.' HU noted that difficulties could be linked to 1. in relation to dissemination 2. regarding those issuers where the HFSA is only the host CA or 3. issuers whose home CA is the HFSA but not listed in Hungary. IE stated that it has experienced a number of cases where issuers have not been in a position to meet the obligation to notify the total number of voting rights and capital to the public by the end of the calendar month. This occurs where there are changes to major holdings on the last two days of the month. In these instances, issuers may not be in a position to report the necessary figures by month end, thus resulting in non compliance with Article 15.

Effectiveness

305. This section of the Report summarizes the responses provided by Member States for the questions which requested information on the effectiveness of the specific TD discretions on the national level.

Major findings

306. Only 3 Member States (EL, FR, SI) described whether they consider the discretions effective in their application. 20 Member States (AT, BG, CY, CZ, DE, DK, EE, ES, FI, HU, IE, IT, LT, LU, LV, NO, PL, PT, RO, UK) consider the discretions as effective. 4 Member States (BE, IS, SE, SK,) gave no answer. MT indicated that they are not in a position to comment on the effectiveness of the application of the options/discretions of TD/L2D.

Plans to change

307. This section of the Report summarizes the responses provided by Member States for the questions which requested information on the possible plans of Member States to change their national provisions related to one of the discretions included in TD.

Major findings

308. 21 Member States (AT, BE, CY, CZ, DK, EE, EL, ES, HU, IE, IT, LT, LU, LV, MT, NO, PL, SE, SI, SK) stated that there are no plans or thoughts to change the application discretion in future legislation in their Member States. 1 Member State (BG) has no information about plans or thoughts to change, another 2 (FI, UK) refer to the revision of their securities market legislation. 4 Member States have changes (DE, FR, NL, RO), whereof 1 (NL) with a detailed description and 1 (RO) with a general remark. 1 Member State (IS) did not answer.

309. HU mentioned that future changes should address keeping up with the future amendments of TD. RO indicated that in the context of the permanent changes of the capital market and of the intensification of cross-border transactions a review of the national legislation in force is anticipated in order to implement/remove some options. NL stated that there is a draft law which seeks to introduce a lower 3% threshold, a statement of intention, as well as a separate draft law which seeks to extend article 10 to include instruments of similar economic effect.

Enforcement and court cases

310. This section of the Report summarizes the responses provided by Member States for the questions which requested information on the relevant enforcement and court cases Member States may have in relation to certain TD discretions.

Major findings

311. 24 Member States (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IT, LT, LU, LV, NL, NO, PL, PT, RO, SI, SK, UK) stated that they have no significant enforcement and court cases in their Member States with regard to the exercise of a particular discretion. 1 Member State (MT) has no information about any significant enforcement and court cases and 4 Member States (BE, HU, IS, SE,) answered with not applicable without further explanation.

PART 2 – Gold-plating and more stringent requirements

Section A – General Provisions

General Provisions:

This section contains questions on the general provisions.

Article 1(1) TD

312. In accordance with Article 1(1), TD establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within a Member State. However certain Member States may apply certain TD provisions on issuers whose securities are not admitted to trading on a regulated market situated or operating within a Member State.

Major findings

313. 10 Member States (DK, PL, RO, SI, UK, BE, HU, IT, LT, PT) have responded that they do apply certain TD provisions on issuers whose securities are not admitted to trading on a regulated market situated or operating within a Member State, while 19 Member States (AT, BG, CY, CZ, DE, EE, EL, ES, FI, FR, IE, IS, LU, LV, MT, NL, NO, SE, SK) responded that they do not apply TD provisions on such issuers.

Article 2(1), point k of TD

314. Article 2(1) k of TD provides that ‘regulated information’ means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under this Directive, under Article 6 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (1), or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of this Directive. This definition directly refers to Article 3(1) of TD, which explicitly allows home Member States to make an issuer subject to requirements more stringent than those laid down in TD. For this reason Member States may include additional elements in their national provisions on ‘regulated information’ in addition to those already covered by TD.

Major findings

315. 13 Member States (AT, BE, CY, ES, FI, FR, IE, IT, LV, NL, SI, SE, UK) have indicated that they have included additional elements (other published information) to the definition of ‘regulated information’ in their national regulation, while 16 Member States (BG, CZ, DE, DK, EL, EE, HU, IS, LT, LU, MT, NO, PL, RO, PT, SK) stated that they did not provide for such additional elements. 7 Member States (FR, IE, IT, NL, SE, SI, UK) have indicated that they have included prospectuses in the definition of ‘regulated information’. With regard to ‘other published information’ that is also made part of the definition of ‘regulated information’ on the national level, Member States have listed the following elements: Notification of the home Member State selected- (AT, BE); Annual document according to Art. 10 of Directive 2003/71/EC / annual document containing disseminated information (AT, NL); Optional announcement of business and results- (BE); Weekly reports on share buy back (from 1 January 2011)- (BE); Indicative Results (net gain or loss after tax) regarding the unaudited financial statements for the year (CY); Corporate governance statement provided for in article 1(7) of Directive 2006/46/EC. The corporate governance statement is included as a special part in the management report of article 4(2)(b) of the TD (CY); Information required in the rules of the stock exchange (FI); In-

formation on corporate actions, related third parties transactions, stock option plans, shareholders agreements, major holdings by a listed company in an unlisted company, corporate governance codes (IT); Information on significant events related to the issuer (LV); The Annual Corporate Governance Report, under the “comply or explain” principle on the recommendations of the Spanish Unified Code of Good Governance (ES); list of the persons who are members of the management bodies, reports drawn up in accordance with the provisions of Articles 225 and 232 (particularly, the letter a) and d)) of Law no. 297/2004 (RO); All information which an issuer is required to disclose under the UK Listing Rules (UK).

Reasons

316. The reasons provided by Member States are the following: harmonizing the provisions of article 1(7) of Directive 2006/46/EC with national legislation; a wider definition of regulated information ensures better and easier access to information by investors. Some Member States indicated that they did not introduce additional elements to the definition of ‘regulated information’ as by implementing TD, they wanted to follow the provisions of the Directive as closely as possible.

Section B - Periodic information - Annual financial report

This group of questions and the following under C, D, E, and F asks questions on periodic information.

Article 4(2) TD

317. The annual financial report shall contain the following: the audited financial statements, the management report, and statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face. Member States may – on the basis of Article 3(1) – require additional elements to the annual financial report.

Major findings

318. 5 Member States (BG, CZ, EL, MT, PL) have indicated that the annual reports comprise of more elements than required in art 4.2-4.5 (audited financial statements, management report, management statement, consolidated financial statement wherever relevant, audit report). 24 Member States (AT, BE, CY, DE, DK, EE, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, NL, NO, PT, RO, SE, SI, SK, UK) have responded that the annual reports do not comprise of more elements than required in art 4.2-4.5 (audited financial statements, management report, management statement, consolidated financial statement wherever relevant, audit report).

319. BG has stated as an additional element the programme of implementation of the internationally recognised standards of good corporate governance which is included in the annual financial reports on the initiative of the FSC to promote the benefit of the application of good Corporate Governance Standards. Another additional element is the annual check-ups according to a model form. CZ has indicated as an additional element the specific report on relations between the controlled person and on relations between the latter and other persons controlled by the same controlling person (based on the Czech Company Law). EL has declared the following additional elements of the Annual Financial reports: The selected annual information, which is published in the press, at the same time that the

Annual Financial Report is published. This financial information includes a) selected accounts of the balance sheet, the profit and loss account, the equity statement and the cash flow statement (on a consolidated and non consolidated basis) and other material information (business combinations, recognition of errors, contingent liabilities, related party transactions...). b) A list of public announcements and other published documents released during the financial year in accordance with Directive 2003/71 of 15 December. The annual report on the use of Funds rose from a share capital increase in cash or from bond issuance. c) The websites, where the annual financial statements, the auditor report and the management reports of the subsidiaries of the parent company can be accessed.

320. MT has stated that the following elements are not included in article 4.2 to 4.5 of TD. 1) A report by the Directors on the compliance with the Code of principles for Good Corporate Governance. 2) A report by the auditors on the compliance by the Issuer with the Code of principles for Good Corporate Governance 3) the nature and details of any material contract together with the names of the parties to the contract, irrespective of whether the transaction is a related party transaction or not, subsisting during the period under review, to which the Issuer, or one of its Subsidiary Undertakings, is a party and in which a Director of the Issuer is or was directly or indirectly interested; and 4) the name of the company secretary of the Issuer, the registered address and any other relevant contact details of the Issuer. PL has stated as an additional elements required by Law the letter of the president of the management board on the most important achievements or failures in financial year, the selected financial information and the statement made by the board of management on the choice of an auditor in accordance with the law.

Reasons

321. Member States, who have established additional requirements, have presented the following reasons: to promote Corporate Governance Standards; related party transactions, statistical and historical reasons.

322. Member States, who have not established additional requirements, have presented as main reasons that they wanted to be fully in line with the provisions of TD; the minimum requirements provided for under TD are sufficiently complete and also historical reasons.

Article 4(3) TD

323. The Member State as the home Member State requires that the audited financial statements of issuers who are not required to prepare consolidated accounts, contain accounts drawn up in accordance with Regulation No 1606/2002/EC.

Major findings

324. 11 Member States (BG, CY, DK, EE, EL, FI, IT, LV, MT, PT, SI) have responded that the Member State as the home Member State requires that the audited financial statements of issuers who are not required to prepare consolidated accounts, contain accounts drawn up with Regulation (EC) N^o 1606/2002. 18 Member States (AT, BE, CZ, DE, ES, FR, HU, IE, IS, LT, LU, NL, NO, PL, RO, SE, SK, UK) have responded that the Member State as the home Member State does not require it.

325. BG has stated that according to the Bulgarian Accountancy Act all issuers, incorporated in Bulgaria, are obliged to draw up and present their annual financial reports on the basis of the International Accounting Standards. DE has replied in affirmative regarding non-financial issuers, in negative regarding financial issuers. FI has answered that if an issuer is not required to produce consolidated accounts, he will have to prepare his single entity accounts in accordance with IFRS. IT has stated that like the consolidated accounts, the annual and half-yearly financial reports are required to be drawn up in accordance with Regulation (EC) No 1606/2002. The statement referred to in Article 4(2) (c) and Article 5(2)(c) of the Transparency Directive should also cover compliance of the annual and half-

yearly account with the said Regulation. MT has indicated that the Listing Rules issued by the MFSA, specifically Listing Rules provide that, 'If an Issuer is not required to prepare consolidated accounts, the annual financial statements shall comprise accounts prepared in accordance with the national law of the Member State in which the Issuer is registered or incorporated.' The national law of Malta requires all companies registered in Malta to draw up accounts in accordance with Regulation (EC) No 1606/2002. PT has said that issuers, who are not required to draw up consolidated accounts but issue securities that are admitted to trading on a regulated market, must draw up their individual annual accounts in accordance with Regulation (EC) No 1606/2002. SI has indicated that these Requirements apply to banks and insurance companies in accordance with the provisions of the Companies Act (Article 54, para.10).

Reasons

326. Some Member States, who have applied this requirement, have indicated the following reasons: to achieve maximum convergence with the international accountancy principles in order to ensure harmonization and to remove part of the administrative burden; consistency with the national company law framework; to enhance the comparability of the issuers' financial statement; to extend IAS and IFRS to all financial statements in order to avoid costs of double accounting for companies and to facilitate the supervision; transparency reasons. Some of the Member States, who have not applied this particular requirement, have indicated the following reasons: the Competent Authority as no competence to elaborate the accounting standards of financial statements on an individual basis; and that issuers, who are not required to prepare consolidated accounts, are required to prepare their audited financial statements in accordance with the national law of the EEA State in which they are incorporated.

Article 4(5) TD

327. According to Article 4(5), TD, the management report shall be drawn up in accordance with Article 46 of Directive 78/660/EEC and, if the issuer is required to prepare consolidated accounts, in accordance with Article 36 of Directive 83/349/EEC. Member States may – on the basis of Article 3(1) – require additional elements to the management report.

Major findings

328. BG has indicated that due to the fact that Art. 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC are very general, as additional elements may be considered 2 of the elements detailed in full in the Bulgarian national legislation: 1) Analysis of the ratio between the achieved financial results reflected in the financial statement for the fiscal year and previously published forecasts for these results; and 2) Analysis and assessment of the policy concerning the management of the financial resources with indication of the possibilities for servicing of the liabilities, eventual jeopardizing and measures which the issuer has undertaken or is to undertake with a view to their removal. DE has answered that the management report shall also assess and discuss the expected development of the company, together with the significant risk and opportunities; underlying assumptions shall be disclosed (sec. 289 (1) 4 HGB). EE has indicated that the Corporate Governance Report is required as a part of the management report of annual report. EL has stated that the information on related party transactions referred in Article 43(1) (7b) of Directive 78/660/EEC are included. FI has stated that the detailed disclosure requirements are set out in the Accounting Act, the Companies Act, the Securities Markets Act, the Accounting Ordinance and the Decree of the Ministry of Finance on the Regular Duty of Disclosure of an Issuer of a Security. LT has replied that they contain additionally the information on the issuers' activity, data on trading in securities, main shareholdings, capital structure and main changes over the year, members of the collegial bodies.

329. MT has responded that the requirements are in the Listing Rules and in the Companies Act. NO has responded that if the management report has to be drawn up in accordance with the Norwegian Accounting Act, the additional information is required; for example, information on equality between the

sexes in the company and measures that have been implemented and measures which are planned to be implemented to promote the objectives of the Norwegian Anti-Discrimination Act. If the accounts do not have to be prepared in accordance with the Accounting Act, no additional information is required. PL has replied that additional requirements are: information on differences between the financial results disclosed in the annual report and previously published forecasts for the given year, value of remuneration and other benefits due to members of the management and supervisory board (individually), if such information has not been included in the financial statements information on remuneration for the auditor providing services for the issuer.

Reasons

330. Some Member States, who have established this additional information, have indicated the following reasons to require additional information: to conduct more effective supervision; historical reasons; usefulness for a wide range of users in making economic decisions, possibility to a variance comparison; to facilitate equal treatment of investors; to ensure sufficient and more comparable information. Some Member States, who have not established this additional information, have indicated the following reasons for not applying additional information: no need for additional requirements on issuers; another national authority has the competence to elaborate the standards of financial statements on an individual basis.

Section C - Half-yearly financial reports

Article 5(1) TD

331. The issuer of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year. Member States may – on the basis of Article 3(1) – require issuers to prepare and publish a similar financial report covering the second six months of the financial year.

Major findings

332. 5 Member States (BG, ES, FI, LT, LV) have responded that they require issuers of shares or debt securities to make public a half-yearly financial report covering the second six months of the financial year. 24 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, FR, HU, IE, IS, IT, LU, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) have responded that they do not require issuers of shares or debt securities to make public a half-yearly financial report covering the second six months of the financial year.

333. BG has stated that the issuers are required to publish financial reports for all of the four quarters of the year (including the last one). ES has stated that it is only for shares. Under current national regulation, it is considered necessary for the issuer to publish in the first two month after the year a second half yearly report if the issuer has not published the annual report within two months after the end of the reporting period. FI has stated that an issuer of shares is required to publish an account statement with the same minimum content as the half yearly report once the annual accounts have been completed. LV has stated that pursuant Articles 57 of the FIML states the following: (1) A capital company whose shares are admitted to trading on the regulated market shall disseminate its interim report/accounts for a period of three, six, nine and twelve months in due course of article 6.2 hereof. (2) A capital company whose debt securities are admitted to trading on a regulated market shall disseminate its interim report/accounts for a period of six and twelve months in due course of article 64.2 hereof. LT has responded that only for listed issuers of shares and debt securities and not as half year financial report, but as 12 month interim report. UK has indicated that only those debt issuers who either issue debt securities the denomination of which are less than EUR 50,000 and who do not issue debt securities unconditionally and irrevocably guaranteed by the issuers Home Member State.

Reasons

334. Some Member States, who have established this requirement, have indicated the following reasons: to ensure a higher level of investor protection through transparent information for investors; to obtain more effective supervisory and transparent standards; to ensure that the information on the second half year is made available quickly and in a comparable format.

Article 5.2

335. The half-yearly financial reports shall include the condensed set of financial statements, an interim management report, and statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole as required under paragraph 3, and that the interim management report includes a fair review of the information required under paragraph 4. Member States may – on the basis of Article 3(1) – require additional elements to the half-yearly financial reports.

Major findings

336. 4 Member States (BG, EL, LT, PL) have responded that the half yearly financial reports include more elements than required in art 5.2-5.5 (condensed set of financial statements, interim management report, management statement, audit report or review, if relevant). 25 Member States (AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IE, IS, IT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK) have responded that the half yearly financial reports do not include more elements than required in art 5.2-5.5 (condensed set of financial statements, interim management report, management statement, audit report or review, if relevant).

337. BG stated as additional elements of the interim financial reports: 1. Presentation of the inside information relating to the circumstances occurred during the past quarter; 2. Quarterly check-ups according a model form determined by the Deputy Chairperson of the FSC; 3. Information about the changes in the accounting policy during the reporting period, the reasons for their making and in what way they impact on the issuer's financial result and equity; 4. Information about occurred changes in the economic group of the issuer if it participates in such group; 5. Information on the results from organizational changes within the issuer, such as transformation, selling of undertakings from the economic group, non-money contributions by the undertaking, renting out of property, long-term investments, suspension of operation; 6. Opinion of the management body about the likelihood of realization of the published forecasts on the results of the current financial year, taking account of the results of the current quarter, as well as information about the factors and circumstances which will influence the obtaining of the forecast results at least for the next quarter; 7. (for the public companies) Data about the persons holding directly or indirectly at least 5 per cent of the votes in the general meeting at the end of the relevant quarter, and the changes in the held by the persons votes for the period since the end of the preceding quarter; 8. (for the public companies) Data about the shares owned by the issuer's management and supervisory bodies at the end of the relevant quarter as well as the changes that occurred for the period since the end of the preceding quarter for every person individually; 9. Information on pending legal, administrative or arbitration procedures relating to liabilities or receivables at the rate of at least 10 % from the issuer's equity; if the total amount of the issuer's liabilities or receivables of all initiated proceedings exceeds 10 % of its equity, information should be presented for each procedure separately; 10. Information about granted by the issuer or its subsidiary loans, providing of guarantees or assuming liabilities in whole to one entity or its subsidiary, including also related persons with indication of the nature of the relations between the issuer and the entity, the amount of unpaid principal, interest rate, deadline for repayment, amount of the assumed liability, term and conditions. EL has stated as additional elements of half-yearly financial reports: a) selected financial information for the

half-year period, which are published in the Press, according to national legislation, at the same time that the half-yearly financial report is published, b) Report on the use of funds during the first half-year, raised from a share capital increase in cash or from bond issuance. PL has stated as additional elements required by the law. 1). the selected financial information, 2) the statement made by the board of management on the choice of an auditor in accordance with law.

Reasons

338. Some Member States, who have established this requirement, have indicated the following reasons: to obtain more effective supervision and high level of investor protection, while selected financial information that consist basic results from the financial statements enable the investor to a quick review on the issuer's financial situation. Some Member States, who that have not established this requirement, have indicated the following reason: implementing the exact provisions of TD.

Article 5(3) TD / Article 3 L2D

339. According to Article 5(3) TD / Article 3 L2D where the issuer is not required to prepare consolidated accounts, than the condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts. Member States may – on the basis of Article 3(1) – require additional elements to the condensed set of financial statements.

Major findings

340. 8 Member States (CY, EL, ES, IS, IT, LT, NO, PL) have responded that where the issuer is not required to prepare consolidated accounts, the condensed set of financial statements contains additional elements to a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts. 21 Member States (AT, BE, BG, CZ, DE, DK, EE, FI, FR, HU, IE, LU, LV, MT, NL, PT, RO, SE, SI, SK, UK) have responded that where the issuer is not required to prepare consolidated accounts the condensed set of financial statements does not have to contain additional elements to a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts.

341. CY has stated that the condensed set of financial statements is prepared in accordance with the International Financial reporting standard applicable to the interim financial statements. ES has replied that the additional requirements are the statement of cash-flow and the statement of changes in equity for the period.

Reasons

342. Member States provided the following information: to follow ESMA's Recommendation on the issue as expressed in CESR/05-407 (Technical Advice); to avoid asymmetric information and to have the same financial statements on an individual or consolidated basis; to avoid costs of double accounting for companies and to facilitate supervision; historical reasons; the implementation of the exact provisions of TD into national law; no need for additional elements to the condensed set of financial statements; the requirements of TD are considered to be sufficient.

Article 5(3) TD / Article 3(1) L2D

343. Article 3 L2D states that in case the condensed set of half-yearly financial statements are prepared in accordance with IFRS pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002, than the set should not necessarily be prepared in line with the provisions of Paragraphs 2 and 3 of Article 3 L2D.

Major findings

344. 15 Member States (CY, CZ, DK, EE, FI, HU, IS, IT, LU, NO, PT, SE, SI, SK, UK) have responded that they require the condensed set of half-yearly financial statements to be prepared in accordance with IFRS pursuant to Regulation No 1606/2002/EC. 14 Member States (AT, BE, BG, DE, EL, ES, FR, IE, LT, LV, MT, NL, PL, RO) have responded that they do not require the condensed set of half-yearly financial statements to be always prepared in accordance with IFRS pursuant to regulation N° 1606/2002/EC.

345. CZ has stated that IFRS for individual accounts is as useful as for consolidated accounts. EL has responded that only if its registered office is in Greece. ES has stated that the condensed set of half-yearly separated or individual financial statements has to be prepared in accordance with Spanish General accounting Accepted Principals (Spanish GAAP). Spanish GAAP have been substantially adapted to IFRS from 2008. HU has answered that a “yes” answer is valid for issuers being obliged to make consolidated annual report and a “no” answer is valid for issuers who are not obliged to make a consolidated annual report. LU has stated that in case of consolidated accounts half-yearly financial statements shall be prepared in line with Regulation (EC) No 1606/2002, but otherwise not. MT has stated in the case of Maltese registered companies, such companies are required to prepare the annual accounts pursuant to regulation No 1606/2002/EC in terms of our national law. Therefore, such companies prepare the half yearly accounts using the same standards. PL has replied that there is no such requirement but national law allows issuers, who do not prepare consolidated financial statements, to prepare half-yearly financial statements in accordance with the national law or IFRS. In the case of Polish issuers the decision on preparation of the financial statements in accordance with IFRS has to be made by the approving body (general meeting of shareholders). SE applies IFRS for consolidated accounts for listed companies.

Reasons

346. Member States provided the following reasons: IFRS for individual accounts is useful as for consolidated accounts; to enhance the comparability of the issuers’ financial statements; to avoid costs/burden of double accounting for companies; to facilitate supervision; consistency with annual reports; historical reasons; consistency with requirements in respect to annual financial statements; voluntary use of IFRS in financial statements.

Article 5(3), TD – Article 3(2) L2D condensed balance sheet

347. In the case that the condensed set of half-yearly financial statements is not prepared in accordance with IFRS pursuant to Regulation No 1606/2002/EC Member States might require the condensed balance sheet to contain additional information to that required in Article 5(3), TD.

Major findings

348. 27 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK) have responded that they do not require the condensed balance sheet to contain any additional information, if the condensed set of half-yearly financial statements is not prepared in accordance with IFRS pursuant to Regulation No 1606/2002/EC. 2 Member States (HU, PL) have responded that they require additional information.

349. PL has stated that the condensed balance sheet has to contain additional comparative information, the comparative balance sheet as of the comparable period for the preceding financial year.

Reasons

350. Member States indicated the following reasons for not applying this option: historical reasons, the legislator added “line items” before “headings and subtotals” (the condensed balance sheet and the condensed profit and loss account have to contain all items headings and subtotals, included in the issuer’s most recent annual financial statements); TD provisions are considered to be sufficient to get a fair picture of the financial state of the issuer; use of national GAAP or IFRS pursuant to Regulation No. 1606/2002/EC.

Article 5(3) TD – Article 3(2) L2D - condensed profit and loss account

351. In case the condensed set of half-yearly financial statements is not prepared in accordance with IFRS pursuant to Regulation No 1606/2002/EC Member States may require the condensed profit and loss account to contain additional information to that required in Article 5(3), TD.

Major findings

352. 1 Member State (BE) has responded to require the condensed profit and loss account to contain any additional information. 28 Member States (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) have responded that if the condensed set of half-yearly financial statements is not prepared in accordance with IFRS pursuant to Regulation No 1606/2002/EC they do not require the condensed profit and loss account to contain any additional information to that required in Article 5(3) TD.

353. BE has replied that the condensed profit and loss account shall include the ordinary and diluted net result per share.

Reasons

354. Member States provided the following reasons: consistency with the condensed set of half-yearly financial statements prepared in accordance with IFRS; the required information in Article 3(2) of L2D is considered to be sufficient to get a fair picture of the financial state of the issuer; individual financial statements are prepared in accordance with national GAAP (in compliance with the L2D) or in accordance with IFRS pursuant to Regulation No. 1606/2002/EC; implementing the exact provisions of TD under national law.

Article 5(3) TD – Article 3(3) L2D - explanatory notes

355. In the case that the condensed set of half-yearly financial statements is not prepared in accordance with IFRS pursuant to Regulation No 1606/2002/EC Member States might require the explanatory notes to contain any additional information to that required in Article 5(3), TD.

Major findings

356. Only 1 Member State (PL) refers to Article 5(3), TD, while 28 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK) do not require additional information.

357. PL has stated that the additional information required by national law is respect of the issuers preparing half-yearly financial statements according to the Polish accounting rules – information on the principles used to prepare the report (e.g. changes in accounting policy and estimates of amounts), description of the significant achievements or failures , description of the factors and events, in par-

ticular non-specific, having a significant impact on the financial results achieved, information on seasonality or cyclicity, information on the issue of securities, information on paid (or declared) dividends, total and per share, divided into ordinary and preference shares, indication of events after the balance sheet date that might have an effect on future financial results, information on changes in contingent liabilities or contingent assets since the last annual balance sheet date. Issuers preparing half-yearly financial statements according to the other national accounting standards and IFRS do not have to contain information additional.

Reasons

358. The reasons provided by Member States are the following: historical reasons; more detailed information requirements permits better harmonization of disclosures contained in half-yearly financial statements; the required information in Article 3(2) of L2D is sufficient to get a fair picture of the financial state of the issuer; individual financial statements are prepared according to national GAAP (in compliance with L2D) or in accordance with IFRS pursuant to Regulation No. 1606/2002/EC.

Article 5(4) of TD

359. According to Article 5(4) of TD, the interim management report shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties transactions. Member States may – on the basis of Article 3(1) – require additional elements to the interim management reports.

Major findings

360. 5 Member States (CY, EL, FI, LT, PL) have responded that the interim management report includes additional information to that listed under Article 5(4) of TD, while the interim management reports of 24 Member States (AT, BE, BG, CZ, DE, DK, EE, ES, FR, HU, IE, IS, IT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK) do not include additional information.

361. CY has stated that the additional information is : a) a detailed and extended economic analysis to the results, so that the readers of the report will be able to assess and evaluate the course of the results during the period b) a declaration of any income from non-recurring or extraordinary activities of the issuer c) any other material information, which affects or could affect the assessment or the evaluation of the readers of the report, regarding profits and losses for the relevant period or any future periods, the prospects and trends of the operations and the gain or loss of important contracts or cooperation. EL has responded that a balanced and comprehensive analysis of the development and performance of the company's business and of its position, for the first six month period, consistent with the size, and complexity of the business. To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators. Qualitative data and estimations on the development of the issuers' activities for the second half yearly period.

362. FI has replied that the minimum content of the interim management report is to set out in the Securities Markets Act and the Decree of the Ministry of Finance on the Regular Duty of Disclosure of an Issuer of a Security. LT has stated that has the same as to the annual report. PL has indicated that the additional information required by the Polish Law is the description of capital group organization and indication of consolidated entities, information on effects of changes in the structure of issuer's capital group, opinion of management board on possibility of realization previously published forecast for the year, indication of shareholders owning at least 5% of the total number votes at a general meeting of shareholders, information on the number of shares of the issuer or the rights to them owned by

management and supervisory bodies, indication of the proceedings pending before the court, the authority responsible for arbitration or public authority, information on the conclusion of the issuer or its subsidiary of one or more transactions with related parties, information on credit or loan guarantees granted, other information which according to the issuer are important for assessing its staff situation, financial position, financial results and their changes.

Reasons

363. Member States provided the following reasons: both shareholders and the public are better informed as regards the issuer; historical reasons; more comprehensive reports give more reliable information about the issuer's situation; Some Member States, who have not required additional elements indicated the following reasons: the required information in Article 3(2) of L2D is considered to be sufficient to get a fair picture of the financial position of the issuer; no intention to impose additional requirements on issuers; historical reasons; more detailed determination of requirements permits better harmonisation of disclosures contained in management reports.

Article 5(4), TD and Article 4(1), L2D

364. Article 5(4) TD requires from issuers of shares that their interim management reports shall also include major related parties' transactions. Article 4(1) L2D sets the minimum content of the major related parties' transactions. Member States may – on the basis of Article 3(1) – require additional elements to the major related parties transactions.

Major findings

365. 3 Member States (CY, EL, IT) have responded to need more information than required in Article 5(4) TD, while 26 Member States (AT, BE, BG, CZ, DE, DK, EE, ES, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) have responded that they do not require issuers of shares to disclose as major related parties transactions in the interim management reports any additional information to that described in article 4 (1) of L2D.

366. CY has said that states that for issuers of shares, the interim management report must include major related party transactions according to the International Accounting Standard for the related party transactions. EL has replied that the information described in article 4(2) of L2D. IT has stated that, in addition to the information listed in Article 4(1) of L2D, Consob requires information on relevant transactions that have taken place in the previous quarter of the current financial year (these transactions may include some that have not materially affected the financial position or the performance of the enterprise during that period).

Reasons

367. Member States provided the following reasons: the information described in Article 4(1) of L2D is sufficient to get a fair picture of the major related parties' transactions; both the shareholders and the public are better informed in regard to the related party transactions; information on related party transactions is particularly relevant in order to ensure proper investor protection.

Article 5(4) TD / Article 4(2) L2D / Article 43(1)(7b) Directive 78/660/EEC

368. Where the issuer of shares is not required to prepare consolidated accounts, it shall disclose the related parties' transactions referred to Article 43(1) (7b) of Directive 78/660/EEC, as a minimum. Member States may – on the basis of Article 3(1) – require such issuers to publish information in addition to what is required by Article 43(1)(7b) of Directive 78/660/EEC.

Major findings

369. 5 Member States (CY, EL, ES, IT, RO) have responded that when the issuers are not required to prepare consolidated accounts they must disclose related parties transactions other than those referred to article 43(1) (7b) of Directive 78/660/EEC, while 24 Member States (BG, AT, BE, CZ, DE, DK, EE, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PL, PT, SE, SI, SK, UK) do not have these requirements to the issuers.

370. CY has expressed that major related party transactions must be disclosed according to the International Accounting Standard for the related party transactions. EL has stated that issuers of both consolidated and non consolidated accounts are required to disclose the same related parties' transactions information. ES has stated that more disclosure is needed than it is established in the TD in terms of profit or loss detailed account and nature of transaction, disclosure of collaterals are delivered. IT has reported that the same rules concerning disclosure of related parties' transactions are applied, regardless of whether the issuer is required or not, to prepare consolidated accounts. LU has stated that pursuant Article 5(2) of the Grand-Ducal regulation of 11 January 2008 relating to the transparency requirements for issuers of securities "Where the issuer of shares for which Luxembourg is the home Member State is not required to prepare consolidated accounts, it shall disclose, as a minimum", the related parties transactions referred to in article 43(1)(7b) of Directive 78/660/EC. RO has answered that when the issuers of shares are not required to prepare consolidated accounts, they shall be disclosed, as a minimum, the transactions concluded by the issuer with the person with whom it acts in concert, the nature of the relationship with the person with whom it acts in concert and other information about the transactions necessary for an understanding of the financial position of the issuer, if such transactions are material and have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where the separate information is necessary for an understanding of the effect of the transactions with the persons with whom it acts in concert, on the financial position of the issuer to understand the effect of the transactions on the financial position of the issuer.

Reasons

371. Some Member States, who have applied this particular discretion, have indicated the following reasons for applying additional information: both shareholders and the public are better informed as regards related party transactions; to avoid an excessive difference in disclosing related party transactions (or any other qualitative information) between issuers who publish only financial statements on an individual basis or issuers who publish it also on a consolidated basis; information on related party transactions is particularly relevant in order to ensure the proper investor protection; Some Member States, who have not applied this discretion, have indicated the following reasons: no intention to impose additional requirements; the information described in Article 43(1)(7b) of Directive 78/660/EEC is sufficient to get a fair picture of the major related parties' transactions; implementing the exact (minimum) provisions of TD/L2D into national law.

Article 5(5) TD

372. According to Article 5(5) TD provides that in case the half-yearly financial report has been audited, the audit report / auditors' review shall be reproduced in full. If no audit or review was done by the auditors, then the issuer shall make a statement to that effect in its report. Member States may implement rules on audit or review of the half-yearly financial reports and even require a mandatory audit or review of the report.

Major findings

373. 3 Member States (EL, FR, PL) have responded that the audit/ or review is mandatory. 26 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK) have responded that audit/review is voluntary.

374. EL, FR and PL have stated that the review is mandatory. BG has stated that it is voluntary. There is no obligation for the quarterly financial reports to be audited. If they are audited, the audit report should be drafted according to the International Audit Standards. If the quarterly financial reports are not audited, the fact should be clearly stated by the issuer. IS has indicated that if the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report. PL has said that the auditor's review of the half-yearly financial statement is mandatory.

Reasons

375. Member States have indicated the following reasons: historical reasons; it is considered that the half-yearly financial statement reviewed by the auditors is more reliable for investors. Some Member States, who have not established this requirement, have indicated the following reasons: implementing the exact (minimum) provisions of TD/L2D into national law; to achieve the goal of maximum convergence with the international auditing principles in order to ensure harmonization and to remove part of the obstacles, which foreign investors are facing; voluntary audit or review is considered to be a good balance between the need to guarantee investors access to complete information and the need to adopt cost/effective solution for issuers.

Section D - Interim management statements

This Section deals with the interim management statements of the periodic information.

Article 6(1) TD

376. According to Article 6(1) TD, an issuer whose shares are admitted to trading on a regulated market shall make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six-month period of the financial year. Such statements shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period. The statement shall contain information covering the period between the beginning of the relevant six-month period and the date of publication of the statement. Member States – on the basis of Article 3(1) – may require issuers whose shares are admitted to trading on a regulated market to publish more than one interim management statements in the first and second half of the financial year respectively.

Major findings

377. 2 Member States (LV, NO) have responded that as the home Member State, they require issuers whose shares are admitted to trading on a regulated market to publish interim management statements more than one in the first and second half of the year. 26 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, MT, NL, PL, PT, RO, SE, SI, SK, UK) have responded negatively. 1 Member State (BG) has replied not applicable.

378. LV has stated that the Article 57 of the FIML states the following: (1) A capital company whose shares are admitted to trading on the regulated market shall disseminate its interim report/accounts for a period of three, six, nine and twelve months in due course of article 64.2 hereof. The interim report/ ac-

counts for six and twelve months, as referred to in paragraph 1 and 2 hereof, shall consist of the following: 1) condensed financial statements 2) interim management report that provides information about significant events that have occurred in the period from the beginning of the financial year until the reporting date and their effect on the condensed financial statements, describes the principal risks and, in case of a half-yearly report/ accounts, uncertainties that a capital company is likely to face or that are likely to affect its financial standing and financial performance during the other six months of the financial year. A capital company, whose shares are admitted to trading on the regulated market and who draws up consolidated annual accounts, shall also. NO states that they require quarterly financial reports for the four quarters of the financial year. However, the quarterly report for the second quarter also comprises, with additional requirements, the issuer's half-yearly report.

Reasons

379. Member States indicated the following reasons: no intention to impose additional requirements on issuers, it is considered to be too costly for the listed companies (regulatory requirements are too excessive). BG has said that under the Bulgarian legislation, issuers are obliged to publish quarterly financial reports. Therefore, as stated in article 6(2) of the TD, they are not required to make public statements by the management provided for in article 6(1) of the TD.

Article 6.1 TD

380. The statements disclosed in the IMS shall contain -at least- an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings, and a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period. Member States may – on the basis of Article 3(1) – require additional elements to the interim management statements.

Major findings

381. 26 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, SE, SI, SK, UK) have responded that additional information besides information required by Article 6(1) to be disclosed in the interim management statement is not required. 1 Member State (FR) indicated that it requires additional elements to the interim management statements. 2 Member States (BG, RO) have replied N/A.

382. BG has stated that under the Bulgarian legislation, issuers are obliged to publish quarterly financial reports. Therefore, as stated in Article 6(2) TD, they are not required to make public statements by the management provided for in article 6(1) of the TD.

Reasons

383. Member States have provided the following reasons: historical reasons; implementing the exact (minimum) provisions of TD/L2D into national law. NO has stated that it requires quarterly financial reports.

Article 6(2) TD

384. According to Article 6(2) TD issuers who prepare quarterly financial reports – either required by national law or the rules of the regulated market or of their own initiative – in accordance with such legislation shall not be obliged to prepare interim management statements. Member States – on the

basis of Article 3(1) – may require issuers, whose shares are admitted to trading on a regulated market and preparing quarterly financial reports to publish other type of interim reports as well.

Major findings

385. 1 Member State (NL) requires other type of interim reports besides quarterly reports, while 28 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NO, PL, PT, RO, SE, SI, SK, UK) do not require additional, other type of interim reports.

386. NL requires issuers to also prepare Interim Management Statements even if they prepare quarterly financial reports. EL has stated that the requirement for companies to produce interim statements is optional according to our national legislation. SI has indicated that it is not an obligation but recommendation.

Section E

Article 7 / Article 4 TD – information in the annual financial report

387. According to Article 7 TD states that the responsibility for information in the annual financial report lies at least with the issuer or its administrative, management or supervisory bodies. Member States – on the basis of Article 3(1) – may provide that responsibility for the information in the annual financial report also lies with any person or internal/external body in addition to the issuer or its administrative, management or supervisory bodies.

Major findings

388.5 Member States (BG, IS, IT, PT, LT) have responded that the responsibility for the information in the annual financial report lies with a person or internal/external body in addition to the issuer or its administrative, management or supervisory bodies. 24 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PL, RO, SE, SI, SK, UK) have responded that the responsibility remains either with the issuer or one of its organs.

389. BG states that the compilers of financial reports (natural persons or specialized accountancy undertakings) are jointly and severally liable for any damages, caused by incorrect, misleading or incomplete data in the issuer's financial statements, and the registered auditor for the damages, caused by the audited by him financial statements. PT has stated that the Portuguese Companies Code provides several management and supervisory models for public limited-liability listed companies. All of these statutory bodies are responsible for the information drawn up and made public by the issuer. Additionally, the Portuguese Securities Code requires that the annual financial report is subject to a report prepared by an external auditor registered with the CMVM who has responsibility in relation to tasks entrusted to them. IT has replied that the responsibility also lies on the managers charged with preparing the annual financial report in relation to the tasks entrusted to them. In particular, the managers charged with preparing the annual financial report must issue a statement attesting: a) The adequacy and effective application, during the period of reference of the documents, of administrative and accounting procedures related to the preparation of the annual financial report b) That the documents were prepared in compliance with applicable international accounting standards recognised by the European Community pursuant to European Parliament and Council regulation No. 1606/2002 of 19 July 2002 c) The correspondence between the documents and related bookkeeping and accounting records d) The suitability of the documents to truthfully and correctly represent the financial position of the issuer and the group of companies included in the scope of consolidation e) That the management report contains a reliable analysis of the business outlook and management result, the financial position of the issuer and the group companies included in the scope of consolida-

tion, and a description of the main risks and uncertain situations to which they are exposed. EE has stated that the persons responsible for the operation of the issuer, whose names and duties shall be clearly indicated, shall declare and confirm in the declaration of the management that according to their best knowledge, the annual accounts, prepared according to the accounting standards in force, present a correct and fair view of the assets, liabilities, financial situation and loss or profit of the issuer and the undertakings involved in the consolidation as a whole, and the management report gives a correct and fair view of the development and results of the business activities and financial status of the issuer and the undertakings involved in the consolidation as a whole and contains a description of the main risks and doubts. RO has implemented the express requirement provided by TD. Where the issuer has two tier administrative bodies, the responsibility lies also with the supervisory body. In few cases, the responsibility lies with the management body, depending on the organizational structure of the issuer. The provisions of other laws in force states that the information from the annual financial report must be verified by independent financial auditor.

Reasons

390. Member States indicated the following reasons: in case the direct and actual responsibility lies with the accountants / accounting companies / external auditors / ad-hoc manager in general, who compile the financial statements, they are also liable on the grounds of the national legislation for incorrect and misleading information; the requirements of the Directive are considered to be sufficient.

Article 7 / Article 5 TD – information in the half-yearly financial report

391. According to Article 7 TD states that the responsibility for information in the half-yearly financial report lies at least with the issuer or its administrative, management or supervisory bodies. Member States – on the basis of Article 3(1) – may provide that responsibility for the information in the half-yearly financial report lies with any person or internal/external body in addition to the issuer or its administrative, management or supervisory bodies.

Major findings

392. 5 Member States (BG, IS, IT, PT, LT) have responded that responsibility for the information in the half-yearly report to be drawn up and made public in accordance with Article 5 of TD lies with any person or internal/external body in addition to the issuer or its administrative, management or supervisory bodies as mentioned under article 7 of TD. 24 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PL, RO, SE, SI, SK, UK) have responded that the responsibility remains with either the issuer or one of its bodies.

393. BG stated that the compilers of financial reports (natural persons or specialized accountancy undertakings) are jointly and severally liable for any damages, caused by incorrect, misleading or incomplete data in the issuer's financial statements, and the registered auditor- for the damages, caused by the audited by him financial statements. IS indicated that the issuer is responsible for making it public. The issuers' administrative body/management body is responsible for the content. The same as annual financial report. IT noted that the responsibility also lies on the managers charged with preparing the half-yearly financial report in relation to the tasks entrusted to them. In particular, the managers charged with preparing the half-yearly financial report must issue a statement attesting: a) The adequacy and effective application, during the period of reference of the documents, of administrative and accounting procedures related to the preparation of the half-yearly financial report; b) That the documents were prepared in compliance with applicable international accounting standards recognised by the European Community pursuant to European Parliament and Council regulation no. 1606/2002 of 19 July 2002; c) The correspondence between the documents and related bookkeeping and accounting records; d) The suitability of the documents to truthfully and correctly represent the financial position of the issuer and the group of companies included in the scope of consolidation e)

That the management report contains a reliable analysis of the information requested under Article 5(4) TD. PT has stated that there is no intervention of auditors, but if such intervention occurs the auditors would be responsible as well as any other person who accepts responsibility for a given part of the information. RO has implemented the express requirement from the TD. Where the issuer has two tier administrative, the responsibility lies also with the supervisory body. In few cases, the responsibility lies with the management body, depending on the organizational structure of the issuer.

Reasons

394. Member States indicated the following reasons: the direct and actual responsibility lies with the accountants / accounting companies / external auditors / ad-hoc manager in general, who compile the financial statements, therefore, they must be also liable on the grounds of the national legislation for incorrect and misleading information.

Article 7 / Article 6(1) TD - Interim Management Statements

395. According to Article 7 TD states that the responsibility for information in the interim management statement lies at least with the issuer or its administrative, management or supervisory bodies. Member States – on the basis of Article 3(1) – may provide that responsibility for the interim management statements to be drawn up and made public in accordance with article 6(1) of TD lies with any person or internal/external body in addition to the issuer or its administrative management or supervisory bodies.

Major findings

396. 4 Member States (IS, IT, PT, LT) have responded that responsibility for the interim management statements also lies with any other person or internal/external body in addition to the issuer or its administrative management or supervisory bodies, while 24 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, LU, LV, MT, NL, NO, PL, RO, SE, SI, SK) indicated that the responsibility for the interim management statements remains with either the issuer or one of its bodies. 1 Member State (BG) has replied not applicable.

397. BG has stated that under the Bulgarian legislation, issuers are obliged to publish quarterly financial reports. Therefore, as stated in article 6 (2) of the TD, they are not required to make public statements by the management provided for in article 6(1) of the TD. IS has stated that the issuer is responsible for making it public. The issuers' administrative body / management body is responsible for the content. The same as annual financial report and the half-yearly report. IT has stated that the responsibility also lies on the managers charged with preparing the interim management statements in relation to the tasks entrusted to them. These managers must attest in writing the correspondence between the documents and related bookkeeping and accounting records. PT has replied that there is no intervention of auditors, but if such intervention occurs the auditors would be responsible as well as any other person who accepts responsibility for a given part of the information. MT has answered that in terms of the Malta Companies Act, the board of directors is responsible for the general administration, management as well as supervisory function of the company.

Reasons

398. Member States have indicated the following reasons: the appointment and liability of an ad-hoc manager provides additional incentives to comply with the transparency obligations; in case of intervention of auditors, the auditors would be responsible as well as any other person who accepts responsibility for a given part of the information.

Article 7 / Article 6(2) TD - Quarterly Financial Report

399. According to Article 7 TD states that the responsibility for information in the quarterly financial report lies at least with the issuer or its administrative, management or supervisory bodies. Member States – on the basis of Article 3(1) – may provide that responsibility for the quarterly financial report to be drawn up and made public in accordance with article 6(2) of TD lies with any person or internal/external body in addition to the issuer or its administrative management or supervisory bodies.

Major findings

400.4 Member States (BG, IT, LT, PT) have responded that the responsibility for the quarterly financial report lies with any person or internal/external body in addition to the issuer or internal/external body in addition to the issuer or its administrative management or supervisory bodies. 25 Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, LU, LV, MT, NL, NO, PL, RO, SE, SI, SK, UK) have responded that the responsibility for the quarterly financial reports remains with either the issuer or one of its bodies.

401. BG has stated that the compilers of financial reports (natural persons or specialized accountancy undertakings) are jointly and severally liable for any damages, caused by incorrect, misleading or incomplete data in the issuer's financial statements and the registered auditor- for the damages, caused by the audited by him financial statements). IT has noted that in the case that quarterly financial reports are drawn up and published upon the initiative of the issuer, the responsibility also lies on the managers charged with preparing such quarterly financial reports in relation to the tasks entrusted to them. These managers must attest in writing the correspondence between the documents and related bookkeeping and accounting records. Neither national legislation nor the rules of the regulated market impose an obligation to prepare and publish quarterly financial reports. PT has stated that there is no intervention of auditors, but if such intervention occurs the auditors would be responsible as well as any other person who accepts responsibility for a given part of the information.

Reasons

402. Member States indicated the following reasons: the direct and actual responsibility lies with the accountants / accounting companies / external auditors / ad-hoc manager / in general, who compile the financial statements, therefore, they must be also liable on the grounds of the national legislation for incorrect and misleading information.

Article 7 / Article 16 TD – information drawn up and made public in accordance with Article 16

403. According to Article 7 TD states that the responsibility for information to be drawn up and made public in accordance with Article 16 lies at least with the issuer or its administrative, management or supervisory bodies. Member States – on the basis of Article 3(1) – may provide that responsibility for information to be drawn up and made public in accordance with Article 16 TD, lies with any person or internal/external body in addition to the issuer or its administrative management or supervisory bodies.

Major findings

404.5 Member States (IT, LT, NL, PT, SK) indicated that responsibility for information to be drawn up and made public in accordance with Article 16 belongs to other persons, internal/external body in ad-

dition to the issuer or its administrative management or supervisory bodies. 24 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, LU, LV, MT, NO, PL, RO, SE, SI, UK) have responded that the responsibility for the information to be drawn up and made public in accordance with Article 16 remains with either the issuer or one of its bodies.

405. LT has stated that the other responsible persons can be added by the choice of the issuer. NL has stated that people from within the issuer appointed by the issuer as being responsible (The board of the Issuer). NO says that for non-Norwegian issuers, other persons/bodies than the above – mentioned can be responsible, according to the issuers` national legislation. SK states that the responsibility for this information shall lie with the issuer or its statutory, management or supervisory bodies, or the natural persons responsible within the issuer.

Reasons

406. Member States have indicated the following reason: the liability on the corporation, on individual members of the relevant corporate bodies and on competent managers provides higher incentives to comply with the law by all parties ultimately involved in the disclosure process.

Section G

407. This Section deals with notification of the acquisition or disposal of major holdings.

Article 9(1) TD

408. The home Member States shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. Member States may – on the basis of Article 3(1) – set additional thresholds of notification.

Major findings

409. 24 Member States (AT, BE, BG, CZ, DE, DK, EE, ES, FI, FR, IE, IS, IT, LT, LV, MT, NL, NO, PL, PT, RO, SE, SI, UK) have indicated that there are other thresholds, where the notification is required by shareholders, in addition to those already covered by Article 9(1) TD. 5 Member States (CY, EL, HU, LU, SK) stated that they only apply the thresholds provided in Article 9(1) TD: 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. 7 Member States have implemented an additional threshold lower than 5% (CZ, DE, ES, IE, IT, PT, UK). 2 Member States have set the thresholds in 1% steps beginning with 3% (IE, UK). Most Member States (19) have implemented thresholds higher than 75% (AT, BE, BG, DK, ES, FR, IE, IS, IT, LT, LV, MT, NL, NO, PL, PT, RO, SE, UK).

410. AT indicated that the additional thresholds are (Section 91 para. 1 ASEA): 35%, 40%, 45%, 90% and an additional threshold if it has been stated in the articles of association of the issuer in accordance with Section 27 para. 1 num 1 of the Austrian Takeover Act. BE pointed out that the additional thresholds are: 35%, 40%, 45%, 55%, 60%, 65%, 70%, 80%, 85%, 90%, 95%. BG explained that the universal threshold is fixed on 5% or to a figure multiple 5%. Therefore, additional thresholds are 35%, 40%, 45%, 55%, 60%, 65%, 70%, 80%, 85%, 90% and 95%. CZ noted that they have established thresholds of 3% (for big issuers with a registered capital higher than 100,000,000 CZK) and 40% (for all issuers). DE stated that the additional threshold is 3%. DK indicated that the additional thresholds are: 1/3, 2/3 and 9/10. ES made reference to Article 53.7 Spanish Securities Market Law 24/1988 and arts. 23,30.6 and 32 of Royal Decree 1362/2007. (Additional thresholds are: 3%, 35%, 40%, 45%, 60%, 70%, 80%, 90%). FI indicated that according to Art 9(3) (b) the 2/3 threshold is used instead of 75%.

411. FR stated that 1) the additional thresholds are 90% 95%. 2) Also, when acting in concert, all parties of the agreement have to notify the total aggregated amount, if the total aggregated amount reach or cross a threshold. 3) Finally, the thresholds are declared on shares and on voting rights. IE pointed out that the additional threshold is from 3% and every 1% to 100% for Irish issuers or as per the TD in relation to non-Irish issuers. IS made reference to Article 78 of Act No. 108/2007 on Securities Transaction: Where a holder of shares acquires or disposes of shares of an issuer whose shares have been admitted to trading on a regulated market, a notification shall be sent in a verifiable manner to the issuer in question and to the Financial Supervisory Authority if, as a result of the acquisition or disposal, the proportion of voting rights of the holder of shares reaches, exceeds or falls below the thresholds of: 5, 10, 15, 20, 25, 30, 35, 40, 50, 66 2/3 and 90%. IT indicated that the following thresholds apply in addition to those stated in article 9(1) of TD: 2%; 35%; 40%; 45%; 66.6%; 90% and 95%. LT noted that shareholder shall also notify about acquisition of 95% of voting rights. LV made reference to Article 61 of the LFIM: (2) Where the home member state of a joint-stock company is the Republic of Latvia, the persons referred to in Paragraph 1 hereof shall notify the respective joint-stock company and simultaneously the Commission of the proportion of their voting rights as a result of the share acquisition or disposal of shares, where that portion reaches, exceeds or falls below the thresholds of ninety and ninety-five percent. MT stated the Listing Rules transposing both the TD and L2D provide an additional threshold notification of 90% of voting rights. NL indicated that the additional thresholds are: 40%, 60% and 95% (however these do not apply to third country issuers for who the Netherlands is the host member state.) NO noted that in Norway the following additional thresholds apply: 1/3 (instead of 30%), 2/3 (instead of 75%) and 90%.
412. PL stated that the additional thresholds are: 33%, 1/3 and 90%. Additionally the notification requirement shall apply also to a shareholder who: 1) held over 10% of the total vote and this share has changed by at least: a) 2% of the total vote - in the case of a public company whose shares have been admitted to trading on the official stock-exchange listing market, b) 5% of the total vote - in the case of a public company whose shares have been admitted to trading on a regulated market other than the one specified in (a) above; 2) held over 33% of the total vote and this share has changed by at least 1%. PT explained that the additional thresholds are: 2%, 1/3, 2/3 and 90%. RO indicated that the legal provision in force contain the thresholds of 33% instead of 30% and in what it concerns the thresholds of 75%, it mentions the obligations of the notification either when reaching 75% or 90%. SE provided the following additional thresholds: 66%, 2/3 and 90%.
413. UK stated that UK issuers' thresholds are set at 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and every 1% threshold thereafter up to 100%. Non-UK issuers are set at the TD minimum.

Reasons

414. Member States provided the following reasons: historical reasons; transparency reasons; legal reasons based on national Company or Takeover law.

Article 9(1) of TD

415. In the previous Section it was presented that Member States may set additional thresholds to those provided under Article 9(1) TD. Further to that Member States may also allow issuers to require notification of voting interests through a provision in their statutes.

Major findings

416. 14 Member States (AT BE, CY, DK, EE, EL, FI, FR, HU, IS, IT, LU, LV, MT, PT) indicated that this possibility is provided for their issuers, while 14 Member States (BG, CZ, DE, ES, IE, LT, NL, NO, PL, RO, SE, SI, SK, UK) indicated that they do not allow issuers to set in their statutes additional thresholds for major shareholding notifications.

Reasons

417. The Member States applying this provision mainly name historical reasons; implementing the exact (minimum) revisions of TD/L2D into national law; legal reasons; it is not forbidden and hence allowed for issuers; it's reasonable and cost/effective to give freedom to the issuer to decide on this topic.

Article 9(1) and Article 12(2) TD

418. On the basis of Article 3(1) Member States may also require that the major shareholding disclosure obligation would also arise if a notification threshold was reached or crossed intra-day but the net end-of-day position remained unchanged at the end of the trading day.

Major findings

419. 9 Member States (AT, CY, DK, FR, IS, LT, LV, MT, NO) indicated that they also require major shareholding notification in case of reaching a threshold intra-day, even when the net end-of-day position remains unchanged at the end of the day. 20 Member States (BE, BG, CZ, DE, EE, EL, ES, FI, HU, IE, IT, LU, NL, PL, PT, RO, SE, SI, SK, UK) however indicated that they do not require such intra-day notification.

420. NO pointed out that the requirement is that the notification is to be given "immediately". This means that the notification shall be given as soon as possible after crossing a threshold and that several notification can be required during one day.

Reasons

421. Member States who waived to apply the requirement do not consider it to be useful to implement such requirement and to avoid unnecessary, potentially misleading information overload. The Member States applying this requirement do so due to transparency reasons. Member States that do not apply this requirement do so because they do not consider it to be necessary (e.g.: the effective change in the ownership is important and not the temporary reaching or crossing of the threshold) or state that there is no requirement under national law to disclose in such case and that.

Article 9(1) of TD

422. On the basis of Article 3(1) Member States may require investors to treat each share class separately for the purposes of calculating where the thresholds for major shareholding notifications have been triggered.

Major findings

423. 4 Member States (AT, BG, IE, SI) indicated that they require investors to treat each share class separately for the purposes of calculating where the thresholds for major shareholding notifications have been triggered. 25 Member States (BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SK, UK) stated that -for the purposes of calculating where the thresholds for major shareholding notifications have been triggered- the separate treatment of share classes is not required from issuers.

424. IT specified that disclosure obligations of significant holdings shall contain: a) indication of shares held divided in categories; as well as b) the percentage represented out of the total shares in the same category. LU indicated that the notification is only triggered if a threshold is crossed with regard to the total voting rights relating to all share classes. LV noted that the issuer's total voting rights/capital is taken into account.

Reasons

425. Member States provided the following reason: investors could get better insight of the ownership structure.

Article 9(3) TD - application of the 30% threshold

Article 9(3) of TD gives Member States the possibility to establish thresholds of 1/3 instead or in addition to 30%.

Major findings

426. None of the 29 Member States takes the possibility to establish thresholds of 1/3 in addition of 30%, although one Member State (DK) applies the 1/3 threshold instead of 30%. The Member States not applying this provision give historical, legal, and systematic (5% steps) reasons for not applying both thresholds. No Member State has considered it necessary to have both thresholds.

Reasons

427. Member States provided the following reasons: the application of both thresholds was not considered necessary (a more burdensome obligation without bringing further significant transparency); systematic (5% steps) reason; the 30% threshold is also relevant for takeover purposes; historical reasons; 33% may represent the “blocking minority” (if decisions are taken at 2/3 at the general assembly).

Article 9(3) of TD – application of the 75% threshold

Article 9(3) of TD gives Member States the possibility to establish thresholds of 2/3 instead or in addition to 75%.

Major findings

428. 2 Member States (DK,IT) apply both the 75% as well as the 2/3 threshold and 27 Member States (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) do not.

Reasons

429. The Member States not applying this provision give historical, legal, and systematic (5% steps) reasons for not applying both thresholds. In general it has not been considered to be necessary to have both thresholds (except for IT); the 75% threshold is also relevant for takeover purposes.

Article 9(5) of TD

430. Under certain circumstances Article 9 (5) TD sets up an exemption from the notification obligation in case of crossing or reaching the 5% threshold by a market maker acting in its capacity of a market maker. In case an issuer sets up notification obligations for thresholds lower than 5%, the question arises whether market makers fulfilling the requirements of Article 9 (5) TD would have to notify the issuer in case these lower thresholds are reached or crossed.

Major findings

431. In 4 Member States (DE,FR,IT, PT) market makers fulfilling the requirements of Article 9 (5) TD would have to notify the issuer in case these lower thresholds are reached or crossed; in 8 Member States (AT,BE,CZ, EL,HU,IE, RO,SK) this is not the case, but in the majority of the Member States (BG,CY,DK,EE,ES,FI,IS,LT,LU,LV,MT,NL,NO,PL,SE,SI,UK) this exemption is not applicable.

432. DE indicated that the market maker exemption also applies for the thresholds of 3 % and 5%. IT stated that the exemption also applies to the 2% threshold. As the 5% threshold is deemed to be sufficiently low to justify an exemption given the specific market making activity, a fortiori it is reasonable to apply the same exemption to the 2% threshold. PT noted that except for the duty to notify the CMVM, the major holdings notification obligation is not applicable to a financial intermediary that acts as a market maker, detains holdings that achieve, surpass or become lower than 5% of the voting rights that correspond to the share capital, provided that the latter neither intervenes in the management of the issuer concerned, nor influences the issuer to purchase those shares or favour its price. Reference is made to the Portuguese Securities Code which provides consistency with lower thresholds. The Member States applying the notification exemption of to market makers mention consistency reasons for this (DE, IT, PT). SK made reference to Art. 41 (6) of the Stock Exchange Act: "Paragraphs (1) and (2) shall not apply to the acquisition or disposal of a holding reaching or crossing the 5% threshold by a market maker, provided that: a) it is authorized by its home Member State to provide investment services; and b) it neither intervenes in the management of the issuer concerned nor exerts any influence on the issuer to buy such shares or back the share price.

Article 9(6)

433. Article 9(6) TD requires that the voting rights in the trading book do not exceed 5% and that the credit institution or investment firm ensures that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the issuer. On the basis of Article 3(1) TD Member States may set additional requirements to those listed under points a) and b) of Article 9(6) TD.

Major findings

434. No Member State set additional requirements to those listed under points a) and b) of Article 9(6) TD. 1 Member State (BG) has replied not applicable.

Section H - Acquisition or disposal of major proportions of voting rights

This group of questions under ongoing information asks questions relating to acquisition of disposal of major proportions of voting rights.

Article 10 (a) to (h) TD

435. Article 10 TD states that the notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of or to exercise voting rights in the cases described in points a)-h). On the basis of Article 3(1) Member States as the home Member State may require notification as defined in paragraphs 1 and 2 of Article 9 to a natural person or legal entity in other cases in addition to those set out in points a) - h) of Article 10 TD.

Major findings

436. 12 Member States (AT, DE, EL, ES, FI, FR, IT, LT, NO, PT, RO, SE) indicated that they require notification as defined in paragraphs 1 and 2 of Article 9 to a natural person or legal entity in other cases in addition to those set out in points a) - h) of Article 10 TD. 17 Member States (BE, BG, CY, CZ, DK, EE, HU, IE, IS, LU, LV, MT, NL, PL, SI, SK, UK) stated that they do not require such notification in additional cases.

437. AT indicated that notification is required in the following cases: Voting rights that this person may exercise without being the owner (Section 92 num 5 ASEA) Voting rights that are deemed to belong to the person pursuant to Article 23 par. 1 or 2 Takeover Act. (Section 92 num 7 ASEA) Voting rights from shares that this person has assigned to a third party as collateral if the voting rights can be exercised by this person without requiring any explicit instructions by the transferee or if this person can influence the exercise of the voting rights by the transferee (section 92 para. 2 ASEA); DE noted that the voting rights which may be acquired by the notifying party by a declaration of intent are attributed to the notifying party (Sect. 22 para. 1 sent. 1 No. 5 German Securities Trading Act). EL stated that additional notification is required in case of every change over 3%, if the participation is already above 10%. In all mutual fund management companies in relation to the holdings of the funds managed by them. FI indicated that in calculating the portion of holdings, the portion of holdings of a shareholder shall include the portion of holdings of an organisation or foundation controlled by the shareholder, the portion of holdings of a pension foundation and pension fund controlled by the shareholder and an organisation controlled by it as well as any other portion of holdings the use of which the shareholder, alone or together with a third party, may decide on under a contract or otherwise. (Chapter 2, section 9, subsection 2 of the Securities Markets Act).

438. IT noted that listed issuers with Italy as home Member State holding more than 10 per cent of the capital of an Italian or foreign unlisted company or Limited Liability Company shall notify to the underlying company and Consob. In addition to the cases under 10 (a) TD, the notification requirements apply also to person or entity that has concluded an agreement in any form whatsoever which: a) creates obligations of consultation prior to the exercise of voting rights in companies with listed shares or companies that control them; b) sets limits on the transfer of the related shares or of financial instruments that entitle holders to buy or subscribe for them; c) provides for the purchase of shares or financial instruments referred to in paragraph b); d) aims to encourage or frustrate a takeover bid or exchange tender offering, including commitments relating to non-participation in a takeover bid. Consob Regulation on issuers specifies that in the event of shares subject to securities lending or repo transactions, the disclosure obligation is both on the lender or the repo payer's and on the borrower or the repo broker's. This obligation does not apply to the borrower or the repo broker where the shares are acquired exclusively for the purpose of the clearing and settlement of the transactions with the usual short settlements cycle (T+3). LT made reference to the Law on Securities, according to which votes held by a person shall be deemed the right to vote that are granted by the shares held by the spouse of the person except cases when nuptial agreements provide that securities are regarded as personae property of the each spouses.

439. NO indicated that the following are regarded as equivalent to the acquirer's or disposer's own shares, rights to shares or voting rights: shares or rights to shares held or acquired or disposed by close asso-

ciates and voting rights to shares that are held by or transferred to close associates or by cessation of such rights. PT stated that in the calculation of qualifying holdings the following voting rights should be considered, in addition to those attaching to shares which the participant has ownership of or usufruct and the cases set out in points (a)-(h) of Article 10 TD: - Those which are held by persons that have entered into any agreement with a shareholder aimed at either acquiring control of the company or frustrating any changes to its control or otherwise constituting an instrument of concerted exercise of influence over the company in which they own shares (for such purposes, agreements concerning restrictions on the transfer of shares representing the share capital of the affiliate company are presumed to be instruments of concerted exercise of influence. This presumption may be rebutted before the CMVM by proving that the relationship established with the shareholder is independent of any effective or potential influence over the affiliate company); - Those which are held, if the participant is a company, by members of its administration and supervisory bodies; - That the participant may acquire pursuant to an agreement executed with the respective holders. RO pointed out that for notification purposes, the voting rights held by a natural or legal person shall be calculated taking into account also the voting rights held by a third party, acting in concert with the respective natural or legal person. SE provided three additional cases where notification is required: A. the shares are possessed by the person's spouse or cohabitee of the notifier; B. the shares are possessed by the notifier's under aged children who are under the notifier's custody; C. the shares are possessed by the notifier's immediate family other than points A and B who have shared a common household for at least one year.

Reasons

440. The most common reasons for providing additional cases where notification is required are: national (civil law, takeover rules) provisions; historical reasons and transparency reasons (e.g.: to ensure transparency on major holdings based on alliances that might ultimately cause a relevant coordination among shareholders).

Article 10 a) TD

441. Article 10 TD states that the notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of or to exercise voting rights in the cases described in points a)-h). Point a) of Article 10 TD provides that in case the voting rights are held by a third party with whom that natural person or legal entity has concluded an agreement, which obliges them to adopt a lasting common policy towards the management of the issuer in question, *by concerted exercise of the voting rights* they hold. Member States may provide rules or guidance on when they consider that there is a concerted exercise of voting rights between two parties.

Major findings

442. 10 Member States (BE, BG, FR, HU, NL, PT, RO, SE, SI, UK) have provided rules or guidance on when there is a concerted exercise of voting rights between two parties. 19 Member States indicated that they do not have rules or guidance's on 'persons acting in concert'.

443. BE made reference to Article 3, § 1, 13° of the Law of 2 May 2007, which defines "persons acting in concert" as : a) the natural or legal persons who cooperate with the offeror, the offeree company or other persons on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company, at frustrating the successful outcome of a bid or at maintaining control of the offeree company; b) the natural or legal persons who have concluded an agreement to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the issuer in question; c) the natural or legal persons who have concluded an agreement to hold, acquire or dispose of securities to which voting rights are attached. BG made reference to Article 2, paragraph 2, item 1 and Article 13, paragraph 4 of Ordinance 39. The first provision defines "concerted exercise of voting rights" as voting rights held by a third party with whom the person has concluded an agreement which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting

common policy towards the management of the company. The second provision states that the notification obligation shall arise for all parties to the agreement.

444. EL noted that they examine ad hoc. ES noted that the Spanish legislation introduces an additional element by which an agreement with a purpose to significantly influence the company's management" would also be captured. FR briefly described that when two or more persons are "acting in concert" (as defined in article L. 233-10 the Code de Commerce), according to article L. 233-9 of Code de commerce, they have to aggregate their holdings and they have to notify if the number of voting rights they hold " in concert " imply the triggering of a legal threshold. If the aggregated holdings reaches a threshold, each of the persons acting in concert, has to notify, because there is a legal solidarity between them, but, for practical reasons it is sufficient that one of them notifies the threshold triggered in concert (this irrespectively of the threshold they reach individually and which they have to declare individually).

445. The concept of concerted exercise of voting rights in the Spanish Transparency Regulation (Royal Decree 1362/2007, November 20th) follows the concept set forth in the Corporate Governance Framework (Orden ECO/3722/2003, December 26th) and the Takeover Regulation (Royal Decree 1066/2007, July 27th). It is not, therefore, a stricter national measure under the Transparency Directive. All definitions respond to the same complementary objectives: (i) to unify the concept of concerted exercise of voting rights and (ii) to capture, under a consistent definition, which might become a situation of control under the Takeover regulation. Thus, the Spanish definition of acting in concert is taking on board elements from the EU relevant Directives (Transparency and Takeovers), as well as other international regulatory framework as for example the International Accounting Standards [IAS n^o27.12. (b), IAS n^o 28, and IAS n^o 31]. In particular, IAS n^o 27 establishes a presumption of "control" where there is *"the power to govern the financial and operating policies of the entity under a statute or an agreement"*. The concept that the Spanish Transparency Regulation has used (significant influence) is widely used and recognised by issuers; it is a concept that can be easily traced to the accounting regulatory framework (IAS 28, adopted by Regulation (EC) No 1606/2002 of the European Parliament and of the Council).

446. PT made reference to Article 20, 20A and 21 of the relevant national law. RO indicated that the rules on the concerted exercise of voting rights are provided for within the Law no. 297/2004 and the CNVM Regulation no. 1/2006. Law no. 297/2004 on capital markets Art. 2 (1) For the purposes of this law, the terms and expressions mentioned below carry the following meanings: 23. persons acting in concert – two or more persons, linked by a concluded agreement or by a gentlemen's agreement in order to enforce a common policy regarding an issuer. The following persons are presumed to act in concert, if no adverse evidence is in place: a) involved persons; b) the parent company together with its subsidiaries, as well as any of the subsidiaries of the same parent company among themselves; c) a firm with its Board members and with the involved persons, as well as these persons among themselves; d) a firm with its pension funds and with the management company of these funds; 22. involved persons: a) persons that control or are controlled by an issuer or that are under joint control; b) persons that participate directly or indirectly to the conclusion of agreements in order to obtain or exercise voting rights jointly, if the shares subject to the agreement grant controlling position; c) natural persons within issuing companies that are part of the company's control and management; d) spouses, relatives and in-laws, second rank ones included, of the natural persons referred to in subparagraph a), b) and c); e) persons that are able to appoint the majority of Board members within an issuer. CNVM Regulation no. 1/2006 Art- 2 (3) For the purpose of applying art. 2 paragraph (1) point 23 of Law no. 297/2004, the following persons are presumed to act in concert, if no adverse evidence is in place, without limiting to the following situations: a) persons who utilize in their economic operations financial resources having the same source or coming from different entities which are involved persons; b) persons who, performing their economic operations, direct the benefits

obtained towards the same receiver or toward receivers who are involved persons; c) legal persons whose ownership structure, management or administration have preponderantly the same composition; d) persons who adopt or have adopted a similar investment policy, by acquiring financial instruments issued by same issuer or by persons involved with the same issuer and/or by selling financial instruments issued by the same issuer or by persons involved with the same issuer; e) persons who have made between them transactions with financial instruments previously negotiated, on their own account or through persons involved with them or who regularly make transactions through entities directly or indirectly controlled by one of them; f) persons who exercise or have exercised in a similar manner voting rights conferred by securities issued by the same issuer; g) persons who, for their economic operations, for representing their interests or for the purpose of exercising the voting rights conferred by financial instruments held, have designated or designate as a mandatory or mandatory's the same person or persons which are involved; h) persons associated in any legal form recognized by the law, where the purpose or the objective of the association is to perform operations related to one or more issuers. i) persons who hold or have held at the same time capital securities at one or more legal persons, having control toward them and having a common policy with or without connection to the capital market; j) persons who perform or have performed economic operations together, with or without connection to the capital market.

447. SE states that the notifier's holdings includes the following: 1. a party with whom the purchaser or transferor has concluded a written agreement to maintain a long-term common position with respect to the management of the company through a coordinated exercise of voting rights; 2. a person who holds shares in the company on behalf of the notifier if the notifier controls the votes for the shares; 3. a subsidiary of the notifier holds the shares; 4. another person holds the shares which in accordance with an agreement with the notifier for a limited time and for compensation has transferred the votes to the notifier; 5. the notifier has received shares as collateral if the notifier controls the votes of the shares and has declared his or her intention to use them; 6. the notifier has a lifelong right of disposition to the shares, if the notifier controls the votes of the shares; 7. the shares have been placed on deposit with the notifier if that person controls the votes; 8. the notifier has received a proxy to exercise the votes if that person control the votes; 9. the shares are possessed by the person's spouse or cohabite of the notifier; 10. The shares are possessed by the notifier's under aged children who are under the notifier's custody; 11. The shares are possessed by the notifier's immediate family other than points 9 and 10 who have shared a common household for at least one year.

448. SI described that the subject is prescribed in a Takeover Act⁴¹ - Article 8 (Concerted action): Persons acting in concert shall be the persons that act in concert on the basis of an explicit or implicit, oral or written agreement and whose aim is to acquire or consolidate their control of the offeree company or to prevent the offeror from making a successful takeover bid. The following persons shall be deemed to act in concert: 1. persons linked merely by circumstances associated with the acquisition of securities, such as: - the time period in which the securities were acquired, - amount of acquired holding, holdings already in their possession, shares held by other holders or - other circumstances associated with these acquisitions that point to a common intention of these persons; 2. members of the management or the supervisory board of the persons acting in concert; 3. members of the management or supervisory board together with persons that include members of these bodies; 4. persons interconnected as immediate family members or 5. persons that proposed the adoption of a resolution by the offeree company's general meeting on the appointment or discharge of members of the management or supervisory boards or of other resolution which is, according to the act regulating commercial companies, to be adopted by at least a three-fourths majority in decisions made by the represented equity capital, and who have achieved the adoption of this resolution by exercising the voting rights or otherwise. The following persons shall be incontestably deemed to act in concert: 1. the controlled company and the controlling entity, 2. companies controlled by the same controlling entity or 3. the management company and investment funds managed by this company. According to this Act, a controlling company shall be a company 1. in which another person has the majority of voting rights; 2. in which another person has the right to appoint or discharge the majority of

⁴¹ http://www.mg.gov.si/fileadmin/mg.gov.si/pageuploads/DNT/pravo_dru__b/Microsoft_Word_-_ZPre_-_1_ANG.pdf

management or supervisory board members and is, at the same time, a shareholder of this company; 4. of which another person is a shareholder and alone controls the majority of voting rights in accordance with an arrangement made with other shareholders or 5. on which another person has the right to exercise a controlling influence or control. Another person from the preceding paragraph shall be the controlled company's controlling entity. In estimating whether a person has the status of a controlling entity, the rights of such person from the third paragraph of this Article shall also include the rights of other persons in which this person has a majority equity interest or the majority of voting rights. According to this Act, immediate family members of individual persons shall be considered the following: 1. the person's spouse or a person with whom they live together in a long-term relationship that, under the act governing marriage and family relations, has the same legal consequences as marriage (hereinafter referred to as "common law marriage"), or with whom they live in a registered same-sex civil partnership; 2. that person's children or adoptive children who do not have full legal capacity and 3. other persons lacking full legal capacity who are under such person's guardianship. Concerted action shall not be considered to be the exercise of the voting right on the basis of organized collecting of proxies if they have been collected according to the act regulating commercial companies, unless it is only used to conceal an arrangement of which the object is to gain control over the offeree company. The authorized person shall notify the intention, reasons and method of organized collecting of proxies in the offeree company to the Securities Market Agency (hereinafter referred to as the "Agency" in advance; otherwise, it shall be presumed that the organized collection of proxies is only used to conceal the arrangement from the preceding sentence. The Agency may, subject to the approval by the minister competent for the economy, lay down more detailed concerted action criteria according to this Act.

449. SK stated the relevant rules on “persons acting in concert” are stipulated only for takeover purposes. NL indicated that if parties have concluded an agreement that provides for a long-term joint policy on voting, each individual party is deemed to control the votes that are at the other party's disposal. Such an agreement is considered to be in place if these parties have agreed to conduct a long-term policy in relation to the issuer, which policy is expressed through the joint exercising of their voting rights. This agreement does not apply to only one single general meeting of shareholders. A verbal agreement may also involve long-term cooperation. In the event that a major shareholder/investor discloses a significant holding, the AFM investigates whether such announcements tally with the disclosures already made in respect of the voting policy. If a major shareholder/investor makes announcements about the standpoint of fellow investors with regard to a fund, an acquisition or a strategy pursued by a company, and the parties concerned did not disclose the alleged interest to the AFM, this may be a reason for the AFM to initiate a further investigation. Non-disclosure or incomplete disclosure of alleged interests to the AFM classifies as an economic offence. The alleged interests must therefore be in agreement with the interests that have been or have to be disclosed to the AFM. UK indicated that the relevant rules are contained in Article 10 of the TD in DTR 5.2.1. <http://fsahandbook.info/FSA/html/handbook/DTR/5/2>.

Reasons

450. The main reasons mentioned by Member States are: transparency purposes, historical and legal reasons (ensure uniform application of the law, take-over bid relevance).

Section I.a. - Procedure on the notification and disclosure of major holdings

This is the first of two parts dealing with procedures on the notification and disclosure of major holdings. This group belongs to ‘Information about major holdings’.

Article 12(1) (a) – (d) of TD

451. Article 12 TD states that the notification required under Articles 9 and 10 shall include the information listed under points a) – d). On the basis of Article 3(1) TD Member State may set additional requirements relating to the minimum content of a major shareholding disclosure notification with respect to those established in Article 12 (1) a) to d) of TD.

Major findings

452. 11 Member States (BE, DE, ES, FI, FR, IT, NO, PL, PT, SE, UK) require additional information for major shareholding disclosure notifications compared to those contained under Article 12 (1) a) to d) of TD. 18 Member States (AT, BG, CY, CZ, DK, EE, EL, HU, IE, IS, LT, LU, LV, MT, NL, RO, SI, SK) do not require such additional information.
453. BE indicated that the additional information compared to those set out in Article 12.1. (a) to (d) is: (i) the name of the issuer, (ii) the reason for the notification, (iii) disclosure of the number of convertible bonds, warrants and shares without voting rights held by the notifying person (where applicable). DE noted that the notification's headline has to be "Notification of voting rights". The address of the notifying party as well as the address of the issuer has to be stated. Every threshold which the notifying party reaches exceeds or falls below must be quoted, as well as the fact that the threshold concerned has been reached, exceeded or fallen below. Furthermore, the exercise of financial instruments (if carried out) must be indicated. The voting rights attributed to the notifying party shall be specified separately for each element of attribution. ES stated that the following additional information is required: the total amount of voting rights of the issuer, the reasons for the notification i.e.: (i) first admission of issuer's listing, (ii) acquisition or transmission of voting rights, (iii) updating as a result of intervening modification of the number of voting rights of the issuer or the holdings chain, the number of voting rights prior to the triggering transaction.
454. FI stated that the detailed information requirements are set in the Decree of the Ministry of Finance on the Disclosure Obligation and on the Information to be disclosed in Connection with the Disclosure and Publication of Portions of Holdings. IT mentioned that the notification form includes standardised detailed information on each of the information listed under 12(1) TD. In addition the form includes information on: - the type of transaction triggering upwards or downwards the relevant thresholds (including for instance detailed information on merger transactions where applicable); - the structure of the chains through which the shares are held; - the underlying issuer; - the capacity in which the shares are held. LU stated that the law does not go beyond the TD. However, in practise the standard form issued by the European Commission is used. NO explained that the following information has to be included additionally: -The number of shares the notification encompasses -The circumstance that triggered the disclosure obligation and whether such circumstance applied to the entity concerned itself or to any related party (close associate).
455. PL provided the following additional elements, which are required by national law: The notification referred shall include the following additional information: 1) number of shares held prior to the change and their percentage share in the company's share capital, and the number of votes attached to these shares and their percentage share in the total vote; 2) number of shares currently held and their percentage share in the company's share capital, and the number of votes attached to these shares and their percentage share in the total vote; 3) information on any intention to further increase the shareholder's share in the total vote within 12 months from the notification date, and on the purpose of such increase - in the case of a notification submitted in connection with reaching or exceeding 10% of the total vote; 4) subsidiaries of the notifying shareholder, who hold company shares; 5) also on a shareholder who reaches or exceeds a given threshold of the total vote defined herein, in connection with shares held by a third party with which the shareholder entered into an agreement on the transfer of right to exercise voting rights. 6) In the event when the entity obliged to notify holds different types of shares, notification referred to in paragraph 1 should also include information specified in above point 2 and 3 separately for each type of shares. 7) Should there be any change of intentions or purpose referred to in paragraph 4.4, the Commission and the company in question should be notified of this fact immediately, no later than within 3 business days from the day on which such a change has occurred. PT indicated that the notification must include information on the number of shares and percentage of

share capital held, the legal title or fact which causes the attribution of voting rights and, when applicable, the number of shares acquired or sold, as well as information on where the transaction was executed. SE requires the following additional information: number of shares (not only voting rights), number and category of shares after the transaction. UK provided the following additional information: the position prior to the triggering transaction; the holdings of all instruments under Article 9, 10 and 13 and the date of the transaction that triggered notification obligation.

Reasons

456. Member States provided the following reasons: legal (take-over bids relevance); supervisory (monitoring); investor protection; historical and transparency reasons (e.g.: information communicated to the public is clear, precise and not misleading).

Article 12(1) of TD - percentage and number of voting rights held

457. Article 12 TD states that the notification required under Articles 9 and 10 shall include the information listed under points a) – d). On the basis of Article 3(1) TD Member State may set additional requirements relating to the minimum content of a major shareholding disclosure notification with respect to those established in Article 12 (1) a) to d) of TD. Member States were asked whether they specifically require the notifying investor to provide the percentage of voting rights held and/or the number of voting rights held.

Major findings

458. 25 Member States (BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, SE, SI, SK, UK) indicated that they require the notifying investor to provide the *percentage of voting rights held*. 3 Member States (AT, EE, RO) do not require the notification of this information. 25 Member States (AT, BE, BG, CY, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, RO, SE, SI, UK) indicated that they require the notifying investor to provide the *number of voting rights held*. 3 Member States (CZ, PT, SK) do not require the notification of this information.

Reasons

459. Member States provided the following reasons: transparency, investor protection; supervisory (monitoring) and historical reasons.

Article 12(1) of TD

460. Article 12 TD states that the notification required under Articles 9 and 10 shall include the information listed under points a) – d). On the basis of Article 3(1) TD Member State may set additional requirements relating to the minimum content of a major shareholding disclosure notification with respect to those established in Article 12 (1) a) to d) of TD. Member States were asked whether they specifically require the notifying investor to provide the corresponding percentage of share capital of the issuer.

Major findings

461. 16 Member States (BG, DK, EL, FI, FR, HU, IE, IT, LT, LV, NL, NO, PL, PT, RO, SE) have indicated that they require the notifying investor to provide the corresponding percentage of share capital of the issuer. 13 Member States (AT, BE, CY, CZ, DE, EE, ES, IS, LU, MT, SI, SK, UK) stated that they do not require the notifying investor to provide the corresponding percentage of share capital of the issuer.

462. CY indicated that it does not require the notifying investor to provide the corresponding percentage of share capital of the issuer. Investor is required to notify the issuer of the percentage of the share capital held in the issuer only in accordance with Article 30 (2) of TD (Transitional provision).

Reasons

463. Member States mostly mentioned the following reasons for requiring this information: inter alia legal (multiple voting rights, no nominal value of shares), historical, transparency, supervisory or consumer protection reasons.

Article 9(1) and Article 12(2) TD - notification form to make major shareholding disclosures

464. Member States were requested to provide information on whether they use standardized or local notification forms for conducting the major shareholding disclosure notifications. The application of the form recommended by the European Commission was specifically raised.

Major findings

465. 24 Member States (BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, NL, PT, RO, SE, SI, UK) indicated that they use standard notification forms for major shareholdings. Half of them (CY, DK, EE, EL, HU, IE, IS, LT, LU, LV, PT, SE) use the form recommended by the European Commission, while the other half (BE, BG, CZ, DE, ES, FI, FR, IT, NL, RO, SI, UK) implemented a local notification form. 5 Member States (AT, MT, NO, PL, SK) don't, however MT and AT indicated that they are planning to implement such standard form as well.

Reasons

466. Among the main reasons provided by Member States were the uniform, clear, precise and not misleading communication to the public (transparency) and in case of the use of a local form the inclusion of additional information (for take-over bid purposes), fulfilment of legal requirements of national law (monitoring) and to ease the disclosure notification procedure for investors by standardizing it. SE pointed out that it applies the standardised form for practical reasons and for the purpose of making it easier for the investor to make a proper notification, the standard notification form is recommended.

Article 12(4)-(5) TD / Article 10(1) L2D

467. Article 12(4) TD provides that under certain conditions the parent undertakings of management firms shall not be required to aggregate its holdings under Articles 9 and 10 TD with the holdings managed by the management company. Similarly Article 12(5) TD provides that under certain conditions the parent undertakings of investment firms shall not be required to aggregate its holdings under Articles 9 and 10 TD with the holdings which such investment firm manages on a client-by client basis. Article 10(1) L2D sets conditions which the parent undertaking of the management company or investment firm has to fulfil. On the basis of Article 3(1) TD Member States may require additional conditions to those included in Article 10(1) L2D.

Major findings

468. 1 Member State (SI) has indicated that it requires additional conditions to those included in Article 10(1) L2D from the parent companies that wish to benefit from the major shareholder notification exemptions under Articles 12(4) and 12(5) TD. 28 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL,

ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SK, UK) have indicated that they do not require such additional conditions.

469. SI indicated that additional requirements are set in Articles 14 and 15 of the Agency's by-law. Parent undertaking of a management company should demonstrate upon Agency's request the organizational structures of parent company and management company in a way to prove that voting rights are exercised in an independent way, that persons who make decisions on how to exercise voting rights do so independently and some others. By law also defines the terms "direct guidance" and "indirect guidance" for the purpose of exercising the voting rights.

Article 12(4)–(5) TD / Article 10(2) (a)-(d) L2D

470. Article 12(4) TD provides that under certain conditions the parent undertakings of management firms shall not be required to aggregate its holdings under Articles 9 and 10 TD with the holdings managed by the management company. Similarly Article 12(5) TD provides that under certain conditions the parent undertakings of investment firms shall not be required to aggregate its holdings under Articles 9 and 10 TD with the holdings which such investment firm manages on a client-by client basis. Article 10(2) L2D requires the parent undertaking of the management company or investment firm to notify certain information to the competent authority of the home Member State of the issuers whose voting rights are attached to holdings managed by the management companies or investment firms. On the basis of Article 3(1) TD, Member States may require information to be notified to the competent authority of the home Member State in addition to those included in Article 10(2) L2D.

Major findings

471. 29 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) have indicated that they do not require such additional information.

Article 12(4)-(5) TD / Article 10 L2D

472. Article 12(4) TD provides that under certain conditions the parent undertakings of management firms shall not be required to aggregate its holdings under Articles 9 and 10 TD with the holdings managed by the management company. Similarly Article 12(5) TD provides that under certain conditions the parent undertakings of investment firms shall not be required to aggregate its holdings under Articles 9 and 10 TD with the holdings which such investment firm manages on a client-by client basis.

473. On the basis of Article 3(1) TD, Member States may require any additional action (other than additional conditions and/or information required by Article 10(1)-(2) L2D) from the parent companies that wish to benefit from the major shareholder notification exemptions under Articles 12(4) and 12(5) TD.

Major findings

474. 1 Member State (DE) has indicated that it requires additional action from the management companies that wish to benefit from the major shareholder notification exemptions under Articles 12(4) and 12(5) TD. FR stated that the AMF would probably ask the parent undertaking to prove that the EEA management companies or the EEA investment firms fulfil the criteria of independence required by the Transparency Directive and by French Law. 26 Member States do not require any other action from the parent companies. 1 Member States (PL) did not respond to the question.

475. DE indicated that it requires a written confirmation that the requirements of Art. 10 (4) L2D are met.

Section I.b. - Procedure on the notification and disclosure of major holdings, Part 2

This is the second part of the questions relating to procedures on the notification and disclosure of major holdings. These questions make part of the section on ongoing information.

Article 12(4) TD, Article 10(4) (a)-(c) first subparagraph / Article 10(4) second subparagraph of L2D

476. Article 10(4) L2D regulates that without prejudice to the application of Article 24 of Directive 2004/109/EC, 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: 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; The persons who decide how the voting rights are to be exercised act independently; 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.
477. On the basis of Article 3(1) TD Member States may require parent undertakings to demonstrate to the competent authority additional information to those listed under Article 10(4) a)-c) L2D.

Major findings

478. 2 Member States (PL, SI) indicated that they require parent undertakings to demonstrate to the competent authority additional information to those listed under Article 10(4) a)-c) L2D. PL asks as an additional requirement that the management board of the parent undertaking shall include at least two persons holding a university degree, having at least three-year experience of work for financial market institutions, and enjoying a good opinion with respect to the positions they have held. SI refers to Articles 14 and 15 of the Agency's by-law apply.

Article 13(1) TD

479. Article 13(1) regulates that the notification requirements laid down in Article 9 TD shall also apply to natural persons or legal entities who hold, directly or indirectly, financial instruments that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market. On the basis of Article 3(1) TD Member States may set additional thresholds for the natural persons and legal entities under Article 13(1) regarding major shareholding notifications.

Major findings

480. 18 Member States (BE, BG, CZ, DK, EE, ES, FR, IE, IS, IT, LT, LV, MT, NO, PT, RO, SE, UK) apply additional thresholds to the persons mentioned in Article 13 (1) TD. 11 Member States (AT, CY, DE, EL, FI, HU, LU, NL, PL, SI, SK) do not apply such additional thresholds.
481. The main purpose of Member States is to have a general regulation for all persons subject to the disclosure notification obligation. 2 Member States (FR, PT) mention that holdings pursuant to Articles 9, 10 and 13 TD are aggregated anyway. BE declared that the additional thresholds (as under Question G.2) also apply to the persons listed under Article 13(1) of TD. BG noted that the threshold of

5% or of a figure divisible to 5% is universal and is applied even in the case of Art. 13 (1) of TD. CZ informed that they have general regulations for all persons. In EE thresholds of 1/3 and 2/3 are applied instead of 30% and 75%. FR also referred to their answer to question G2. There are no thresholds that particularly apply to Art. 13. Holdings under Article 13 are added to holdings under Article 9, of TD. IS explained that referring to Article 80 the notification requirement laid down in Article 78 shall also apply to a party that holds, directly or indirectly, financial instruments as provided in paragraphs (a) and (d)-(h) of point 2 of paragraph 1 of Article 2, provided that the financial instrument in question results in an entitlement of the party in question to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer falling under paragraph 1 or 2 of Article 77. IT informed that only the additional threshold of 2% does apply. LT noted that there are equal requirements for all persons. MT informed that the Listing Rules provide that a natural or legal person shall make a notification of the relevant thresholds in respect of any qualifying financial instruments held by such person, directly or indirectly, which result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, of an Issuer whose shares are admitted to listing on a Regulated Market and provided that such person enjoys, on maturity, either the unconditional right to acquire the underlying shares or the discretion as to his right to acquire such shares or not. NO noted that all thresholds (also the 90%) apply equally to all the persons listed. PT informed that Articles 10 and 13 of TD are aggregated in Portugal. RO stated that the reason for this answer is the applicability of the initial principle set out in the Article 13(1) also for cases for which notification thresholds are additionally required to those set out in Art. 9 (1) provided for under the TD. SE explained that a person listed under article 13(1) TD shall notify the issuer and the CA regarding the thresholds which have been specified in Q G 2. UK informed that they are the same thresholds.

Reasons

482. The main reasons provided by Member States are the following: to have a consistent and uniform notification regime (consistency with thresholds for notifications of major holdings and rules on attribution of voting rights); to increase transparency; legal reasons (squeeze out /sell out and control of companies).

Article 13(1) of the TD

483. The home Member State may require the aggregation of shareholdings under Article 9 TD with the holdings of 'financial instruments' mentioned under Article 13(1) TD According to Article 9 TD, the home Member State shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %. According to Article 13(1) TD, these notification requirements shall also apply to a natural person or legal entity who holds, directly or indirectly, financial instruments that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market.

Major findings

484. All Member States, as home Member States, but seven (BG, CZ, DE, ES, IT, LU, NL) require the aggregation of shareholdings with the holdings of financial instruments. ES notes that there are no aggregation rules for the calculation of the threshold or the notification of the position. Shareholding positions and financial instruments must be calculated and disclosed separately.

485. DE explained that there is still a separate duty to notify financial instruments. Regarding this duty, financial instruments are aggregated with voting rights according to Article 9 and 10 TD; the aggrega-

tion came into effect on March 1st, 2009. LU does not require the aggregation of shareholdings with the holdings of 'financial instruments', however, once a notification is triggered, the information has to be given on shareholdings and holdings in financial instruments regardless of whether notification was triggered by shares or by financial instruments.

Reasons

486. Among the reasons provided by Member States are historical, legal (take-over bid relevance), supervisory (monitoring) and transparency reasons.

Article 13(1) TD/ Article 11(3) (a)-(g) L2D

487. Article 11(3) L2D sets out the minimum requirements for major shareholdings disclosure notifications for the purposes of Article 13(1) TD. These minimum requirements are: The resulting situation in terms of voting rights; If applicable, the chain of controlled undertakings through which financial instruments are effectively held; The dates on which the threshold was reached or crossed; For instruments with an exercise period, an indication of the date or time period where shares will or can be acquired, if applicable; Date of maturity or expiration of the instrument; Identity of the holder; Name of the underlying issuer.

488. On the basis of Article 3(1) TD Member States may require additional elements to the major shareholding notification to be made under Article 13(1) TD.

Major findings

489. 9 Member States (BE, DE, ES, FI, FR, IT, NL, NO, PT) indicated that require additional elements to the major shareholding notification to be made under Article 13(1) TD, while 20 Member States (AT, BG, CY, CZ, DK, EE, EL, HU, IE, IS, LT, LU, LV, MT, PL, RO, SE, SI, SK, UK) stated that they do not require such additional elements.

490. IT reported that the notification form includes standardised detailed information on each of the information listed under Article 11(3) L2D. In addition, the form includes information on: - the type of transaction triggering upwards or downwards the relevant thresholds (including for instance detailed information on merger transactions where applicable); - the structure of the chains through which the shares are held; - the capacity in which the shares are held.”

Reasons

491. The reasons provided by Member States are mainly historical, supervisory (monitoring), consumer protection (clear, precise and not misleading) legal (take-over bid relevance) and transparency related.

Article 9-13 TD

492. On the basis of Article 3(1) TD Member States may set additional or more stringent requirements to shareholders regarding major shareholding notifications besides the specific cases already addressed by this Report earlier.

Major findings

493. 15 Member States (AT,BE,CY,DK,DE,FI,FR,EL,IT,LT,MT,PT,RO,SI,UK) indicated that they set additional requirements additional or more stringent requirements to shareholders regarding major

shareholding notifications, 14 Member States (BG,CZ,EE,ES,HU,IE,IS,LU,LV,NL,NO,PL,SE,SK) stated that they do not set such additional or more stringent requirements.

494. AT informed that the more stringent disclosure requirements relating to notification of major holdings please find below in Art. 92 of the ASEA, Article 92 of the ASEA: “The reporting obligation pursuant to Article 91 par. 1 and 1a shall also apply to persons who are authorized to exercise voting rights in one of more of the following cases: 1. Voting rights under shares held by third parties with whom this person has reached an agreement that imposed the obligation on both parties to pursue a common policy with respect to the management of the concerned listed company by exercising the voting rights in mutual consent; 2. Voting rights from shares that this person has assigned to a third party as collateral if the voting rights can be exercised without requiring any explicit instructions by the transferee or if the person can influence the exercise of the voting rights by the transferee; 3. Voting rights from shares under which this person enjoys “usus fructus” rights if the voting rights can be exercised without requiring any explicit instructions by the transferee or if the person can influence the exercise of the voting rights by the transferee; 4. Voting rights from shares that belong to a company or may be considered as belonging according to fig. Z 1 to 3 over which this person holds a controlling interest, directly or indirectly (Art. 22 par. 2 and 3 Takeover Act); 5. Voting rights that this person may exercise without being the owner; 6. Voting rights that this person in the function of a party having the power of attorney may exercise at his or her own discretion, if no special instructions have been given by the shareholders; 7. Voting rights that are deemed to belong to the person pursuant to Article 23 par. 1 or 2 Takeover Act.
495. BE declared that shareholders that are obliged to notify also have to disclose the number of convertible bonds, warrants and shares without voting rights they hold (where applicable). They have to update notifications concerning financial instruments 1) if these instruments are not exercised at expiry date and that fact causes the crossing of a downward threshold, 2) at year end, if these instruments are not exercised at expiry date without causing the crossing of a downward threshold, 3) at year end, if they were exercised in the course of the year. CY explained that a person who holds, directly or indirectly, financial instruments in an issuer that result in an entitlement to acquire, on such holder's own initiative alone, under an agreement which is legally binding, shares to which voting rights are attached, independently from whether the shares have been issued by the issuer or not, is subject to notification requirements. DK informed that major shareholders have to disclose voting rights and share capital. FI noted that the notification requirement applies also if the number of shares held reach or cross the threshold(s). In addition shareholders or persons comparable to shareholders are required to notify any contract or other arrangement which, when effected, will result in reaching or crossing the thresholds.
496. DE informed and updated that an additional disclosure requirement for holders of 10 % or more is effective since May 31st, 2009, sect. 27a German Securities Trading Act. Notification requirements applicable to owners of qualifying holdings (1) Any notifying party within the meaning of sections 21 and 22 whose shareholding reaches or exceeds the threshold of 10 percent, or a higher threshold, of voting rights attached to shares must, within 20 trading days after reaching or exceeding the threshold, inform the issuer whose home country is the Federal Republic of Germany of the aims underlying the purchase of the voting rights and of the origin of the funds used to purchase the voting rights. Any changes to the aims within the meaning of sentence 1 must be notified within 20 trading days. In respect of the aims underlying the purchase of the voting rights, the notifying party shall notify whether 1.the investment is aimed at implementing strategic objectives or at generating a trading profit; 2.it plans to acquire further voting rights within the next twelve months by means of a purchase or by any other means; 3.it intends to exert an influence on the appointment or removal of members of the issuer's administrative, managing and supervisory bodies and 4.it intends to achieve a material change in the company's capital structure, in particular as regards the ratio between own funds and external funds and the dividend policy. With regard to the origin of the funds used, the notifying party must state whether these are own funds or external funds raised by the notifying party in order to finance the purchase of the voting rights. No notification requirement pursuant to sentence 1 shall apply if the threshold has been reached or exceeded as a result of an offer within the meaning of section 2 (1) of the Securities Acquisition and Takeover Act (“Wertpapiererwerbs- und Übernahmegesetz”). Moreover,

no notification requirement shall apply to asset management companies, investment stock corporations as well as foreign management companies and investment companies within the meaning of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ EC L 375 p. 3) which are subject to a prohibition pursuant to Article 25 (1) sentence 1 of Directive 85/611/EEC, to the extent that an investment threshold of 10 percent or less has been determined; in addition, no notification requirement shall apply in the event of a permissible exception for exceeding investment thresholds in accordance with Article 26 (1) sentence 1 and (2) of Directive 85/611/EEC. (2) The issuer shall publish the information received or the fact that the notification requirement pursuant to subsection (1) has not been fulfilled in accordance with section 26 (1) sentence 1 in conjunction with the Regulation pursuant to section 26 (3) no. 1. (3) The articles of association of a domestic issuer may provide that subsection (1) does not apply. Moreover, subsection (1) shall not apply to issuers domiciled abroad whose articles of association or other provisions stipulate non-application. (4) The Federal Ministry of Finance may, by means of a Regulation not requiring the consent of the Bundesrat, issue more detailed provisions concerning the contents, nature, language, scope and form of the notification pursuant to subsection (1).

497. EL referred to a) their law 3556/2007 introduces an extra notification obligation when a person possesses at least 10% of voting rights of an issuer and its proportion of voting rights changes more or greater than 3% of total voting rights of the issuer as a result of an acquisition or disposal or of an event changing the breakdown of voting rights and b) an extra obligation on mutual fund management companies has been provided to aggregate the voting rights of the funds managed. FR informed that principally: A. 20 thresholds instead of 8: 1) the notification of obligation arises when the thresholds are triggered not only in voting rights but in capital too. 2) There are more thresholds: the French law requires notification when the threshold of 90% is triggered, in capital or in voting rights, and when the threshold of 95% is triggered, in capital and in voting rights. B. Aggregation (art. 9 TD - L. 233-7 Code de Commerce and article 10 TD - L.233-9) : If the obligation to aggregate is considered as a more stringent measure, Article L. 233-9 of Code de Commerce requires (for calculating the reached or crossed thresholds), an obligation for the notifying issuer, to aggregate the direct and the indirect holdings (capital/ voting rights). The circumstances described in article L. 233-9 are the circumstances mentioned in article 10 of the TD. C. Start of the notification period (Q n° 53 art12 TD and art. 9 LD2) the shareholder should have learned of the acquisition, disposal or possibility of exercising voting rights, the day of the threshold is crossed. D. Some threshold arise an obligation to declare the intentions: 3) French law asks for the notification of intentions when the threshold of 10% is crossed or when the 20% threshold is triggered, or in case there is a change of intentions. E. The AMF charges (750 Euros) per decision (And the French local standard form asks for additional information such as: total number of shares, of voting rights, contacts of paying person, indication of the type of market where the shares are admitted.)

498. IT explained that among the financial instruments to be notified, there are also those which give the right to holder to sell the underlying shares. Moreover, IT has additional thresholds. Furthermore IT updated that the holding of financial instruments which give rise to sell the underlying shares shall be notified by: (i) holders of more than 2% share capital; (ii) holders of financial instruments that result in an entitlement to acquire more than 2% share capital. As mentioned in the previous response, Italian law contemplates additional thresholds triggering the notification obligation. LT declared that Lithuania has adopted more stringent requirements regarding notification of the acquisition of major holdings (Article 9 of the Transparency Directive) - there is a notification requirement when the threshold of 95% is crossed. Although the Transparency Directive does not foresee such a threshold, 95% is a relevant threshold when the squeeze-out and sell-out rights under the Takeover Directive may be exercised, so the information about this is informative and useful. MT informed that the Listing Rules transposing both the TD and L2D require a notification of major holdings when the threshold of 90% of voting rights is crossed. In RO investors are required when notifying the issuer to notify also both the competent authority and the regulated market. Also, investors are required to provide information on the means the voting rights were acquired or disposed of. (The standard notification form). In SI the management or supervisory body member of the public company (and company at least 250 shareholders and equity capital of not less than 4 Mio. EUR) must inform the company about any

change in the share of voting rights in such company even if the threshold of major holding is thereby not achieved or exceeded and even if it does not fall below an individual threshold.

Reasons

499. Member States have provided mostly consumer protection and transparency (possible empty voting; concrete possibilities that a potential holding will become an actual holding; crossing put and call positions on the same major holding) reasons.

Articles 14 - 15 TD

500. Articles 14 TD provides a requirement to the issuer to publish the proportion of own shares if the issuer acquires or disposes of its own shares. Article 15 TD requires issuers to publish the total number of voting rights and capital at the end of each month for the purposes of calculating the thresholds provided for in Article 9 TD. On the basis of Article 3(1) TD Member States may set additional or more stringent requirements to issuers regarding their obligations under Articles 14 and 15 TD.

Major findings

501. 20 Member States (AT, BG, CY, CZ, EE, EL, ES, FR, IE, IS, LT, LU, LV, MT, NL, NO, PL, RO, SI, SK) responded that they do not set additional or more stringent requirements to issuers regarding their obligations under Articles 14 and 15 TD. 9 Member States (BE, DE, DK, FI, HU, IT, PT, SE, UK) reported that they impose such additional or more stringent requirements.

502. The additional disclosure requirements reported include additional thresholds (DE, IT, SE) or an obligation on the issuer to disclose information on: (i) any transaction on its own shares (regardless of the thresholds in Article 14 of the TD) (FI, SE⁴²), (ii) the total number of shares or other financial instruments without voting rights (BE), (iii) changes regarding the type of attribution of voting rights (PT), or (iv) the breakdown of the total voting rights by type and class of shares (HU). It is noticed that additional disclosure requirements referred to by Member States may derive from other EU legal instruments. For instance, Article 10 of the Takeover Directive requires issuers to publish detailed information on the structure of their capital, any restrictions on the transfer of securities or voting rights, the shareholders' agreements, etc.. In ES an additional threshold of 1% applies but only in the case the issuer is under a take-over. BE declared that issuers have to disclose the total number of convertible bonds, warrants and shares without voting rights (where applicable). Belgian issuers have to disclose their shareholder structure in the notes to the annual financial statements, as required by Article 10 of Directive 2004/25/EC. DE stated that in cases other than Art. 21 (3) TD also the 3%-threshold applies. DK informed that the issuers have to disclose voting rights and share capital regarding major shareholders. FI noted that the issuers are required to notify the stock exchange of any transaction it has concluded with its own shares (regardless of the thresholds in Article 14). The stock exchange is required to make the information public. HU explained that the voting rights shall be published on the last working day of the month by type and class of the shares.

503. IT reported that Italian law contemplates additional thresholds triggering the notification obligation. These additional obligations apply also to issuer holding directly or indirectly (through a subsidiary) own shares. PT informed that the disclosure requirements concerning alterations in the type of attribution of the same voting rights. SE explained that the issuer shall disclose information regarding own shares that are acquired or sold and if the holding reaches, exceeds or fall below any thresholds in accordance with the Swedish legislation regarding major shareholdings (i.e. not only the thresholds of 5% and 10%).

⁴² The information is made public through the Stock Exchange.

Reasons

504. The most common reasons provided by Member States are historical reasons; greater transparency; national company law provisions; consistency with the major holding notification requirements for other shareholders; the existence of different classes of shares under national law.

Section J - Additional information

Article 16 TD

505. Article 16 lists information to be published by issuers regarding changes in the rights attaching to the various classes of shares, changes in the rights of holders of securities other than shares, new loan issues, and any guarantee or security in that respect. Article 3 of the TD allows the home Member State to impose more stringent requirements on issuers.

Major findings

506. 25 Members (AT, BE, BG, CY, CZ, DK, DE, EL, ES, FI, FR, IE, IS, IT, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK, UK) responded that they do not require issuers to publish additional information to that required by Article 16. 4 Members (DE, HU, MT, NO), instead, answered that they require issuers to publish additional information to that required by Article 16.

507. The additional information reported by those 4 Member States includes, among other, information on the following: Changes in the rights attaching to financial instruments other than those mentioned by Article 16 of the TD, such as derivative securities issued by the issuer itself that do not give access to the shares of the issuer (NO) or securities which grant conversion or subscription rights to the creditors in respect of shares (DE); 1. The results of any new issue or public offer of securities and the effect, if any, of any issue of further securities on the terms of the exercise of rights under options, warrants and convertible securities; 2. Statement indicating where the audited annual accounts of any guarantor are available to the public; 3. Any sale of shares in another company resulting in a company ceasing to be a subsidiary and any acquisition of shares of an unquoted company; 4. Any change of address of the registered office and of the Officers of the issuer; 5. Where a valuation has been conducted on the fixed assets of the issuer and/or its subsidiaries including a copy of the valuation reports or a statement indicating where such report has been made to the public; 6. Any material change to the issuer's capital structure including the structure of its debt securities admitted to listing, except that notification of a new issue may be delayed while an offer or underwriting is in progress (MT). The withdrawal of securities due to knock-out conditions, where applicable; 2. Holdings held by non-EU entities; 3. Non-compliance by securities holders; Matters regarding discontinuation of listing (MT); The answers provided by Members are not fully comparable. On the one hand, Members have adopted different approaches in the breakdown of certain obligations applying at national level between (i) requirements "additional" to those set out in Article 16 of the TD in relation to the notification of major holdings, and (ii) requirements "additional" to those set out in Articles 17 and 18 of the TD in relation to the exercise of rights by shareholders and debt securities holders.

508. For instance, MT and PT have included among the "additional requirements" relevant for the purposes of Article 16 of the TD the obligation by the issuer to disclose information relating to: corporate go-

vernance (PT)⁴³; financial information (MT)⁴⁴; dividend payments (MT)⁴⁵; increase and decrease of share capital (PT), proposed amendments to the statutes (MT) and other extraordinary shareholders' meetings (MT); information on profits and losses and on insolvency proceedings (PT, MT)⁴⁶. Other Member States that impose similar obligations at national level have included such requirements among those “additional” to the ones set out in Articles 17 and/or 18 of the TD only. On the other hand, some Members reported as an “additional requirement” also obligations imposed by other EU legal instruments, and therefore applicable in all Member States, such as the obligation to disclose: credit ratings and their amendments under the CRAs Regulation (PT); price sensitive information under MAD (HU, MT)⁴⁷. The obligation to disclose the following information was also mentioned as “additional requirement”: Information which the issuer publishes in a third country and which may be of importance to the public in the European Union and the European Economic Area (DE); Any information concerning the issuer or any of its subsidiaries necessary to avoid the establishment of a false market in its securities (MT).

Reasons

509. The most common reason reported for applying additional requirement is to increase transparency; investor protection and market efficiency.

Section K - Information for holders of securities admitted to trading on a regulated market

This group forms part of the section including questions on information for holders of securities admitted to trading on a regulated market.

Article 17(2)(a)-(d) TD

510. Article 17(2) (a)-(d) of the TD lists some information and facilities that have to be made available by the issuer to enable holders of shares to exercise their rights (e.g. information additional to the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings; publish notice or distribute circulars on issues in addition to allocation and

⁴³ PT: (i) composition of the administrative and supervisory boards, and the Chair of the shareholders' meetings if any; details of the statutory auditor and respective changes; appointment and replacement of the company's Secretary; appointment and replacement of the company's representative for relation with the market and the regulator (for issuers of shares admitted to trading on a regulated market or other securities giving the right to subscribe or acquire the same); (ii) composition of the administrative and supervisory boards, and also of the chair of the shareholders' meetings if any, details of the statutory auditor and respective changes; appointment and replacement of the company's representative for relation with the market and the regulator (for issuers of debt securities).

⁴⁴ Preliminary results, profit forecast (MT) or the resolution by the general meeting concerning the financial statements (PT for issuers of equity securities).

⁴⁵ The date fixed for any board meeting of the issuer at which the declaration or recommendation or payment of a dividend is expected to be decided; any decision by the board of Directors of the issuer to declare any dividend or other distribution on securities admissible to listing or not to declare any dividend or interest payment on securities authorised as admissible to listing or relating to profits (MT).

⁴⁶ MT: The date fixed for any board meeting of the issuer at which any announcement of the profits or losses in respect of any year, half-year or other period is to be approved for publication; the filing of a winding-up application.

PT: Convening a general meeting to determine the loss of public company status; filing for insolvency, judgment initiating the insolvency proceedings or dismissing the filing for insolvency, and also the approval and official confirmation of the insolvency plan (PT for issuers of non-equity securities).

⁴⁷ Including any resolution for the merger or amalgamation of the issuer and any agreement entered into in connection with any acquisition or realisation of assets or any transaction outside the ordinary course of business of the issuer and/or its subsidiaries which is likely to materially affect the price of its securities (MT).

payments of dividends or the issue of new shares, etc.). More stringent requirements can be imposed by the home Member State on issuers according to Article 3(1) of TD.

Major findings

511. 26 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK, UK) responded that they do not require issuers to ensure that other facilities and information are made available in the home Member State to enable holders of shares to exercise their rights, in addition to those listed under Article 17(2) (a) – (d) of the TD. 3 Member States (IT, MT, NO), instead, stated that they require issuers to ensure that additional facilities and information are made available in the home Member State.
512. The additional information and facilities reported relate mainly to information to be made available before the shareholders' meeting (IT, MT, NO), especially with regard to material or extraordinary resolutions; corporate governance (PT); financial information (IT), major corporate transactions (IT), modalities by which shareholders can exercise their rights (IT, PT). IT indicated that notices calling shareholders' meetings of issuers of shares must include the articles of their by-laws governing attendance at meetings. Without prejudice to the disclosure requirements provided for by-laws and regulations, at least 15 days before the shareholders' meeting, directors shall make available to the public at the registered office and the market management company a report concerning the items on the agenda. Issuers are required to make available to the public a wide range of information and documents before shareholders' meetings convened to adopt material resolutions, such as: Mergers, spin-offs and increases in capital by way of contributions in kind; Pools of assets allocated to a specific business project; Other amendments to the instrument of incorporation, issue of bonds, optional and mandatory conversion; Purchase and sale of treasury shares; Reduction of capital pursuant to losses under Article 2446 of the Italian Civil Code; Approval of the company annual financial statements. The notice convening the shareholders' meetings shall contain the information that the documentation will be published within the time limits provided for in the legislation and specifies that shareholders may obtain a copy at their expense. Issuers of financial instruments shall inform the public by a proper communiqué of the resolutions whereby the competent body approves the draft company annual financial statements, the proposed dividend, the consolidated financial statements, the half-yearly report, and the interim financial statements. In case of postal voting, notices convening shareholders' meetings shall specify: a) that votes may also be cast by mail; b) the way and the persons at whose offices voting papers are to be requested; c) the address to which voting papers are to be sent and the time limit by which they must reach the addressee. Copies of notices shall be sent to the central depository of the financial instruments carrying voting rights in the shareholders' meeting. The central depository shall inform custodians, which shall notify depositors.
513. MT made reference to the Listing Rules, which includes a list of circulars which an issuer must distribute to its shareholders which are in addition to allocation and payments of dividends or the issue of new shares. These include a circular including any business other than ordinary business at an annual general meeting, a circular in connection with a resolution proposing an amendment of the Memorandum and Articles of Association, a circular in connection with a resolution proposing to approve the adoption or amendment of employee share scheme, long-term incentive schemes and discounted option arrangements, a circular in connection with a resolution proposing to redeem a listed debt security prior its due date of redemption. Also the Listing Rules require that if a circular is issued to the holders of any particular class of security, the issuer must issue a copy or summary of that circular to

all other holders of its securities which are authorized as admissible to listing unless the contents of that circular are irrelevant to them. Moreover the Listing Rules transpose Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies. NO indicated that additional requirements for Norwegian issuers are provided for in the Norwegian Public Limited Liability Companies Act. There are requirements to the notice of the general meeting; such as specification of the matters which are to be handled at the general meeting.

Reasons

514. The most common reason reported for the additional requirements is to allow holders of shares to make informed decisions when exercising their rights. Another issue reported was the continuation of existing legislation. The additional requirements reported may be closely connected to obligations set out in other Community texts. As it is stated in Commission Staff Report on more stringent national measures concerning the Transparency Directive⁴⁸, the Transparency Directive covers fields that may be directly related to other EU legal instruments, such as the Shareholders' Rights Directive or the accounting rules. Secondly, other EU regulation, such as the Prospectus Directive, the latest modification to the accounting directives or the Takeover Bids Directive may also include disclosure requirements which form part of the core area of the Transparency Directive obligations. The Transparency Directive is also the instrument for implementing disclosure obligations under other Directives, such as the Market Abuse Directive.

Article 17(3) (a)-(d) TD

Article 17 (3) of the TD sets out a non-exhaustive list of conditions that need to be complied with for the purposes of conveying information to shareholders by electronic means. Based on Article 3(1) the home Member State may impose additional conditions.

Major findings

515. No Member State, as home Member State, has reported to have applied this discretion.

516. 12 (BE, BG, CY, DE, EE, ES, IT, MT, PT, RO, SE, SK) Members have indicated the reasons why they have not applied this particular discretion.

517. The most common reasons are that the conditions imposed in the TD were considered as sufficient for the purposes of investor protection and equal treatment of shareholders (BG, IT, RO, SE) and that additional requirements were not deemed necessary (EE, MT), also considering that electronic means are not extensively used (MT). Other reasons reported are: implementing the exact (minimum) provisions of the Directive (BE, CY, DE) or full harmonization (ES). BE stated that Belgium copied the TD conditions. BG explained that the conditions laid down in TD are considered to be sufficient for the purpose of preserving the shareholders' interests. CY indicated that no discretion was applied and the national provisions are in line with the Directive. DE noted that the goal was 1:1 implementation of TD. EE stated that additional requirements were not deemed necessary. ES indicated the reason of full harmonization. IT noted that the conditions laid down under point (a) – (d) of Article 17(3) of TD are deemed to be sufficient to ensure equal treatment for all holders of shares who are in the same position. MT pointed out that the use of electronic means is not extensively used in Malta and therefore it was deemed sufficient at this point in time to apply the minimum provisions. Portuguese (PT) law does not prohibit the use of electronic means for the purposes of conveying information to shareholders. The possibility to convey information by electronic means is expressly provided for in the specific cases where information must be conveyed to shareholders; In which case the conditions provided in

⁴⁸ Commission Staff Working Document – Report on more stringent national measures concerning Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, 10 December 2009. EC(2008) 3033 Final, pag.18.

Article 17(3) (or equivalent) apply. It is pointed out that, according to the Shareholders' Rights Directive, issuers must be permitted to offer the possibility to participate and vote in general meetings by electronic means. Member States must also permit shareholders to appoint a proxy holder by electronic means and issuers to accept notifications of the appointment of a proxy holder by electronic means. Moreover, Member States may provide that the rights to put items on the agenda of the general meeting and to table draft resolutions must be exercised by electronic means.

Section L - Information required for issuers whose debt securities are admitted to trading on a regulated market

This is the second group of questions on information for holders of securities admitted to trading on a regulated market.

Article 18(2)(a)-(c) TD

518. Article 18 (2)(a)–(c) of the TD lists some information and facilities that have to be made available by the issuer to enable holders of debt securities to exercise their rights. More stringent requirements can be imposed by the home Member State on issuers according to Article 3 of the TD (e.g. a requirement to publish notices or distribute circulars on additional issues that those listed under Article 18 (2) (a)).

Major findings

519. 28 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) responded that they do not require issuers to ensure that other facilities and information are made available in the home Member State in addition to those set out under Article 18 (2)(a)-(c) of the TD to enable holders of debt securities to exercise their rights. 1 Member State (IT), instead, stated that they require issuers to ensure that additional facilities and information are made available in the home Member State vis-à-vis holders of debt securities. The same Members indicated that additional facilities and information need to be made available also vis-à-vis holders of shares. 2 Members (MT, NL) reported to require additional facilities and information to be made available to holders of shares but not to holders of debt securities.

520. Those additional information and facilities relate mainly to extraordinary transactions, corporate governance, approval of financial information, insolvency proceedings and major corporate transactions. Like in the case of additional disclosure obligations vis-à-vis shareholders, the additional requirements reported may be closely connected with obligations set out in other EU legal instruments, such as the Shareholders' Rights Directive, the MAD or company law.

Article 18(4)(a)-(d) TD

Article 18(4)(a)-(d) of the TD sets out a non-exhaustive list of conditions that need to be complied with for the purposes of conveying information to holders of debt securities by electronic means. The home Member State may impose additional conditions.

Major findings

521. No Member responded to set additional conditions.

Reasons

522. The most common reasons is that additional requirements were not deemed necessary, also considering that electronic means were not extensively used. The conditions imposed in the TD were consi-

dered as sufficient for the purposes of equal treatment and correct and timely information of debt securities holders. Other reasons reported were implementing the exact (minimum) provisions of TD/L2D or full harmonization.

523. 3 ESMAMembers (HU, SE, SK) reported that Article 18(4) of the TD was not implemented in their legislation. SE stated that the legislation does not impose any condition for the use of electronic means. HU and SK stated that Article 18(4) would not be applicable since debt securities holders' meetings are not required under their national legislation. Issuers are allowed to use electronic means to convey information to debt securities holders in relation for instance to the exercise of conversion, exchange, subscription or cancellation rights, and repayment, but the use of such electronic means is not subject to the conditions set out in Article 18(4) of the TD.

524. In this regard it is noticed that the scope of Article 18(4) is not limited to information pertaining to meetings of debt securities holders. Article 18(4) stipulates when electronic means can be used for conveying information to debt securities holders. The TD does not make it mandatory to have meetings of debt securities holders. Meetings of debt securities holders may be left to the terms and conditions of the debt securities.

Section M - General obligation - Home Member State control

Article 19(1) of TD, second subparagraph – communicating draft amendments to any further recipient other than the competent authority

525. Article 19(1) TD requires that the draft amendment of the instrument of incorporation or statutes of the issuer should be communicated to the competent authority of the home Member State and to the regulated market to which its securities have been admitted to trading without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment. On the basis of Article 3(1) TD Member States may require that the draft amendment of the instrument of incorporation or statutes of the issuer should be communicated to further recipients in addition to the home competent authority and the regulated market.

Major findings

526. 4 Member States (BE, IT, PL, SE) indicated that they as the home Member State require the issuer to communicate the draft amendment of its instrument of incorporation or statutes to any further recipient other than its home competent authority and the regulated market to which its securities are admitted. 25 Member States (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PT, RO, SI, SK, UK) indicated that they do not require issuers to communicate the draft amendment of their instrument of incorporation or statutes to any further recipient.

527. BE, IT and PL indicated that issuers have to also disclose the draft amendment of its instrument of incorporation or statutes to the public. SE stated that the draft amendment shall be filed for registration immediately to the Swedish Companies Registration Office's company register. PT rose that in case of specific issuers which are subject to the supervision of other regulatory authorities (e.g. credit institutions, financial and insurance companies) the draft amendments of its instrument of incorporation or statutes may be required to be provided to the respective competent authority, within the administrative procedure of approval of such amendments.

Reasons

528. The reasons provided by Member States for applying this requirement were: historical reasons, to enable holders of debt securities to make an informed decision when exercising their rights, information regarding the company's statutes can be accessed by anyone in the register.

Article 19(1) of TD, second subparagraph – possible additional draft corporate documents to be communicated to the competent authority

529. Article 19(1) TD requires that the draft amendment of the instrument of incorporation or statutes of the issuer should be communicated to the competent authority of the home Member State and to the regulated market to which its securities have been admitted to trading without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment. On the basis of Article 3(1) TD Member States may require that issuers shall communicate other type of draft corporate documents to the home competent authority and to the regulated market.

Major findings

530. 4 Member States (BE, IT, PL, PT) indicated that they require the issuer to communicate any further draft corporate document to its home competent authority and/or to the regulated market to which the issuer's securities have been admitted to trading. 25 Member States (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, RO, SE, SI, SK, UK) do not require issuers to communicate any further draft corporate documents.

531. BE stated that issuers governed by Belgian law have to communicate to CBFA the special reports referred to in the Companies Code, within the term laid down in the Companies Code for those reports to be made available to the public or the securities holders. IT clarified that issuers are also required to communicate any draft corporate document to Consob regarding the following issues: Mergers, spin-offs and share capital increases by means of the conferral of assets in kind; Assets allocated to a specific business project; Material acquisition and disposals; Purchase and sale of own shares; Reduction of share capital due to losses; Stock options/assignment of financial instruments to corporate officers, employees and collaborators. PL stated that national law requires issuers that any draft resolution, which might be a subject of the general meeting should be communicated to the Competent Authority of the home Member State, to the regulated market to which its securities have been admitted to trading and to the public. PT mentioned that the proxy document for representation in a General Meeting of a public company shall be submitted to the CMVM.

Reasons

532. The reasons provided by Member States for applying this requirement were: historical reasons, to ensure that the competent authority and the regulated market are in a position to access information on major corporate transactions in advance and possibly use this information for supervisory purposes, to control compliance with legal requirements of proxy solicitation document for representation in a General Meeting of a public company.

Article 19(1) of TD

533. Article 19(1) TD requires that the draft amendment of the instrument of incorporation or statutes of the issuer should be communicated to the competent authority of the home Member State and to the regulated market to which its securities have been admitted to trading without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment. On the basis of Article 3(1) TD Member States may require that issuers shall communicate other type of draft corporate documents to the home competent authority and to the regulated market and they may

also require that these other types of draft corporate documents shall be communicated to further recipients in addition to the home competent authority and to the regulated market.

Major findings

534. No Member State requires issuers to communicate any further draft corporate documents (other than the draft amendment of the instrument of incorporation or statutes) to further recipients in addition to the home competent authority and the regulated market.

Article 19(3) of TD

535. Article 19(3) TD states that information to be notified to the issuer in accordance with Article 9, 10, 12 and 13 shall at the same time be filed with the competent authority of the home Member State. On the basis of Article 3(1) TD Member States may require that the information to be notified in accordance with Article 9, 10, 12 and 13 may be notified/filed to some other person than the issuer and the competent authority.

Major findings

536. 2 Member States (IT, RO) stated that as the home Member State, they require that the information under Articles 9, 10, 12 and 13 TD should be notified / filed to any other person than the issuer and its competent authority. 27 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PL, PT, SE, SI, SK, UK) do not require the notification/filing of the information under Articles 9, 10, 12 and 13 TD to any other person than the issuer and its competent authority.

Reasons

537. Member States have provided the following reason: to ensure the highest level of transparency.

Section N - Languages

Article 20(3), second subparagraph of TD

538. In the first place Article 20(3) first subparagraph regulates that where securities are admitted to trading on a regulated market in one or more host Member States, but not in the home Member State, than the regulated information may be disclosed – on the choice of the issuer – either in a language accepted by the competent authorities of those host Member States or in a language customary in the sphere of international finance. The second subparagraph of Article 20(3) TD provides that in addition to the above, the home Member State may also lay down in its law, regulations and administrative provisions that the regulated information shall – depending on the choice of the issuer, be disclosed either in a language accepted by its competent authority or in a language customary in the sphere of international finance.

Major findings

539. 21 Member States (BG, CY, CZ, DE, DK, EE, ES, FI, FR, IE, IT, LT, LU, MT, NL, PL, PT, RO, SE, SK, UK) have stated that as a home Member State they have laid down in their laws, regulations or administrative provisions 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. 8 Member States (AT, BE, EL, HU, IS, LV, NO, SI) have stated that they do not have such laws, regulations or administrative provisions.

Reasons

540. The most common reason for the additional requirements reported is to enhance transparency to allow holders of debt securities to make informed decisions when exercising their rights; effective supervision; reducing translation costs for the issuer. For effective supervision regulated information has to be in a language understandable to the home competent authority. Some Member States specifically stated that they consider and accept English as a language customary in the sphere of international finance. 2 Members (HU, SK) mentioned that debt securities holders' meetings are not required under their national law. SK noted that, according to the European Commission statement as of 26 June 2006 (transposition meeting), it is not necessary to introduce meeting of debt securities holders. HU and SK reported that, in any case, issuers are required to disclose to the public information regarding the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights, and repayment, as well as information on the designated agent through which debt securities holders may exercise their financial rights.

Article 20 TD

541. Article 20 TD deals with the language regime to be applied under TD. Member States may apply a divergent regime and introduce different language requirements to the specific provisions of the Directive.

Major findings

542. 6 Member States (CZ, ES, LU, NL, NO, SE) have indicated that their language regime apply in different ways for regulated information (i.e. notification of major holdings, ongoing information, periodic information, etc). 23 Member States (AT, BE, BG, CY, DK, EE, FI, FR, DE, EL, HU, IS, IE, IT, LT, LV, MT, PL, PT, RO, SI, SK, UK) stated that their language regime applies for regulated information in a uniform manner. 7 Member States (BE, CY, FI, HU, IE, LU, MT) stated that they have more than one official language. No Member State requires the disclosure of regulated information in all of its official languages.

543. CZ declared that for the notification of major holdings Czech and English and for other information Czech, English and Slovak are accepted. LU declared that for major holding notifications English is always accepted and no other language is required. NO noted that issuers can be granted an exemption from notifying major holdings in the national language, by the regulated market. PL updated its information, as certain elements are required by national law: An issuer of securities for whom the Republic of Poland is a host state shall draw up regulated information (ongoing, periodic, inside) at the issuer's discretion, in languages required by the host states, including Polish or English. In the case when securities of an issuer for whom the Republic of Poland is a home state have been admitted to trading on a regulated market on the territory of the Republic of Poland, information regulated information shall be drawn up in Polish. In the case when securities of an issuer for whom the Republic of Poland is a home state have been admitted to trading on a regulated market on the territory of the Republic of Poland and in host states, regulated information shall be also drawn up, at the issuer's discretion, in languages required by the host states or in English. In the case when securities of an issuer for whom the Republic of Poland is a home state have not been admitted to trading on a regulated market on the territory of the Republic of Poland, regulated information shall be drawn up, at the issuer's discretion, in languages required by the host states or in English and, at the issuer's discretion, in Polish or English. In the case of securities denominated in EUR with par value per unit amounting as of issue date at least EUR 50,000, or in the case of non-equity securities denominated in a currency other than EUR with par value per unit amounting as of issue date to the equivalent of at least EUR

50,000, regulated information shall be drawn up, at the issuer's discretion, in a language required by the home state and in languages required by host states or in English. ES declared that shareholder and the natural person or legal entity referred to in Articles 9, 10 and 13 are allowed to notify information on major holdings only in a language customary in the sphere of international finance. The issuer is not obliged to provide a translation into a language accepted by the competent authorities. SE explained that regarding major shareholding the accepted languages are Swedish, Danish, Norwegian and English.

Reasons

544. Member States indicated the following reasons: easy use and compatibility; implementing the exact (minimum) provisions of TD/L2D into national legislation; minimizing the administrative burden for issuers and major shareholders.

Section O - Access to regulated information

Article 21(1) TD / Recital 8

545. Article 21(1) TD states that the home member State shall ensure that the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent, discloses regulated information in a manner ensuring fast access to such information on a non-discriminatory basis and makes it available to the officially appointed mechanism. ... The home Member State shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. Recital 8 or TD states that the removal of barriers on the basis of the home Member State principle under TD should not affect the home Member State's right to *request the issuer to publish, in addition, parts of or all regulated information through newspapers*.

Major findings

546. 5 Member States (DE, EE, EL, IT, SK) have indicated that they require the issuer to publish parts of or all regulated information through newspapers, even if the issuer uses other types of media for publishing regulated information. 24 Member States (AT, BE, BG, CY, CZ, DK, ES, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, UK) have indicated that they do not require the issuer to publish parts of or all regulated information through newspapers, if the issuer uses other types of media for publishing regulated information.

547. LU does not require but the CSSF asks issuers to use newspapers if such use is necessary in order to reach a significant part of the investors. ES stated that there is no such a general requirement in their national law; however information on General Meetings should be published in newspapers. EE stated that its Commercial Code requires issuers to disclose the notice of general meeting in a newspaper. EL declared that the publication of regulated information must be done by electronic means and in printed means, which have national and European range. IT stated that regulated information must in any case be published on Italian daily newspapers. SK mentioned that where regulated information is disclosed on the issuer's website, then it shall also be disclosed either in a 1. daily print media with national circulation and an adequate distribution in all the Member States in which the issuer's securities are admitted to trading on a regulated market; or 2. a generally recognized information system publishing official market prices of securities and money market instruments. Media for the dissemination of regulated information shall communicate regulated information in its full and unaltered version. Where the information in question includes an annual financial report, half-yearly report or interim statement, this requirement shall be deemed fulfilled if the announcement related to the regulated information is communicated to the media for the dissemination of regulated information and indicates on which website, in addition to the central register of regulated information, the relevant documents

are available. In paragraph 356) referring to Article 23 TD and Q P21-P24 please change the information regarding SK in the text and in the table.

Reasons

548. The most common reason provided by Member States applying this requirement was that newspapers are the mostly used, accessible and exhaustive means of dissemination of financial information. The high number of individual investors for whom this information source is easily accessible was also referred to.

Article 21(1) TD / Article 12(5) (a) – (e) L2D

549. Article 21(1) TD states that the home member State shall ensure that the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent, discloses regulated information in a manner ensuring fast access to such information on a non-discriminatory basis and makes it available to the officially appointed mechanism. Article 12(1) L2D provides that the dissemination of regulated information for the purposes of Article 21(1) TD shall be carried out in compliance with the minimum standards set out in Article 12(2)-(5) L2D. Article 12(5) L2D states that upon request the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent shall be able to communicate to the competent authority the information listed under points a)-e) in relation to any disclosure of regulated information. On the basis of Article 3(1) TD, Member States may require additional information to be provided to the competent authority to those set out under Article 12(5) a)-e) L2D.

Major findings

550. None of the competent authorities require the issuer or the person who has applied for admission to trading on a regulated market without the issuer's consent to provide additional information to those listed under Article 12(5) a)-e) L2D.

Article 21(2) TD

551. Article 21(2) TD states that the home Member State shall ensure that the officially appointed mechanism should comply with minimum quality standards of security, certainty as to the information source, time recording and easy access by end users. Under Article 3(1) TD Member States may apply more stringent requirements and higher quality standards than those foreseen by Article 21(2) TD.

Major findings

552. Only 3 Member States (BG, IT, SK) have indicated that they require that their officially appointed mechanism for the central storage of regulated information should comply with requirements additional to the minimum quality standards of security, certainty as to the information source, time recording and easy access by end users. 26 Member States (BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, UK) have indicated that they do not apply such additional requirements.

Reasons

553. Member States provided the following reasons: to guarantee a high level of security of the information storage and at the same time to create conditions for an easy access on the part of the end users; to ensure: 1. that the Competent Authority has the fullest access to the information in order to carry out its supervisory function; 2, that investors are not prevented from accessing information by the fixing of unreasonable high fees; 3. business continuity; 4. highest quality of the services. The requirements

contained in the European level provisions were considered adequate by a number of Member States (the minimum quality standards listed in the European Commission Recommendation 2007/657/EC on the electronic network of officially appointed mechanisms ensures security of the dissemination, certainty as to the information source and easy access by end users).

Section P - Third countries

Article 23 TD, Articles 13-23 L2D

554. In case Member States provide more stringent requirements to the issuers established in their member States - on the basis of Article 3(1) TD -, then the equivalence of third country issuers might also be based on these more stringent requirements, unless the requirements of equivalence is directly set by Articles 13-23 L2D.

Major findings

555. 10 Member States (BG, EE, EL, ES, FI, IT, LT, MT, PL, PT,) indicated that when as the home Member State, they set “more stringent” requirements to issuers - in line with Article 3 of TD -, then the assessment of equivalence of third country requirements are actually based on these “more stringent” requirements (unless the requirements of equivalence are directly set by Articles 13-23 of L2D). 19 Member States (AT, BE, CY, CZ, DE, DK, FR, HU, IE, IS, LU, LV, NL, NO, RO, SE, SI, SK, UK) stated that even if there are “more stringent” requirements established for issuers, the assessment of equivalence of third country requirements are not based on these “more stringent” requirements.

556. Some Member States declared that they have not implemented “more stringent” requirements (RO, SE, SI) or that the assessment is based on the requirements of L2D (CY, CZ, DE, FR, IS, NO, UK). Those Member States who base their assessment of third country equivalence of possible more stringent requirements, mentioned the following reasons: equal treatment of all issuers (BG, LT, MT, PT), to ensure that investors have access to the same information regardless to the place where the issuer has its registered office (IT). FI made reference to the Commission staff interpretation on the application of the equivalence rule.

Articles 13-23 L2D / Article 23 TD / Articles 4-7, Articles 12(6), 14 - 18 TD

557. On the basis of Article 3(1) TD Member States may set additional requirements for those third country issuers regarding publishing, communicating and filing of financial information, which benefit from the exemptions from the requirements under Articles 4 to 7, 12(6), 14,15 and 16 to 18 of TD.

Major findings

558. 29 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU ,LV, MT, NL, NO, PL ,PT, RO, SE, SI, SK, UK) indicated that they do not impose such further requirements.

Section Q - Competent Authorities

Article 24 (4) (a) to (i) of the TD additional powers

559. Member States may provide their Competent Authority with additional powers than those listed in Article 24 (4) (a) to (i) TD.

Major findings

560. 11 Member States (CY, IE, IS, IT, LT, LU, LV, MT, PT, SE, SI) responded that they provide that their Competent Authority/-ies have additional powers beyond those listed in Article 24(4)(a) to (i). With the exception of IE all other Member States provided information on the nature of their additional powers, which include powers:

561. IS, LT appoint experts or external auditors to conduct inspections or to provide opinions; LU may issue injunctions and has the power to ask an external auditor to carry out specific inspections and analysis regarding the issuer's compliance with the Transparency Law at the issuer's costs. MT suspends the listing of a security; CY, PT require information, data, cooperation and/or corrective or supplementary statements from issuers, shareholders, holders of financial instruments; SI supervises notification duties for "potential target companies.

Reasons

562. Several Member States that have not provided for additional powers, stated that the powers provided under TD are sufficient. One Member State mentioned that it implemented the exact (minimum) provisions of TD/L2D into national legislation. The reasons provided by Member States that have additional powers, provided the following reasons: 1. to protect investors and/or maintain smooth market operation; 2. to enable the Competent Authority to exercise powers in the Market Abuse Directive in connection with investigations in connection with TD-related violations; 3. because the Competent Authority already had these or similar powers as part of its wider powers; 4. to enable monitoring of compliance with the TD; 5. due the relationship between the definition of public companies as potential target companies under the takeover regulation.

Section R - Penalties

Article 24(4)

563. In accordance with Article 28 (1), Member States shall ensure, in conformity with their national law, that at least the appropriate administrative measures may be taken or civil and/or administrative penalties imposed in respect of the persons responsible where the provisions adopted in accordance with the TD have not been complied with.

Major findings

564. 18 Member States (BE, CY, DE, EL, ES, FI, FR, HU, IE, IS, IT, LU, MT, NL, PL, RO, SK, UK) responded that they provide that additional measures/penalties may be taken or imposed in respect of the persons responsible, where the provisions adopted in accordance with TD have not been complied with.

565. CY provided the following additional power: 1) to require the issuer, the shareholder, the holder of financial instruments and the person mentioned in section 30, to make a corrective or supplementary statement, where the information provided in accordance with the Law is considered by the Commission to require correction or supplementing. 2) where it is ascertained that the relevant reporting framework is not drawn up in accordance with the provisions of the Law, the Commission, may require the issuer to perform one or more of the following actions: Corrective statement and/or announcement, restatement of the financial statements, inclusion of information in the next financial year. Additional penalties: for providing false or misleading data or information and/or to conceal data and information an administrative fine of up to €341.000 may be imposed. IS stated that the Financial Supervisory Authority may appoint an expert to inspect certain aspects of the activities or operations

of a regulated entity, or to undertake other specific supervision of such an entity. The expert shall be appointed for a specified period of no longer than four weeks at a time. The expert shall be provided with working facilities on the premises of the regulated entity and given access to all requested accounts, minutes, documents and other data possessed by the regulated entity. The expert shall be entitled to attend meetings of the Board of the regulated entity as an observer with the right to speak. The expert's obligation of confidentiality shall be as provided for in Chapter IV of this Act. The regulated entity shall bear the cost of the expert's work, in part or whole, as assessed by the Financial Supervisory Authority. The Financial Supervisory Authority may perform special on-site investigations and may seize any material in accordance with provisions of the Criminal Proceedings Act, provided that there are cogent reasons to suspect that the regulated entity has violated laws or regulations applicable to its activities, or if there is reason to believe that inspections or actions by the Financial Supervisory Authority will not otherwise achieve their objective. Provisions of the Criminal Proceedings Act shall be applied when executing such measures.

566. IT indicated that when investigating violations of TD provisions, Consob can exercise the following additional powers: Consob may in relation to any person who could be aware of the facts: 1a) require information, data or documents in any form whatsoever, establishing the time limits for receipt thereof; 1b) require existing telephone records, establishing the time limits for receipt thereof; 1c) conduct personal hearings; 1d) seize property that may be confiscated under Italian law; (...) 1f) conduct searches in the manner provided for under Italian law. Consob may further: 2a) avail itself of the cooperation of governmental bodies, requiring that it be provided with data and information and access the information system of the tax records database; 2b) require the provider to furnish it with the traffic records; 2c) require the communication of personal data; 2d) avail, where necessary, of the information contained in the anti money laundering registers; 2e) gain direct access, through a dedicated electronic connection, to the data contained in the Bank of Italy's Central Credit Register. 2f) make use where necessary, also through an electronic connection, of data contained in the special section of the tax records system. The powers under subsections 1(d), 1(f) and 2(b) shall be exercised subject to authorisation by the Chief Public Prosecutor's Office. Such authorisation is also necessary for the exercise of the powers under subsections 1(b), 1(c), and 2(c) against persons other than authorised intermediaries, the issuers and other persons subject to supervision pursuant to this decree. Where there are grounds for suspecting that the provisions of this title are being violated, Consob may as a precautionary measure direct that the relevant conduct cease. In the exercise of the above-mentioned powers, Consob may avail itself of the cooperation of the Finance Police which shall carry out the requested inquiries relying on the investigatory powers that they enjoy in connection with the assessment of VAT and income taxes.

567. LT noted that the competent authority has the right to employ specialists and experts of appropriate areas requesting them to provide their opinions, conclusions, assessment or perform other actions requiring specific qualification, knowledge or expertise. In LU, the CSSF may hand the case to the prosecutor. Courts may issue criminal sanctions. In addition, the law provides for the automatic suspension of voting rights of shareholders of Luxembourg issuers which did not comply with their major holdings notification obligations. Courts may cancel any general assembly decision where such suspended voting rights have nevertheless been used. LV stated that the Law on the Financial and Capital Market Commission prescribes general powers of the Commission: (http://www.fktk.lv/en/law/general/laws/on_the_financial_and_capital_m/).

568. MT noted that the Listing Rules state that the Listing Authority shall suspend the listing of a security to protect investors or where the smooth operation of a Regulated Market otherwise is, or may be, temporarily jeopardised. The Listing Rule states that the Listing Authority may discontinue the listing of any security if, inter alia, it is satisfied that, owing to special circumstances normal regular dealings in any security are no longer possible or upon the request of the Issuer or a Regulated Market. SE made reference to Chapter 23 sections 2-4 of the Securities Market Act (2007:528).

Reasons

569. The Member States that have not provided for additional powers, provided the following reasons: the powers provided by TD are sufficient. One Member State mentioned that it implemented the exact (minimum) provisions of TD/L2D into national legislation. The reasons provided by Member States that have provided for additional powers are the following: to protect investors; to maintain smooth market operation; historical reasons; to enable monitoring of compliance with TD; due the relationship between the definition of public companies under the takeover regulation. IT explained that its powers were introduced in Italy upon implementation of MAD. The Italian legislator deemed useful to empower Consob to exercise them in connection with any of its investigations, including in connection with TD related violations.

Section T - General additional questions

570. This last group of question asks questions regarding satisfaction, difficulties encountered, effectiveness, plans to change, enforcement and court cases.

Satisfaction

T2. Satisfaction with the practical application of the additional/more stringent requirements the Member State / Competent Authority apply

571. This section of the Report summarizes the responses provided by Member States for the questions which requested information on their satisfaction with the application of the additional / more stringent requirements set with regard to TD on the national level.

Major findings

572. None of the Member States expressed any dissatisfaction with the practical application of the discretions in their Member States. 21 Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IT, LT, LV, NL, NO, PL, SI, UK) specifically expressed their satisfaction.

Difficulties encountered

T4. Difficulties Member State or Competent Authority faces regarding the additional/more stringent requirements the Member State / Competent Authority applies

573. This section of the Report summarizes the responses provided by Member States for the questions which requested information on the difficulties faced regarding the application of the additional / more stringent requirements set with regard to TD on the national level.

Major findings

574. Only 2 Member States indicated any difficulties, (RO) with the half year auditor report on transactions and (BE) with the definition of acting in concert, as the TD definition is not clear enough. The other Member States have no difficulties at all, or have not faced significant /substantial difficulties.

Effectiveness

T6. Effectiveness of the additional/more stringent requirements

575. This section of the Report summarizes the responses provided by Member States for the questions which requested information on the effectiveness of the application of the additional / more stringent requirements set with regard to TD on the national level.

Major findings

576. 18 Member States (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IT, LV, NO, PL, PT, RO) consider the additional/more stringent requirements effective in their application. 1 Member State (LT) indicated that it has no market analysis. 1 Member State (NL) considers the discretions not effective in their application, but without providing detailed description. MT indicated that they are not in a position to comment on the effectiveness or otherwise of the application or otherwise of the additional/more stringent requirements.

Plans to change

T8. Plans and / or thoughts to change the application of the additional / more stringent requirements in future legislation in the single Member States

577. This section of the Report summarizes the responses provided by Member States for the questions which requested information on any plans to change national regulation on the additional / more stringent requirements set with regard to TD on the national level.

Major findings

578. Only 5 Member States (AT, DE, IE, PT, RO) indicated that they are planning to introduce changes, which they also described. The other 24 Member States indicated no plans to change their national legislation on additional / more stringent requirements set with regard to TD.

Enforcement and court cases

T10. Significant enforcement and court cases in the Member States with regard to the exercise of a particular additional / more stringent measure

579. This section of the Report summarizes the responses provided by Member States for the questions, which requested information on significant enforcement and court cases regarding the application of the additional / more stringent requirements set with regard to TD on the national level.

Major findings

580. 21 Member States (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IT, LT, LV, NL, NO, PL, PT, RO, SK) stated that there are no significant enforcement and court cases in their Member States with regard to the exercise of particular additional / more stringent requirements. 1 Member State (MT) has no information about any significant enforcement and court cases. 7 Member States (BE, HU, IS, LU, SE, SI, UK) answered with not applicable.