

European Commission
Directorate General Internal Market and Services

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CONSULTATION ON THE HARMONISATION OF TRANSPARENCY REQUIREMENTS IN RELATION TO INFORMATION ABOUT ISSUERS WHOSE SECURITIES ARE ADMITTED TO TRADING ON A REGULATED MARKET

The European Commission has launched a public consultation on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. The Central Chamber of Commerce of Finland submits the following statement.

The Central Chamber of Commerce of Finland welcomes the Commission's objective to reduce undue administrative burden for listed companies, especially for SMEs.

The IPO market in Finland is almost non-existent. The situation is not due to the recent financial crisis but started years before the crisis. SMEs do not want to be subject to the administrative burden caused by the current strict and demanding regulation on listed companies. In order to support growth in Europe, it is crucial to take measures to increase SMEs interest in the securities market.

We support all efforts to reduce the administrative burden of listed companies, particularly SMEs. SMEs have very limited legal resources. The current securities market regulation does not acknowledge the fact that some listed companies are among the largest companies in the world whereas others are actually quite small with very limited administrative resources. The market value of a large listed company may actually be a thousand times higher than that of a small listed company. Therefore, there is a need for an adapted regime for SMEs admitted to trading on regulated markets and MTFs. Otherwise, we cannot expect much interest in the securities markets among SMEs.

Information about the respondent

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I. Attractiveness of regulated capital markets for small listed companies

Unfortunately, the regulated capital markets are currently not attractive for small listed companies. This is naturally due to many reasons, such as the availability of other financing, taxation and securities market regulation. For many years, the Finnish IPO market has been almost non-existing and the same is true for the alternative listing venue First North (licensed as an MTF). Several smaller listed companies have been in contact with us about their dissatisfaction with the stringent securities market regulation and the costs caused by it.

The issue: attractiveness of regulated markets for small listed companies and the Transparency Directive

1. Impact of the Transparency Directive on the attractiveness of regulated markets for small listed companies. *Do the Transparency Directive obligations for issuers (e.g. disclosure of annual and half-yearly financial reports, quarterly information etc.) impact on the decisions of small listed companies to be listed in or to exit regulated markets (e.g. do they act as an entry barrier)?*

Some of the requirements of the Transparency Directive reduce the attractiveness of regulated markets for small and medium sized listed companies. It is noteworthy that many listed companies have expressed their dissatisfaction with current regulations. Partly the problem is caused by gold-plating in some Member States' legislation and stock exchange regulation.

We would like to emphasize that the small listed companies understand the importance of transparency and shareholder information. The issue in question is how much and how often informa-

tion should be given. Due to the large amount of regulation, small listed companies may find it difficult to even understand all the requirements, not to speak of the cost of implementing the requirements. IFRS standards add considerably the challenges faced by small listed companies.

According to our experience, based on contacts with listed companies, by far the most criticized rule concerns quarterly reporting. It is self-evident that large international listed companies accept the duty of quarterly reporting. However, many small and medium sized listed companies have been in contact with us, stressing the important of more flexibility. Companies should have the choice of reporting every three months, four months or six months. As said, part of the problem is caused by gold-plating in national regulation.

Actually, even large cap companies in retail business have expressed their dissatisfaction with quarterly reporting, telling that they would prefer the option of four months' reporting. The explanation has been that in that in retail business, the first three months of the year are not always comparable due to the annual timing of Easter, sometimes in March (the first quarter) and other years in April (the second quarter). In addition, some retail companies have major campaigns during spring with a major financial impact, and again, some years the campaigns fall in the first quarter while other years they fall in the second quarter. As quarterly reports are commonly compared with the previous year's corresponding quarter, the comparison may prove misleading when e.g. a company's major campaigns' timing doesn't match the previous year.

2. Costs for smaller listed companies. *Which are the most important costs for small listed companies associated to compliance with the Transparency Directive (e.g. cost of preparing the accounts, auditing costs, legal costs, cost of making public the information etc.)?*

In our discussions with small listed companies, some companies have informed us of the costs caused by quarterly reporting. E.g. one small listed company lists the costs as follows:

- quarterly report	30.000 EUR per report
- auditor's fee	46.000 EUR annually
- special issues such as IFRS and translations	20.000 EUR annually
- costs of quarterly disclosure	20.000 EUR per quarter
- other additional costs of quarterly reports	10.000 EUR per quarter

This small listed company estimates that reducing the number from quarterly reporting to every four months would reduce their costs from 50.000 to 60.000 EUR. Considering the small size of the company this is a considerably sum in their finances.

The company in question also points out that prospectus requirements are so demanding that experts help is needed which naturally is very costly compared to the finances of the small company.

3. Potential diminution of cost for small listed companies. *What changes of the Transparency Directive will bring important reductions in costs for small listed companies?*

Quarterly reporting is too demanding especially for small and medium-sized listed companies. The directive should allow reporting every four or six months and prohibit gold-plating by the Member States and stock exchanges. In addition to IFRS requirements, this issue is by far the most important measure that could be achieved without diminishing transparency. It should be noted that companies would still have the duty to disclose positive and negative profit warnings. So if the prospects of a company change, investors are informed of it despite the reduced frequency of regular reporting.

We would also like to point out that reducing the frequency of reporting would make small listed companies more attractive to the analysts, media and investors. Analysts can devote a very limited time to small listed companies and the current frequency of reporting makes the situation worse. If the frequency of reporting were more reasonable, analysts, media and investors might find time more easily to study the reports.

FRS compliance causes costs for smaller issuers and this area should also be taken into consideration.

4. The lower visibility of smaller listed companies. *How does the visibility problem materialise (e.g. lower attention of analysts, lower investment levels, lower trading etc.) for (objectively) well performing small companies?*

Although Helsinki Stock Exchange has several major international listed companies, many of the listed companies are quite small. The volumes of trade of small cap companies are mostly very low. This is certainly partially due to the low interest of analysts and media in the small cap companies.

5. Other cases reflecting low benefits. *Are there, in your view, other cases reflecting low benefits for small listed companies resulting from disclosure obligations compared to larger listed companies?*

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Possible options to address in the Transparency Directive the problems related to small listed companies

6. Definition of a small listed company. *What would be the optimal definition of a "small listed company" in the context of regular (i.e. after the admission to trading of the securities) transparency requirements?*

We support option i) for issuers of shares, those companies with a market capitalisation below a certain threshold such as €100 Million, €250 Million or other.

The other options would be impractical and lead to different regimes in the different Member States. Different definitions would attract "forum shopping", meaning that companies would seek to find the jurisdiction with the least regulatory burden. The threshold should be high enough, at least 250 MEUR, preferably 400 MEUR.

We would also like to point out that the status of the company should not be under constant change. Once a company has been defined as a small listed company, it should remain under the definition for two to three years so that it does not need to make changes annually. Naturally, if there is a company takeover, the definition could then be reviewed.

7. Potential diminution of cost for small listed companies if changes to the Transparency Directive were to be adopted

7.1. If a differentiated regime for small listed companies is added to the Transparency Directive with a view to reduce the compliance costs of those companies, would it be desirable to prevent Member States/regulated markets from imposing in national law/listing rules more stringent or additional obligations on small listed companies?

The current regulatory burden is partially caused by national gold-plating. We support very strongly maximum harmonisation in this respect, not allowing the Member States or the stock exchanges to impose more stringent obligations on listed companies.

7.2. Do you think that an extension of the deadline for the publication of financial reports would imply a reduction in legal, auditing or other type of costs?

We believe that it could imply some reduced costs but the amount would not be significant.

7.3. Do the various rules requiring the disclosure by listed companies of reports of narrative nature bring significant costs/operation complexity for small listed companies (e.g. legal, account preparation, auditing, other type of costs)?

Yes, the large number of narrative reporting causes a significant amount of work to companies. Narrative reports need not only to be written but also checked and proof-read and compared to other narrative reports. The narrative reports also add auditing costs to some extent.

7.4. Would you see benefits from integrating in the Transparency Directive the disclosure obligations mentioned in question (8.3) which are currently in different directives?

Yes, we think that a part of the difficulty of understanding all the different rules is related to the fragmented regulatory framework. It would be easier to learn the different requirements if the regulations were integrated.

7.5. If the Transparency Directive provided for maximum harmonisation (no national add-ons) of the content of narrative reports referred to in question (7.3) for small listed companies, would this imply a reduction in legal, auditing or other type of costs?

Yes, we anticipate some cost reduction.

7.6. In case you think maximum harmonisation regarding the content of narrative reports referred to in question (7.5) is desirable, what do you think would be the best way?

We support the creation of non-mandatory ready-to-use templates regarding these narrative disclosures (option i). However, we hesitate if CESR/ESMA were the right organization to prepare them, at least alone. This is because they do not provide transparency or consultations to the market participants during the preparatory work. On the other hand, we are pleased with the European Commission's current efforts to consult the market participants.

7.7. Concerning question (7.6), could you provide a specific reply regarding the disclosure of environmental and social data requested in Article 46(1)(b) of the Fourth Company Law?

We find it important that such requirements not be increased regarding small companies.

8. Diminution of cost for small listed companies vs. diminution of transparency to the market.

8.1. Is it possible to apply lighter transparency obligations for small listed companies without a corresponding significant diminution of transparency provided to the market?

Our main concern is the current frequency of financial reporting, partly due to national gold-plating legislation. Quarterly reporting is too demanding especially for small and medium-sized

listed companies. The directive should allow reporting every four or six months and prohibit gold-plating by the Member States and stock exchanges. In addition to IFRS requirements, this issue is by far the most important measure that could be achieved without diminishing transparency.

This change would not diminish transparency of the market. It should be noted that companies would still have the duty to disclose positive and negative profit warnings. So if the prospects of a company change, investors are informed of it despite the reduced frequency of regular reporting.

We would also like to point out that reducing the frequency of reporting would make small listed companies more attractive to the analysts and investors. Analysts can devote a very limited time to small listed companies and the frequency of reporting makes the situation worse. If the frequency of reporting were more reasonable, analysts, media and investors would find time more easily to study the reports. Reducing the frequency of reporting might also enhance the quality of the reports when companies could concentrate more on the preparatory work of each report.

8.2. If the obligation to disclose quarterly financial information was waived for small listed companies, would this result in an unreasonable diminution of transparency?

No, on the contrary. See answer 8.1.

9. Addressing the lower visibility of smaller listed companies

9.1. Do you think that measures at EU level (including possible changes to the transparency directive) can help solving the lower visibility of smaller listed companies?

Yes, to some extent. Naturally, it is also a market feature that large cap companies attract the most interest among analysts, media and investors.

9.2. What type of measures at EU level could help solving the visibility problem of small listed companies?

We believe that reducing the frequency of financial reporting from three months to four or six months, would have a positive impact on the interest level of the media, analysts and investors. Currently, small listed companies are issuing so much information that that media, analysts and investors don't have sufficient time to study all the reports. Reducing the frequency of reporting might also enhance the quality of the reports when companies could concentrate more on the preparatory work of each report. Also, the extension of the reporting deadlines would give some flexibility.

9.3. Do you think that the development of an EU database storing regulated information on all issuers of securities in the EU will facilitate research and create interest/result in greater attention in small listed companies by financial analysts, financial intermediaries and investors?

Yes, an EU database could be useful; provided that it does not add bureaucracy to the listed companies and that the database would be easy to use.

Other views regarding small listed companies.

10. Do you have any other views on regular transparency requirements which could make regulated markets more attractive to small listed companies?

We would like to emphasize the importance of not adding any administrative burden to listed companies, whether through securities market or other legislation. The current regulatory framework is extremely demanding even for large companies and small listed companies are really struggling in the compliance of all the rules.

One measure that could contribute to reducing the administrative burden of listed companies would be an opportunity to disclose information in English only when this is appropriate.

II. Information about holdings of voting rights.

As a general remark we would like to stress the need to achieve as much harmonisation as possible. The lacking harmonisation is an obstacle to cross-border activities. We believe that the implementation and application of the rules on information about major holdings of voting rights are currently too fragmented. We support harmonisation efforts.

11. Would the disclosure of holdings of cash-settled derivatives be beneficial to the market?

We recognize that the potential secret building up of voting rights by the use of cash-settled derivatives jeopardizes market efficiency and we understand the need to close the existing loopholes in the current Directive. This, in our opinion, should be realized through a fully harmonized regime. It should, however, be borne in mind that the vast majority of such instruments are bought for trading or hedging purposes and the mandatory disclosure of such instruments would cause unnecessary administrative burdens and cause unnecessary uncertainty and confusion about changes in the voting structure.

The assumedly very low number of cases where such instruments have been used to secretly built up a stake in a company, need, however, be somehow addressed, but, in our opinion, in a manner which would not affect the majority of investors, who don't have any hidden intentions.

12. If the Transparency Directive was to require holders of cash-settled derivatives to disclose their positions,

12.1. should holdings of cash-settled derivatives be aggregated to holdings of voting rights and/or of financial instruments giving unconditional access to voting rights for the purposes of calculating whether the threshold triggering the disclosure obligation is reached or crossed?

As already mentioned, we acknowledge the Commission's and supervisors concerns to avoid a situation whereby investors would secretly build up a stake in a company through the use of (cash-settled) derivatives. In our opinion this can be addressed in a way which would not affect the vast majority of users of derivatives who do not have such intentions.

Thus, any disclosure requirement of (cash-settled) derivatives holdings would only apply to those investors who have a genuine intention of acquiring the underlying shares, for the purpose of building or extending their stake in the issuing company. Such disclosure requirement should be effectively sanctioned, e.g. through the loss of voting rights. This approach would amount to a major sanction on any investor who does intend to acquire a significant stake in a company, but would not concern other users of derivatives.

Realised as proposed above, a requirement for aggregated disclosure would be meaningful and appropriate.

12.2. and if such disclosure of cash-settled derivatives should be done independently of voting rights and of other financial instruments, which threshold should be applied? E.g.

(i) the thresholds provided in Article 9(1) Transparency Directive should be applied (5%, 10% etc);

(ii) the lower/initial threshold for this kind of disclosure should be significant and higher than the 5% foreseen in Article 9(1) Transparency Directive (e.g. at least 10% or higher);

(iii) other.

Should the Commission decide in favour of a wider application of the transparency requirements to cash-settled derivatives, then holdings in these instruments should be disclosed in isolation from straight shareholdings. Separate disclosure would be essential in order not to 'dilute' essential information about companies' voting structure with, for the vast majority of notifications, less relevant information about holdings in cash-settled derivatives. Otherwise, there would be a significant risk of mal-interpretations and misunderstandings.

Such separate disclosures of cash-settled derivatives should only start from a threshold that would be sufficiently high to eliminate as many non-relevant notifications as possible. In the view of Eu-

European banks, this would mean a minimum threshold of at least 10%, taking into account that cash-settled derivatives only indirectly allow any influence on the company.

It is also noteworthy that the use of cash-settled derivatives in the secret build-up of stakes necessarily presumes a third party participation in such process. Therefore we would like to encourage the Commission to consider to what extent here discussed situations could be addressed through better enforcement of the “*acting on behalf of*” and “*acting in concert*” provisions of the Directive, which in fact serve the purpose of preventing the indirect building up of stakes in a company.

Transparency of holdings of voting rights after the record date in advance of the general meeting of shareholders (the question of empty voting)

13. Would the establishment of a specific disclosure mechanism for holders of voting rights who do not hold shares between the record date and the shareholders meeting be useful/effective to prevent empty voting practices?

(i) yes (please explain);

(ii) no, only limiting/prohibiting empty voting practices would be effective.

We have not identified any particular problem around ‘empty voting’.

It is an avoidable consequence of the record date principle, that some investors have a right to vote at the time of shareholder meetings, even though they have sold their shares between the record date and the date of the shareholder meeting. However, there is no economic difference between this situation and the one where investors vote without having an economic interest as a result of holding off-setting derivatives or other financial instruments.

For further discussion it would be helpful for the Commission to provide examples of cases which it has identified to be problematic.

For the moment, we believe that a disclosure requirement would not be justified. We would, indeed, oppose an outright ban on voting without an economic interest.

14. If a specific disclosure obligation is imposed regarding the transfer of voting rights independently of the shares between the record date and the general meeting,

14.1. which threshold of voting rights should be applied in order to trigger the obligation? E.g. 0,5%, 1%, 2%, other.

Please see our answer to Question 13 above.

14.2. which time-limit for the disclosure should be applied for this disclosure to be useful? E.g. immediate disclosure; no later than 1 day, other.

Please see our answer to Question 13 above.

Intentions with holdings or voting policies disclosure.

15. Which is the best way to make the investment process more transparent:

- i) requesting investors to disclose their future intentions with holdings;*
- ii) requesting investors to disclose their actual voting policies;*
- iii) both;*
- iv) none;*
- v) other.*

We oppose binding EU-level measures (option iv). The role of institutional investors is developing in a very satisfactory manner through self-regulation. We find it unnecessary to address the issue on EU level. This is due to the fact that institutional investors are a very heterogenic group. The needs, goals and operations of pension funds, hedge funds and investment companies differ to a great extent. Binding EU-level measures must not be harmful to the European financial actors. As financial markets are international, we should not impose such regulation on European financial actors that e.g. their American counterparts do not share.

It should be noted that in some occasions transparency might be counterproductive and even hinder an actor from reaching its goal. E.g. if an financial actor is forced to inform the market of its strategic decision or intentions to buy little by little large amounts of shares in a company, this will inevitably lead to rising stock prices while other actors will try to benefit from the situation. It should be noted that flagging requirements provide transparency to the market, so the market participants are not unaware of the ownership of a major owner.

We recognize, however, the importance of addressing the issue but we are content to follow the current development through self-regulation, which, together with the provisions of the current Transparency Directive and the Takeover Directive already provide for appropriate requirements to ensure that firms are appropriately informed about their investors.

16. If investors were required to disclose to the market which their intentions are with regard to their investment,

16.1. would such disclosure be useful?

- i) this would be useful for issuers and other investors (e.g. more transparency);*
- ii) this would be negative to issuers and other investors (e.g. facilitate antitakeover defences).*

We find the proposal problematic. In addition to our response to Question 15 above, as suggested in point ii) of the Commission's question, such requirements would facilitate existing shareholders' and managements' efforts to prevent takeovers. As a consequence, the efficient functioning of the market for corporate control and its potential to act as an important driver for innovation would be severely hindered.

However, the issue has many sides due to the fact that institutional investors are a very heterogeneous group.

16.2. which should be the minimum threshold triggering such disclosure?

- i) the thresholds provided in Article 9(1) Transparency Directive should be applied (5%, 10% etc);*
- ii) the lower/initial threshold should be significant and higher than the 5% foreseen in Article 9(1) Transparency Directive (e.g. at least 10% or higher);*
- iii) the information should only be requested only if certain threshold are crossed and provided that the investor is among the largest 3 investors in the issuer;*
- iv) other.*

Please see question 15. Although we don't support such disclosure, we find it necessary that the threshold be considerably higher than 5 per cent.

16.3. should such disclosure consist in:

- i) simple information on intentions (e.g. box ticking in a form: I intend to change/influence control of the issuer/I do not intend to change/influence control of the issuer);*
- ii) more substantial information on intentions (e.g. narrative explanations on purpose of the acquisition including any plans or proposals of the investor for future purchases or sales of issuer's stock or for any changes in the issuer's management or board of directors etc.);*
- iii) information on source and amount of funds used to acquire the securities;*
- iv) arrangements to which the investor is a party relating to issuer's securities;*
- v) other.*

Please see question 15. Although we don't support such disclosure, we find it necessary that if such a disclosure is required, it should have more information than just box ticking.

Aggregation of holdings and voting rights.

17. Should holdings of shares and voting rights be aggregated with holdings of financial instruments giving unconditional access to voting rights for the purposes of calculating the relevant thresholds that trigger the notification obligation?

It is obvious that the aggregation of the different holdings (including any indirect access to voting rights) will enhance the market's ability to get undistorted information about total holdings of dif-

ferent investors. In our opinion, most importantly any approach to the calculation of the notification thresholds should be fully harmonised across Member States.

Other cases of insufficient transparency regarding corporate ownership.

18. Are there other cases of potentially insufficient transparency regarding corporate ownership?]

We have not observed any such cases.

III. Ineffective application of the Directive because of diverging national measures and/or unclear obligations in the Directive

Uniform EU regime or maximum harmonisation: major holdings of voting rights.

19. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) for the notification of major holdings of voting rights?

Yes. We support maximum harmonisation. It would simplify cross-border investments. We see that the thresholds for the notification of major holdings of voting rights as the most important aspect in this respect. Current divergence of thresholds is unjustified and leads to uncertainty, unequal treatment and additional costs for investors.

We also see a need for consistent sanctioning regimes.

20. If a fully uniform EU regime is not possible because of insurmountable legal barriers, should Member States be prevented from adopting more stringent requirements than those of the Transparency Directive regarding the notification of major holdings of voting rights?

Yes. Part of the current problems regarding securities market regulation is due to gold-plating. Both Member States and stock exchanges should be prevented from adopting more stringent requirements.

Uniform EU Regime or maximum harmonisation: disclosure by issuers.

21. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) regarding issuers' disclosures?

In principle, we support full harmonisation. We have, however, not discovered any meaningful problems with the current requirements of the Transparency Directive regarding issuers' disclosures. Should the Commission consider any specific changes, we would request more information about what shortcomings has been identified.

Divergent rules: calculation of holdings.

22. Could you please explain in what way national rules implementing the Directive result in different methods for aggregating holdings of voting rights (and where applicable financial instruments) for the purposes of calculating whether the relevant thresholds triggering the notification obligation are reached or crossed by investors?

We understand the concerns with regard to divergences in the calculation of voting rights. Specifically, differences have for example been observed with regard to the treatment of securities lending. We strongly support full harmonisation in this respect, while understanding that it may not be possible at this point of time.

Unclear rules

23. Could you provide evidence of cases where unclear rules in the Directive ought to be clarified?

We don't have such cases to be provided.

IV. Any other comments

24. Do you have any other comments regarding the Transparency Directive?

THE CENTRAL CHAMBER OF COMMERCE OF FINLAND

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