Relazione Illustrativa

Schema di decreto legislativo recante attuazione della direttiva 2013/50/UE del Parlamento europeo e del Consiglio del 22 ottobre 2013, recante modifica della direttiva 2004/109/CE del Parlamento europeo e del Consiglio, sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato, la direttiva 2003/71/CE del Parlamento europeo e del Consiglio, relativa al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di strumenti finanziari, e la direttiva 2007/14/CE della Commissione, che stabilisce le modalità di applicazione di talune disposizioni della direttiva 2004/109/CE.

Il Governo, tramite uno o più decreti legislativi, è autorizzato a recepire la direttiva 2013/50/UE ai sensi di quanto previsto dalla legge 9 luglio 2015, n. 114, (legge di delegazione europea 2014), in particolare dall'articolo 1, commi 1 e 3, dall'articolo 5 e dall'allegato B, recante delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea.

La direttiva 2013/50/UE modifica la direttiva 2004/109/CE, relativa all'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti valori mobiliari negoziati in mercati regolamentati, la direttiva 2007/14/CE che delle precedente stabilisce alcune modalità di applicazione e, infine, per finalità di opportuno, la direttiva 2003/71/CE relativa ai prospetti oggetto di pubblicazione in caso di amissione alla negoziazione di strumenti finanziari o loro offerta pubblica.

Il termine entro il quale gli Stati membri dovranno conformare i propri ordinamenti a quanto disposto dalla direttiva è fissato al 26 novembre 2015.

La legge 9 luglio 2015, n. 114, in aggiunta ai criteri di delega generali previsti dalla legge 24 dicembre 2012, n. 234, recante norme generali sulla partecipazione dell'Italia alla formazione e all'attuazione della normativa e delle politiche dell'Unione europea e in essa richiamati, prevede che il Governo, nell'attuare il recepimento della direttiva 2013/50/UE, possa:

1) apportare al testo unico delle disposizioni in materia di intermediazione finanziaria, di cui al decreto legislativo 24 febbraio 1998, n. 58 (TUF), le modifiche e le integrazioni necessarie al corretto e integrale recepimento della direttiva prevedendo, ove opportuno, il ricorso alla

disciplina secondaria e attribuendo le competenze e i poteri di vigilanza previsti nella direttiva medesima alla Commissione nazionale per le società e la borsa (CONSOB);

2) innalzare la soglia minima prevista dal TUF, in materia di obblighi di comunicazione delle partecipazioni rilevanti, nel rispetto di quanto disposto dalla direttiva 2004/109/CE, come modificata dalla direttiva 2013/50/UE;

3) attribuire alla CONSOB il potere di disporre, con proprio regolamento e in conformità con le previsioni della direttiva 2013/50/UE, obblighi di pubblicazione delle informazioni finanziarie periodiche aggiuntive con una frequenza maggiore rispetto alle relazioni finanziarie annuali e alle relazioni finanziarie semestrali;

4) apportare modificazioni alla normativa vigente, anche di derivazione europea, per i settori interessati dalla direttiva da attuare, al fine di realizzare il migliore coordinamento con le altre disposizioni vigenti, e di assicurare un adeguato regime di trasparenza in materia di informazione sugli emittenti garantendo un appropriato grado di protezione dell'investitore e la più ampia tutela della stabilità finanziaria e assicurando i più adeguati obblighi di informazione e correttezza.

Lo schema di decreto legislativo è stato pertanto redatto in base ai descritti criteri di delega e, di seguito, sono illustrati contenuti e finalità delle singole disposizioni che apportano modifiche ad articoli vigenti del TUF o ne introducono di nuovi, con richiamo della disposizioni della direttiva 2013/50/UE di cui costituiscono attuazione.

L'articolo 1 (Modifiche al decreto legislativo 28 febbraio 1998, n. 58) reca le disposizioni necessarie ad allineare il contenuto del TUF alle innovazioni apportate dalla direttiva 2013/50/UE.

Il comma 1 apporta modifiche all'articolo 1, comma 1, del TUF, nello specifico all'impianto definitorio. In particolare:

a) alla lettera w), è modificata la definizione di "emittente" in modo da ricomprendervi le associazioni di imprese registrate e i trust. Ulteriore modifica è finalizzata a chiarire che, nel caso di ricevute di deposito ammessi alla negoziazione in un mercato regolamentato, per emittente deve intendersi l'emittente dei valori mobiliari rappresentati, anche qualora questi non siano ammessi alla negoziazione in un mercato regolamentato;

b) alla lettera w-quater), che definisce gli "emittenti quotati aventi l'Italia come Stato membro d' origine", sono apportate sia modifiche di carattere redazionale, volte a sostituire l'ormai desueta

espressione "Comunità europea" con quella corretta di "Unione europea", sia altre, di carattere sostanziale, ai punti 3) e 4), nonché con l'introduzione del nuovo punto 5), finalizzate ad allineare la predetta definizione con quella della direttiva 2013/50/UE;

c) alla lettera w-quater.1) è oggetto di modifica la definizione di piccole e medie imprese emittenti azioni quotate(PMI) in modo che, tramite l'introduzione del valore del fatturato antecedente alla quotazione quale parametro definitorio, tale qualifica possa ora essere acquisita anche da società di nuova costituzione. La Consob, tenuta a pubblicare sul proprio sito internet l'elenco degli emittenti aventi la qualifica di PMI, disciplinerà con regolamento l'attuazione di quanto previsto dalla lettera, ivi comprese gli obblighi informativi a carico delle PMI in ragione del loro status.

Il comma 2 modifica l'articolo 62 del TUF al fine di distinguere le fasi di ammissione alla quotazione e di ammissione alle negoziazioni. una fase di ammissione a quotazione seguita dalla ammissione alle negoziazioni. I soggetti gestori del mercato, di conseguenza, adegueranno i procedimenti di ammissione di emittenti e strumenti, articolandoli nelle due fasi della verifica dell'ammissibilità a quotazione, e in quella di ammissione alle negoziazioni, dove prevalgono valutazioni tecniche relative allo strumento ammesso piuttosto che a valutazioni sull'emittente. Il processo, nel suo insieme, risulterà allineato a quelli previsti in altri ordinamenti europei, ovviando alle difficoltà operative evidenziatesi in passato e relative, in particolar modo, alla difficoltà di stabilire se operassero sin dall'ammissione alla quotazione gli obblighi di diffusione di notizie rilevanti ai fini delle determinazione dei prezzi degli strumenti pur essendo questi ultimi non ancora oggetto di negoziazione.

Le modifiche apportate all'articolo 64 del TUF dal comma 3 rispondono alla medesime finalità di quelle relative all'articolo 62, con il quale sono opportunamente coordinate.

Il comma 4 introduce il nuovo articolo 91-bis nel TUF, nel quale sono disciplinate le modalità con cui gli emittenti comunicano alla Consob la propria scelta dell'Italia quale Stato membro di origine, nonché il regime da applicarsi a quegli emittenti nel caso in cui o non abbiano effettuato la comunicazione entro tre mesi dall'ammissione alla negoziazione dei propri valori mobiliari o questi ultimi siano negoziati nei mercati di più Stati membri.

Il comma 5 modifica l'articolo 93-bis, comma 1, lettera f), n. 3) del TUF al fine di coordinarne il contenuto con le innovazioni apportate in materia di scelta e comunicazione dello Stato membro di origine.

Il comma 6 modifica l'articolo 113-ter del TUF. L'intervento al comma 1 comporta l'allineamento dell'elenco delle informazioni regolamentate a quello minimo ed obbligatorio previsto dagli atti dell'Unione europea. Per informazioni regolamentate si intendono quelle che devono essere pubblicate dagli emittenti quotati, dagli emittenti quotati aventi l'Italia come Stato membro d'origine o dai soggetti che li controllano; tali informazioni sono depositate presso la Consob e la società di gestione del mercato per il quale l'emittente ha richiesto o ha approvato l'ammissione alla negoziazione dei propri valori mobiliari o quote di fondi chiusi. Le relazioni su governo societario e remunerazione degli amministratori, per effetto della modifica apportata, non rientreranno nel novero di questa tipologia di informazioni.

La modifica al comma 3 dell'articolo 113-ter elimina la previsione secondo cui le informazioni regolamentate debbano essere oggetto anche di pubblicazione su giornali quotidiani nazionali. La pubblicazione su quotidiani costituisce un adempimento che non discende da obblighi previsti da atti dell'Unione europea e, dal punto di vista sostanziale, non accresce la trasparenza, poiché, ai sensi della vigente disciplina, le medesime informazioni, oltre che trasmesse al sistema di diffusione delle informazioni regolamentate (SDIR), cui hanno accesso le agenzie di stampa, e al meccanismo di stoccaggio autorizzato dalla Consob, che ne garantisce la memoria storica, sono altresì di pronta reperibilità per il pubblico dei risparmiatori mediante accesso al sito internet dell'emittente, ove le stesse devono essere pubblicate. Il mantenimento di tale adempimento costituirebbe un livello di regolamentazione superiore a quello minimo previsto dagli atti dell'Unione europea configurandosi, pertanto, quale caso di *gold plating* ai sensi dell'articolo 15, comma 2, della legge 12 novembre 2011, n. 183 (Legge di Stabilità 2012).

Il comma 7 modifica l'articolo 114, comma 1, del TUF, eliminando la disposizione secondo cui gli emittenti pubblicano su giornali quotidiani nazionali le informazioni privilegiate di cui all'articolo 181. Anche in questo caso, analogamente alla modifica apportata dal comma 4 all'articolo 113-bis del TUF, la pubblicazione su giornali quotidiani nazionali costituisce un adempimento che non discende da obblighi previsti da atti dell'Unione europea e, dal punto di vista sostanziale, non accresce la trasparenza, configurandosi in vece come un onere amministrativo ulteriore rispetto a quelli minimi previsti dalle direttive europee ai sensi dell'articolo 15, comma 2, della legge 12 novembre 2011, n. 183 (Legge di Stabilità 2012).

Il comma 8 modifica l'articolo 120 del TUF, prevedendo che sia innalzata dal due al tre per cento la soglia di partecipazione al capitale di un emittente dal cui superamento, o discesa, opera

l'obbligo di notifica sia verso l'emittente stesso sia verso la Consob. La modifica discende da quanto previsto dalla legge 9 luglio 2015, n. 114, (Legge di delegazione europea 2014) che, nei criteri di delega specifici previsti per il recepimento della Direttiva 2013/50/UE, all'articolo 5, comma 1, lettera b), ha espressamente previsto di prevedere, ove opportuno, l'innalzamento della soglia minima" prevista dal TUF in materia di obblighi di comunicazione delle partecipazioni rilevanti. L'innalzamento della soglia minima può comportare effetti positivi in termini di maggiore afflusso di capitali sul mercato azionario italiano da parte di investitori istituzionali, i quali tendono, compatibilmente con le proprie politiche di investimento, a collocarsi lievemente al di sotto del livello di emersione richiesto dalla disciplina sulla trasparenza degli assetti proprietari, al fine di non sopportare i costi connessi alle operazioni di notifica..

Il comma 9 modifica l'articolo 125-bis, comma 1, del TUF, eliminando l'obbligo di pubblicazione a mezzo stampa dell'avviso di convocazione dell'assemblea. Le motivazioni, cos' come per le abrogazioni previste dai commi 6 e 7, consistono nell'assenza di obblighi di questo tipo nella normativa europea di riferimento..

Il comma 10 interviene sull'articolo 154-ter del TUF in materia di relazioni finanziarie:

a) modificando il comma 1, al fine di allineare il testo a quanto previsto dall'articolo 1, paragrafo 2, lettera b) della direttiva 2013/50/UE, relativamente al termine entro cui gli emittenti quotati aventi l'Italia come Stato membro d'origine mettono a disposizione del pubblico la relazione finanziaria, che è ora fissato in quattro mesi dalla chiusure dell'esercizio;
b) emendando il comma 1-ter, tramite un intervento di carattere redazionale circa la corretta denominazione del soggetto in caricato di effettuare il controllo legale dei conti;
c) adeguando il comma 2, a quanto disposto dall'articolo 1, paragrafo 4 della direttiva 2013/50/UE e prevedendo, quindi, che in luogo degli attuali sessanta giorni la relazione finanziaria semestrale debba invece essere pubblicata quanto prima possibile e, comunque, non oltre tre mesi dalla fine di tale semestre;
d) sostituendo il comma 5 e inserendo il nuovo comma 5-bis, in quanto l'obbligo di presentare e pubblicare il resoconto trimestrale è stato abrogato dalla direttiva 2013/50/UE. In luogo di tale obbligo e in linea con quanto previsto dalla legge di delegazione europea, viene ad essere previsto che la Consob abbia la facoltà di esercitare il potere previsto dalla Direttiva consistente nel prevedere obblighi di pubblicazione delle informazioni finanziarie periodiche, con una frequenza maggiore rispetto a quella annuale e semestrale, previo soddisfacimento delle condizioni previste all'articolo 3 della Direttiva, e consistenti nella realizzazione di una valutazione di impatto atta a verificare che:

i. la richiesta di informazioni finanziarie periodiche aggiuntive non comporti un onere finanziario sproporzionato, in particolare per i piccoli e medi emittenti, tenendo conto anche di quanto previsto negli altri Stati membri in materia;

ii. il contenuto delle informazioni sia proporzionato ai fattori che contribuiscono alle decisioni di investimento assunte dagli investitori.

La ratio esplicitamente sottesa a tali condizioni, dettate dalla stessa Direttiva 2013/50/UE, consiste negli assunti che la produzione di informazioni finanziarie con frequenza maggiore di quella semestrale, in talune circostanze, potrebbe disincentivare strategie di investimento orientate al lungo periodo e che, inoltre, ciò potrebbe costituire un onere ingiustificato a carico dei piccoli e medi emittenti, a fronte del quale non si riscontrerebbero pertanto benefici a favore del mercato e delle scelte di investimento effettuate dagli operatori. La Consob, potrà comunque richiedere informazioni il cui contenuto, al massimo, coinciderà con quello previsto attualmente dalla relazione trimestrale di cui all'attuale comma 5 dell'articolo 154-ter del TUF.

e) apportando modifiche al comma 6 di carattere redazionali o comunque finalizzate ad assicurarne il coordinamento con altre disposizioni.

Il comma 11 inserisce nel TUF il nuovo articolo 154-quater, rubricato "Trasparenza dei pagamenti ai governi", al fine di coordinare la qualifica di emittente quotato avente l'Italia come Stato membro di origine con il regime di trasparenza dei pagamenti ai governi al quale sono soggetti, ai sensi del decreto legislativo 18 agosto 2015, n. 139, i soggetti operanti nei settori estrattivo e forestale. Il nuovo articolo disciplina modalità e tempi di messa a disposizione per il pubblico delle relazioni derivanti dall'assolvimento degli obblighi in oggetto, demandandone alla Consob la definizione in via regolamentare.

Il comma 12 modifica l'articolo 192-bis del TUF, recante disposizioni in materia di misure e sanzioni amministrative. Gli interventi emendativi consistono in:

a) sostituzione del comma 1, al fine di integrare la normativa nazionale con le nuove misure, previste dalla direttiva, di cui possono essere destinatari gli emittenti in caso di violazioni o omissioni inerenti le informazioni contenute nella relazione sul governo societario e gli assetti proprietari di cui all'articolo 123-bis del TUF. Per effetto delle modifiche apportate, gli emittenti potranno essere destinatari di misure consistenti: i) in una dichiarazione pubblica che indichi responsabile e natura della violazione; ii) un ordine di cessazione della condotta con eventuale

indicazione delle azioni necessarie a porre rimedio; iii) una sanzione amministrativa da euro diecimila a euro due milioni;

b) sostituzione del comma 1-bis, al fine di allineare a quanto disposto dalla direttiva 2013/50/UE le misure e le sanzioni irrorabili agli esponenti aziendali ed al personale per le violazioni in tema di disciplina degli intermediari, dei mercati e della gestione accentrata di strumenti finanziari. Per l'omissione delle comunicazioni previste dall'articolo 190-bis del TUF è quindi ora previsto che siano applicabili le medesime misure di cui al comma 1 così come novellato;

c) inserimento del nuovo comma 1-quater, che completa il regime sanzionatorio definito dai commi 1 e 1-bis, prevedendo ulteriori sanzioni applicabili: i) al caso di inosservanza dell'obbligo di eliminare le infrazioni commesse o dell'astenersi dal ripeterle; ii) agli esponenti aziendali ed al personale che abbiano contribuito al determinare l'inosservanza degli ordini.

Il comma 13 modifica l'articolo 193 del TUF, recante disposizioni in materia di informazione societaria e doveri dei sindaci, dei revisori legali e delle società di revisione legale. L'adeguamento del regime sanzionatorio a quanto disposto dalla direttiva 2013/50/UE ha comportato la necessità di:

a) modificare il comma 1, riformulandolo in modo da ricomprendere tra le violazioni oggetto di sanzione anche quelle inerenti la pubblicazione delle relazioni sui pagamenti ai governi, di cui al nuovo articolo 154-ter del TUF, in linea con l'articolo 28-*bis*, lettera a), della direttiva 2004/109/CE così come modificata dalla direttiva 2013/50/UE. Le sanzioni applicabili nei confronti di società, enti o associazioni per la violazione degli obblighi previsti dagli articoli richiamati nel primo periodo, possono consistere in: i) una dichiarazione pubblica indicante il soggetto responsabile della violazione e la natura della stessa; ii) un ordine di eliminare le infrazioni contestate, con eventuale indicazione delle misure da adottare e del termine per l'adempimento, e di astenersi dal ripeterle; iii) una sanzione amministrativa pecuniaria da euro cinquemila a euro dieci milioni o, se superiore, fino al 5% del fatturato complessivo annuo;

b) inserire il comma 1.1, che disciplina il regime sanzionatorio da applicarsi alle persone fisiche per le violazioni previste dal comma 1;

c) inserire il comma 1.2, che disciplina il regime sanzionatorio per esponenti aziendali e personale delle persone giuridiche responsabili delle violazioni previste dal comma 1, prevedendo per questi soggetti le medesime sanzioni di cui al comma 1 qualora ricorrano i nessi causalità di cui all'articolo 190-bis, comma 1, lettera a), del TUF;

d) modificare il comma 1-quater, inserendovi il richiamo ai commi 1, 1.1 e 1.2 per questioni di coordinamento e completamento della disciplina;

e) modificare il comma 2, prevedendo che nei casi di omissione delle comunicazioni delle partecipazioni rilevanti, dei patti parasociali e degli altri divieti previsti dagli articoli 120, comma 5, 121, commi 1 e 3, e 122, comma 4, siano applicabili le sanzioni amministrative consistenti: i) in una dichiarazione pubblica indicante il soggetto responsabile della violazione e la natura della stessa; ii) un ordine di eliminare le infrazioni contestate, con eventuale indicazione delle misure da adottare e del termine per l'adempimento, e di astenersi dal ripeterle; iii) una sanzione pecuniaria da euro diecimila a euro dieci milioni, o se superiore al 5% del fatturato complessivo annuo;

f) inserire il comma 2.1, che disciplina il regime sanzionatorio da applicarsi alle persone fisiche per le violazioni previste dal comma 2 e consistenti in: i) una dichiarazione pubblica indicante la persona responsabile della violazione e la natura della stessa; ii) un ordine di eliminare le infrazioni contestate, con eventuale indicazione delle misure da adottare e del termine per l'adempimento, e di astenersi dal ripeterle; iii) una sanzione amministrativa pecuniaria da euro diecimila a euro due milioni;

g) inserire il comma 2.2, che disciplina il regime sanzionatorio per esponenti aziendali e personale delle persone giuridiche responsabili delle violazioni previste dal comma 1, prevedendo per questi soggetti le medesime sanzioni di cui al comma 2.1 qualora ricorrano i nessi di causalità di cui all'articolo 190-bis, comma 1, lettera a), del TUF;

h) inserire il comma 2.3, che indica i minimi edittali da assumersi per ritardi nelle comunicazioni previste dall'articolo 120, commi 2, 2-bis, 3 e 4 del TUF;

i) inserire il comma 2.4, che regola i casi in cui i vantaggi derivanti dalle violazioni siano maggiori dei massimi edittali previsti dai commi 1, 1.1, 2 e 2.1, prevedendo che al ricorrere di tale circostanza la sanzione amministrativa sia elevata fino al massimo del vantaggio ottenuto purché questo sia determinabile;

j) sopprimere il comma 2-bis, essendo ora le sanzioni applicabili ad esponenti aziendali e personali disciplinate nei commi 1.1 e 2.1;

k) modificare il comma 3, tramite eliminazione del rimando al comma 2 per la determinazione della sanzione, in quanto non più applicabile, in luogo del quale è invece fissata la sanzione amministrativa pecuniaria da euro diecimila a euro unmilionecinquecentomila.

Il comma 14 modifica l'articolo 194-bis, comma 1, del TUF, recante disposizioni in materia di criteri per la determinazione delle sanzioni, inserendo una locuzione necessaria a tenere conto

della circostanza che, per effetto delle modifiche apportate agli articoli 192-bis e 193, le sanzioni applicabili non consistono, unicamente, in quelle aventi natura pecuniaria ma anche in dichiarazioni pubbliche ed ordini.

Il comma 15 modifica l'articolo 194-quater, comma 1, del TUF, eliminando il 115-bis dagli articoli richiamati per le cui violazioni la Banca d'Italia o la Consob, quando esse siano connotate da scarsa offensività o pericolosità, in alternativa all'applicazione di sanzioni amministrative pecuniarie, possono applicare nei confronti delle società o degli enti interessati una sanzione consistente nell'ordine di eliminare le infrazioni contestate. La modifica discende dall'intervento effettuato sull'articolo 193, comma 1, che richiama il 115-bis e quindi estende alle violazioni degli obblighi in esso previsti la possibilità per le Autorità di vigilanza di comminare la misura dell'ordine.

Il comma 16 interviene sull'articolo 194-quinquies, comma 1, lettera a) del TUF, modificando il richiamo ai commi dell'articolo 193 per effetto delle modifiche ad essi apportate.

Il comma 17 modifica l'articolo 195-bis, comma 1, primo periodo, del TUF, eliminando la previsione secondo cui il provvedimento di applicazione della sanzione debba essere pubblicato sul Bollettino della Consob e disponendo che, invece, sia oggetto di pubblicazione sul sito internet dell'Autorità. Il richiamo alla possibilità di pubblicare il provvedimento ove ciò sia consentito dalla normativa europea di riferimento, discende dalla circostanza che l'articolo in oggetto detta una disciplina generale, mentre le diverse fattispecie sanzionatorie, derivanti da diverse direttive europee, presentano regimi di pubblicità tra loro non omogenei.

L'articolo 2 (Disposizioni transitorie e finali) disciplina il regime transitorio applicabile in materia di comunicazione della scelta dello Stato membro di origine da parte degli emittenti nel caso in cui, descritto al comma 1, non abbiano effettuato la comunicazione prima del 27 novembre 2015, data entro cui gli Stati membri devono recepire le disposizioni della direttiva 2013/50/UE, oppure, ai sensi del comma 2, abbiano già scelto l'Italia ed effettuato la comunicazione, disponendo l'esonero dall'obbligo di comunicazione salvo che dopo il 27 novembre 2015 non scelgano un altro Stato membro di origine.

Il comma 3 prevede che la Consob adegui il contenuto delle proprie disposizioni regolamentare a quanto previsto dal decreto e dalla direttiva 2013/50/UE.

L'articolo 3 (Clausola di invarianza finanziaria) prevede che dall'attuazione del decreto non derivano oneri per la finanza pubblica, trattandosi di disposizioni di carattere ordinamentale.

Tabella di concordanza ex art. 31, comma 2, della legge 24 dicembre 2012, n. 234.

Schema di decreto legislativo recante attuazione della direttiva 2013/50/UE del Parlamento europeo e del Consiglio del 22 ottobre 2013, recante modifica della direttiva 2004/109/CE del Parlamento europeo e del Consiglio, sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato, la direttiva 2003/71/CE del Parlamento europeo e del Consiglio, relativa al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di strumenti finanziari, e la direttiva 2007/14/CE della Commissione, che stabilisce le modalità di applicazione di talune disposizioni della direttiva 2004/109/CE.

Nota introduttiva:

La direttiva 2013/50/UE reca innovazioni all'ordinamento europeo in materia di obblighi di trasparenza a cui sono sottoposti sia gli emittenti i cui valori mobiliari sono negoziati in mercati regolamentati, sia i soggetti che detengono in essi partecipazioni o, comunque, strumenti il cui effetto è equivalente a quello derivante dal possesso di azioni.

La direttiva innova, pertanto, atti dell'Unione europea già esistenti e tra questi, in particolare, la direttiva 2004/109/CE del Parlamento europeo e del Consiglio. Nella seguente tabella di trasposizione si fornisce evidenza delle disposizioni della direttiva attuate con lo schema di decreto legislativo a cui essa è allegata, indicando la corrispondente norma nazionale che ne costituirà la misura di attuazione.

DIRETTIVA 2013/50/UE	DISPOSIZIONE NAZIONALE DI ATTUAZIONE
Articolo 1 Modifiche della direttiva 2004/109/CE La direttiva 2004/109/CE è così modificata: 1) l'articolo 2 è così modificato: a) il paragrafo 1 è così modificato: i) la lettera d) è sostituita dalla seguente: d) "emittente": persona fisica o giuridica di diritto privato o pubblico, compreso uno Stato, i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato. Nel caso di certificati di deposito ammessi alla negoziazione in un mercato regolamentato, per emittente si intende l'emittente dei valori mobiliari rappresentati, a prescindere dal fatto che tali valori siano ammessi o meno alla negoziazione in un mercato regolamentato;» ii) la lettera i) è così modificata: i) al punto i) il secondo trattino è sostituito dal seguente: «— quando l'emittente ha sede in un paese terzo, lo Stato membro scelto dall'emittente stesso tra gli Stati membri in cui i suoi valori mobiliari siano ammessi alla negoziazione in un mercato regolamentato. La scelta dello Stato membro d'origine resta valida a meno che l'emittente ne abbia scelto uno nuovo ai sensi del punto iii) e abbia comunicato tale scelta in conformità del secondo comma della presente lettera i);» iii) è aggiunto il punto seguente: «iii) per un emittente i cui valori mobiliari non siano più ammessi alla negoziazione in un mercato	***Articolo 1, comma 1, lettera a)*** 1. All'articolo 1, comma 1, del decreto legislativo 28 febbraio 1998, n. 58, sono apportate le seguenti modificazioni: a) la lettera w) è sostituita dalla seguente: "w)"emittenti quotati": i soggetti, italiani o esteri, inclusi i trust, che emettono strumenti finanziari quotati in un mercato regolamentato italiano. Nel caso di ricevute di deposito ammesse alle negoziazioni in un mercato regolamentato, per emittente si intende l'emittente dei valori mobiliari rappresentati, anche qualora tali valori non sono ammessi alla negoziazione in un mercato regolamentato;"; ***Articolo 1, comma 1, lettera b)*** b) alla lettera w-quater): 1) al punto 1) la parola "le" è sostituita dalla seguente: "gli" e le parole "della Comunità europea, aventi sede in Italia" sono sostituite dalle seguenti: "dell'Unione europea, aventi sede legale in Italia"; 2) al punto 2) le parole "della Comunità europea, aventi sede in Italia" sono sostituite dalle seguenti: "dell'Unione europea, aventi sede legale in Italia"; 3) il punto 3) è sostituito dal seguente: "3) gli emittenti valori mobiliari di cui ai numeri 1) e 2), aventi sede legale in uno Stato non appartenente all'Unione europea, che hanno scelto l'Italia come Stato membro d'origine tra gli Stati membri in cui i propri valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato. La scelta dello Stato membro d'origine resta valida salvo che l'emittente abbia scelto un nuovo Stato membro d'origine ai sensi del numero 5) e abbia comunicato tale scelta;"; 4) al punto 4), dopo le parole "aventi sede" è aggiunta la parola "legale", al secondo periodo le parole "come Stato membro" sono soppresse e, al terzo periodo, le parole "della Comunità europea" sono sostituite dalle seguenti:

regolamentato nello Stato membro d'origine, quale definito al punto i), secondo trattino, o al punto ii), ma siano ammessi alla negoziazione in uno o più degli altri Stati membri, il nuovo Stato membro d'origine che l'emittente può scegliere tra gli Stati membri in cui i suoi valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato e, se del caso, lo Stato membro in cui l'emittente ha la sede legale;» iv) sono aggiunti i commi seguenti: «Un emittente comunica il suo Stato membro d'origine di cui ai punti i), ii) o iii) conformemente agli articoli 20 e 21. Inoltre un emittente comunica lo Stato membro d'origine all'autorità competente dello Stato membro in cui ha, se del caso, la sede legale, all'autorità competente dello Stato membro d'origine e alle autorità competenti di tutti gli Stati membri ospitanti. Se l'emittente, quale definito al punto i), secondo trattino, o al punto ii), non comunica lo Stato membro d'origine in un periodo di tre mesi dalla data in cui i suoi valori mobiliari sono ammessi per la prima volta alla negoziazione in un mercato regolamentato, lo Stato membro d'origine è quello in cui i valori mobiliari dell'emittente sono ammessi alla negoziazione in un mercato regolamentato. Qualora i valori mobiliari dell'emittente siano ammessi alla negoziazione in mercati regolamentati situati o operanti in più Stati membri, questi ultimi sono gli Stati membri d'origine dell'emittente fino alla scelta successiva di un solo Stato membro d'origine e la relativa comunicazione da parte dell'emittente stesso. Per un emittente i cui valori mobiliari siano già ammessi alla negoziazione in un mercato regolamentato e la cui scelta dello Stato membro d'origine di cui al secondo trattino del punto i) o al punto ii) non sia stata comunicata prima del 27 novembre 2015, il periodo di tre mesi decorre dal 27 novembre 2015. Un emittente che abbia scelto lo Stato membro d'origine di cui al secondo trattino del punto i) oppure ai punti ii) o iii) e abbia comunicato tale scelta alle autorità competenti dello Stato membro d'origine prima del 27 novembre 2015 è esentato dall'obbligo di cui al secondo comma della presente lettera i), a meno che scelga un altro Stato membro d'origine dopo il 27 novembre 2015.»; iii) è aggiunta la lettera seguente: «q) "accordo formale": accordo vincolante in base al diritto applicabile.»;	"dell'Unione europea, o salvo che l'emittente, nel triennio, rientri tra gli emittenti di cui ai numeri 1), 2), 3) e 5) della presente lettera"; 5) dopo il punto 4) è inserito il seguente: "5) gli emittenti di cui ai numeri 3) e 4) i cui valori mobiliari non sono più ammessi alla negoziazione in un mercato regolamentato dello Stato membro d'origine, ma sono stati ammessi alla negoziazione in un mercato regolamentato italiano o di altri Stati membri e, se del caso, aventi sede legale in Italia oppure che hanno scelto l'Italia come nuovo Stato membro d'origine;; ***Articolo 1, comma 4*** 4. Dopo l'articolo 91 del decreto legislativo 28 febbraio 1998, n. 58, è inserito il seguente: "Art. 91-bis. 1. Nei casi previsti dall'articolo 1, comma 1, lettera w-quater), gli emittenti comunicano lo Stato membro d'origine in conformità all'articolo 113-ter e alle disposizioni adottate dalla Consob con regolamento. La medesima comunicazione è effettuata alle autorità competenti dello Stato membro in cui l'emittente ha la sede legale, ove applicabile, nonché alle autorità competenti dello Stato membro d'origine e degli Stati membri ospitanti. 2. Per gli emittenti indicati all'articolo 1,comma 1 lettera w-quater) numeri 3), 4) e 5), che non hanno effettuato la comunicazione dello Stato membro d'origine entro tre mesi dalla data in cui i valori mobiliari sono stati ammessi alla negoziazione, per la prima volta nell'Unione europea, unicamente in un mercato regolamentato italiano, lo Stato membro d'origine è l'Italia. Per gli emittenti valori mobiliari ammessi alla negoziazione in mercati regolamentati di più Stati membri, inclusa l'Italia, in assenza della comunicazione richiesta dal comma 1, sia l'Italia che tali altri Stati membri sono considerati Stato membro d'origine, fino alla successiva scelta e relativa comunicazione." ***Articolo 1, comma 5*** 5. All'articolo 93-bis, comma 1, lettera f), n. 3) del decreto legislativo 28 febbraio 1998, n. 58, le parole "2003/71/CE" sono sostituite dalle seguenti: "2013/50/UE" e le parole: "qualora lo Stato membro d'origine non fosse stato determinato da una loro scelta;" sono sostituite dalle seguenti: "nelle seguenti circostanze: a) qualora lo Stato membro d'origine non fosse stato determinato da una loro scelta, o b) ai sensi dell'articolo 2, paragrafo 1, lettera i), punto iii), della direttiva 2004/109/CE"; **Articolo 2**

b) è aggiunto il paragrafo seguente: «2 bis. Nella presente direttiva il termine "persona giuridica" comprende le associazioni di imprese registrate prive di personalità giuridica e i trust»;	**(Disposizioni transitorie e finali)** 1. Per gli emittenti valori mobiliari ammessi alla negoziazione in un mercato regolamentato italiano, che non hanno effettuato la comunicazione dello Stato membro d'origine prima del 27 novembre 2015, il periodo di tre mesi decorre dalla di entrata in vigore del presente decreto. 2. Gli emittenti di cui all'articolo 1, lettera w-quater), numeri 3), 4) e 5), del decreto legislativo 28 febbraio 1998, n. 58, che hanno scelto l'Italia quale Stato membro d'origine e hanno effettuato la comunicazione prima del 27 novembre 2015, sono esentati dall'obbligo di comunicazione, salvo che scelgano un altro Stato membro d'origine dopo tale data. 3. La Consob adegua le disposizioni contenute nei propri regolamenti ove esse siano in contrato con quanto previsto dal presente decreto e dalla direttiva 2013/50/UE.
Modifiche apportata in forza del criterio di delega previsto per il recepimento secondo cui è possibile *"prevedere, in conformità alle definizioni e alla disciplina della direttiva e ai principi e criteri direttivi di cui all'articolo 1, comma 1, le occorrenti modificazioni alla normativa vigente, anche di derivazione europea, per i settori interessati dalla direttiva da attuare, al fine di realizzare il migliore coordinamento con le altre disposizioni vigenti, e di assicurare un adeguato regime di trasparenza in materia di informazione sugli emittenti garantendo un appropriato grado di protezione dell'investitore e la più ampia tutela della stabilità finanziaria e assicurando i più adeguati obblighi di informazione e correttezza"*	***Articolo 1, comma 1, lettera c)*** c) la lettera w-quater.1) è sostituita dalla seguente: "w-quater.1) "PMI": fermo quanto previsto da altre disposizioni di legge, le piccole e medie imprese, emittenti azioni quotate, il cui fatturato anche anteriormente all'ammissione alla negoziazione delle proprie azioni, sia inferiore a 300 milioni di euro, ovvero che abbiano una capitalizzazione di mercato inferiore ai 500 milioni di euro. Non si considerano PMI gli emittenti azioni quotate che abbiano superato entrambi i predetti limiti per tre anni consecutivi. La Consob stabilisce con regolamento le disposizioni attuative della presente lettera, incluse le modalità informative cui sono tenuti tali emittenti in relazione all'acquisto ovvero alla perdita della qualifica di PMI. La Consob sulla base delle informazioni fornite dagli emittenti pubblica l'elenco delle PMI tramite il proprio sito internet".
Modifiche apportata in forza del criterio di delega previsto per il recepimento secondo cui è possibile *"prevedere, in conformità alle definizioni e alla disciplina della direttiva e ai principi e criteri direttivi di cui all'articolo 1, comma 1, le occorrenti modificazioni alla normativa vigente, anche di derivazione europea, per i settori interessati dalla direttiva da attuare, al fine di realizzare il migliore coordinamento con le altre disposizioni vigenti, e di assicurare un adeguato regime di trasparenza in materia di informazione sugli emittenti garantendo un*	***Articolo 1, commi 3, 6, 7, 8 e 9*** 3. All'articolo 64 del decreto legislativo 28 febbraio 1998, n. 58, sono apportate le seguenti modificazioni: a) al comma 1, lettera c), dopo le parole "la sospensione degli strumenti finanziari" sono aggiunte le seguenti: "dalla quotazione e dalle negoziazioni"; b) al comma 1-bis, lettera a), dopo le parole "decisioni di ammissione" sono aggiunte le seguenti: "alle negoziazioni" e dopo le parole "e di esclusione" sono aggiunte le seguenti: "dalle negoziazioni";

appropriato grado di protezione dell'investitore e la più ampia tutela della stabilità finanziaria e assicurando i più adeguati obblighi di informazione e correttezza"	c) al comma 1-ter, dopo le parole "l'ammissione, l'esclusione e la sospensione" sono aggiunte le seguenti: "dalla quotazione e". 6. All'articolo 113-ter del decreto legislativo 28 febbraio 1998, n. 58, sono apportate le seguenti modificazioni: a) al comma 1 le parole "I-bis" sono sostituite dalle seguenti: "articoli da 120 a 123"; b) al comma 3 le parole "ferma restando la necessità di pubblicazione tramite mezzi di informazione su giornali quotidiani nazionali," sono soppresse, e le parole "la Comunità" sono sostituite dalle seguenti: "l'Unione". 7. All'articolo 114, comma 1, del decreto legislativo 28 febbraio 1998, n. 58, le parole "ferma restando la necessità di pubblicazione tramite mezzi di informazione su giornali quotidiani nazionali," sono soppresse. 8. All'articolo 120, comma 2, del decreto legislativo 28 febbraio 1998, n. 58, la parola "due" è sostituita dalla seguente: "tre"; 9. All'articolo 125-bis, comma 1, del decreto legislativo 28 febbraio 1998, n. 58, le parole ", ivi inclusa la pubblicazione per estratto sui giornali quotidiani" sono soppresse.
2) l'articolo 3 è così modificato: a) il paragrafo 1 è sostituito dal seguente: «1. Lo Stato membro d'origine può assoggettare un emittente ad obblighi più severi di quelli previsti dalla presente direttiva, ma non può imporgli di pubblicare informazioni finanziarie periodiche con una frequenza maggiore rispetto alle relazioni finanziarie annuali di cui all'articolo 4 e alle relazioni finanziarie semestrali di cui all'articolo 5.»; b) è inserito il paragrafo seguente: «1 bis. In deroga al paragrafo 1, lo Stato membro d'origine può imporre agli emittenti di pubblicare informazioni finanziarie periodiche aggiuntive con una frequenza maggiore rispetto alle relazioni finanziarie annuali di cui all'articolo 4 e alle relazioni finanziarie semestrali di cui all'articolo 5, alle condizioni seguenti: — le informazioni finanziarie periodiche aggiuntive non comportano un onere finanziario sproporzionato nello Stato membro in questione, in particolare per i piccoli e medi emittenti interessati, e — il contenuto delle informazioni finanziarie periodiche aggiuntive richieste è proporzionato ai fattori che contribuiscono alle decisioni di investimento assunte dagli investitori nello Stato membro in questione. Prima di adottare la decisione che impone agli emittenti di pubblicare	***Articolo 1, comma 10, lettere d) ed e)*** d) il comma 5 è sostituito dal seguente "5. Con il regolamento di cui al comma 6, la Consob può disporre, nei confronti di emittenti aventi l'Italia come Stato membro d'origine, inclusi gli enti finanziari, l'obbligo di pubblicare informazioni finanziarie periodiche aggiuntive consistenti al più in: a) una descrizione generale della situazione patrimoniale e dell'andamento economico dell'emittente e delle sue imprese controllate nel periodo di riferimento; b) una illustrazione degli eventi rilevanti e delle operazioni che hanno avuto luogo nel periodo di riferimento e la loro incidenza sulla situazione patrimoniale dell'emittente e delle sue imprese controllate.". e) dopo il comma 5 è inserito il seguente: "5-bis. Prima dell'eventuale introduzione degli obblighi di cui al comma 5, la Consob rende pubblica l'analisi di impatto effettuata ai sensi dell'articolo 14, comma 24-quater, della legge 28 novembre 2005, n. 246. Quest'ultima, in conformità alla disciplina comunitaria di riferimento, esamina, anche in chiave comparatistica, la sussistenza delle seguenti condizioni: a) le informazioni finanziarie periodiche aggiuntive non comportano oneri sproporzionati, in particolare per i piccoli e medi emittenti interessati; b) il

informazioni finanziarie periodiche aggiuntive gli Stati membri valutano se tali requisiti aggiuntivi possono comportare un'attenzione eccessiva ai risultati e al rendimento a breve termine degli emittenti e incidere negativamente sulle possibilità di accesso dei piccoli e medi emittenti ai mercati regolamentati. Questa disposizione non pregiudica la facoltà degli Stati membri di richiedere agli emittenti che siano enti finanziari la pubblicazione di informazioni finanziarie periodiche aggiuntive. Lo Stato membro d'origine non può assoggettare un possessore di azioni, o una persona fisica o giuridica di cui agli articoli 10 e 13, ad obblighi più severi di quelli previsti dalla presente direttiva, salvo che: i) definisca soglie di notifica inferiori o aggiuntive rispetto a quelle definite all'articolo 9, paragrafo 1 ed esiga notifiche equivalenti in relazione alle soglie basate sulle quote di capitale; ii) imponga obblighi più severi rispetto a quelli previsti dall'articolo 12; o iii) applichi disposizioni legislative, regolamentari e amministrative adottate in riferimento alle offerte pubbliche di acquisto, alle operazioni di fusione che incidono sulla proprietà o sul controllo di un'impresa, che sono soggette alla vigilanza delle autorità designate dagli Stati membri in conformità all'articolo 4 della direttiva 2004/25/CE del Parlamento europeo e del Consiglio, del 21 aprile 2004, concernente le offerte pubbliche di acquisto.	contenuto delle informazioni finanziarie periodiche aggiuntive richieste è proporzionato ai fattori che contribuiscono alle decisioni di investimento assunte dagli investitori; c) le informazioni finanziarie periodiche aggiuntive richieste non favoriscono un'attenzione eccessiva ai risultati e al rendimento a breve termine degli emittenti e non incidono negativamente sulle possibilità di accesso dei piccoli e medi emittenti ai mercati regolamentati.
3) l'articolo 4 è così modificato: a) il paragrafo 1 è sostituito dal seguente: «1. L'emittente pubblica la sua relazione finanziaria annuale entro quattro mesi dopo la fine di ciascun esercizio finanziario e assicura che resti a disposizione del pubblico per almeno dieci anni.»; b) è aggiunto il paragrafo seguente: «7. A decorrere dal 1o gennaio 2020 tutte le relazioni finanziarie annuali sono predisposte in un formato elettronico unico di comunicazione, a condizione che l'Autorità europea di vigilanza (Autorità europea degli strumenti finanziari e dei mercati) (AESFEM), istituita dal regolamento (UE) n. 1095/2010 del Parlamento europeo e del Consiglio (*), abbia effettuato un'analisi costi-benefici. L'AESFEM elabora progetti di norme tecniche di regolamentazione volte a specificare il formato elettronico di comunicazione e contenenti i dovuti riferimenti alle opzioni tecnologiche attuali e future. Prima dell'adozione dei progetti di norme tecniche di regolamentazione, l'AESFEM conduce un'analisi adeguata dei possibili formati elettronici di	***Articolo 1, comma 10, lettera a)*** 10. All'articolo 154-ter del decreto legislativo 28 febbraio 1998, n. 58, sono apportate le seguenti modificazioni: a) al comma 1 le parole "centoventi giorni" sono sostituite dalla seguenti: "quattro mesi";

comunicazione e svolge opportuni test sul campo. L'AESFEM presenta alla Commissione i progetti di norme tecniche di regolamentazione entro il 31 dicembre 2016. Alla Commissione è delegato il potere di adottare le norme tecniche di regolamentazione di cui al secondo comma, in conformità agli articoli da 10 a 14 del regolamento (UE) n. 1095/2010.	
Modifiche apportata in forza del criterio di delega previsto per il recepimento secondo cui è possibile *"prevedere, in conformità alle definizioni e alla disciplina della direttiva e ai principi e criteri direttivi di cui all'articolo 1, comma 1,* le occorrenti modificazioni alla normativa vigente, anche di derivazione europea, per i settori interessati dalla direttiva da attuare, al fine di realizzare il migliore coordinamento con le altre disposizioni vigenti, e di assicurare un adeguato regime di trasparenza in materia di informazione sugli emittenti garantendo un appropriato grado di protezione dell'investitore e la più ampia tutela della stabilità finanziaria e assicurando i più adeguati obblighi di informazione e correttezza"	***Articolo 1, comma 10, lettere b), c), d) ed e)*** b) al comma 1-ter le parole: "e alla società di revisione" sono sostituite dalle seguenti: ", al revisore legale o alla società di revisione legale"; c) al comma 2 le parole: "Entro sessanta giorni dalla chiusura del primo semestre dell'esercizio, gli" sono sostituite dalla seguente: "Gli" e dopo le parole: "Stato membro d'origine pubblicano" sono inserite le seguenti: ", quanto prima possibile e comunque entro tre mesi dalla chiusura del primo semestre dell'esercizio,"; d) il comma 5 è sostituito dal seguente "5. Con il regolamento di cui al comma 6, la Consob può disporre, nei confronti di emittenti aventi l'Italia come Stato membro d'origine, inclusi gli enti finanziari, l'obbligo di pubblicare informazioni finanziarie periodiche aggiuntive consistenti al più in: a) una descrizione generale della situazione patrimoniale e dell'andamento economico dell'emittente e delle sue imprese controllate nel periodo di riferimento; b) una illustrazione degli eventi rilevanti e delle operazioni che hanno avuto luogo nel periodo di riferimento e la loro incidenza sulla situazione patrimoniale dell'emittente e delle sue imprese controllate."; e) dopo il comma 5 è inserito il seguente: "5-bis. Prima dell'eventuale introduzione degli obblighi di cui al comma 5, la Consob rende pubblica l'analisi di impatto effettuata ai sensi dell'articolo 14, comma 24-quater, della legge 28 novembre 2005, n. 246. Quest'ultima, in conformità alla disciplina comunitaria di riferimento, esamina, anche in chiave comparatistica, la sussistenza delle seguenti condizioni: a) le informazioni finanziarie periodiche aggiuntive non comportano oneri sproporzionati, in particolare per i piccoli e medi emittenti interessati; b) il contenuto delle informazioni finanziarie periodiche aggiuntive richieste è proporzionato ai fattori che contribuiscono alle decisioni di investimento assunte dagli investitori; c) le informazioni finanziarie periodiche aggiuntive richieste non

	favoriscono un'attenzione eccessiva ai risultati e al rendimento a breve termine degli emittenti e non incidono negativamente sulle possibilità di accesso dei piccoli e medi emittenti ai mercati regolamentati.”;
4) all'articolo 5, il paragrafo 1 è sostituito dal seguente: «1. L'emittente di azioni o titoli di debito pubblica una relazione finanziaria semestrale riguardante i primi sei mesi dell'esercizio finanziario, quanto prima possibile dopo la fine del semestre considerato, ma comunque entro tre mesi dalla fine di tale semestre. L'emittente provvede affinché la relazione finanziaria semestrale resti a disposizione del pubblico per almeno dieci anni.»;	***Articolo 1, comma 10, lettera c)*** c) al comma 2 le parole “Entro sessanta giorni dalla chiusura del primo semestre dell'esercizio, gli” sono sostituite dalla seguente: “Gli” e dopo le parole “Stato membro d'origine pubblicano” sono inserite le seguenti: “, quanto prima possibile e comunque entro tre mesi dalla chiusura del primo semestre dell'esercizio,”;
5) l'articolo 6 è sostituito dal seguente: «Articolo 6 Relazione sui pagamenti ai governi Gli Stati membri impongono agli emittenti operanti nell'industria estrattiva o forestale primaria, in base alla definizione fornita all'articolo 41, paragrafi 1 e 2, della direttiva 2013/34/UE del Parlamento europeo e del Consiglio, del 26 giugno 2013, relativa ai bilanci d'esercizio, ai bilanci consolidati e alle relative relazioni di talune tipologie di imprese, recante modifica della direttiva 2006/43/CE del Parlamento europeo e del Consiglio e abrogazione delle direttive 78/660/CEE e 83/349/CEE del Consiglio (*), di predisporre su base annua una relazione sui pagamenti effettuati ai governi, conformemente al capo 10 di tale direttiva. La relazione è pubblicata entro sei mesi dalla fine di ciascun esercizio finanziario e resta a disposizione del pubblico per almeno dieci anni. I pagamenti ai governi sono riportati a livello consolidato.	***Articolo 1, comma 11*** 11. Dopo l'articolo 154-ter del decreto legislativo 28 febbraio 1998, n. 58, è inserito il seguente: Art. 154-quater (Trasparenza dei pagamenti ai governi) 1. Gli emittenti quotati aventi l'Italia come Stato membro d'origine, operanti in uno dei settori di cui all'articolo 1, comma 1, lettere h) ed i), del Decreto legislativo 18 agosto 2015, n. 139, pubblicano, nel proprio sito internet e con le altre modalità previste dalla Consob con regolamento, la relazione sui pagamenti ai governi redatta in conformità alle disposizioni contenute nel Capo I del medesimo Decreto, entro sei mesi dalla data di chiusura dell'esercizio. 2. La medesima relazione resta a disposizione del pubblico per un periodo di dieci anni dalla prima pubblicazione. 3. I pagamenti ai governi sono riportati a livello consolidato.”.
6) l'articolo 8 è così modificato: a) il paragrafo 1 è sostituito dal seguente: «1. Gli articoli 4 e 5 non si applicano ai seguenti emittenti: a) Stato, autorità regionali o locali di uno Stato, organismi internazionali pubblici ai quali appartiene almeno uno Stato membro, la Banca centrale europea (BCE), il Fondo europeo di stabilità finanziaria (FESF), istituito dall'accordo quadro del FESF e qualsiasi altro meccanismo istituito con l'obiettivo di preservare la stabilità finanziaria dell'unione monetaria europea prestando un'assistenza finanziaria temporanea agli Stati membri la cui moneta è l'euro e le banche centrali nazionali degli Stati	*L'attuale articolo 100 del decreto legislativo 28 febbraio 1998, n. 58, già ottempera a quanto previsto dalla disposizione della direttiva.*

membri a prescindere dal fatto che esse emettano o meno azioni o altri valori mobiliari, e b) emittenti che emettono esclusivamente titoli di debito ammessi alla negoziazione in un mercato regolamentato il cui valore nominale unitario è di almeno 100 000 EUR, o, in caso di titoli di debito in valute diverse dall'euro, il cui valore nominale unitario, alla data dell'emissione, è equivalente almeno a 100 000 EUR.»; b) il paragrafo 4 è sostituito dal seguente: «4. In deroga al paragrafo 1, lettera b), del presente articolo, gli articoli 4 e 5 non si applicano agli emittenti che emettono esclusivamente titoli di debito il cui valore nominale unitario è di almeno 50 000 EUR o, in caso di titoli di debito in valute diverse dall'euro, il cui valore nominale unitario, alla data dell'emissione, è equivalente almeno a 50 000 EUR, che siano già stati ammessi alla negoziazione in un mercato regolamentato dell'Unione prima del 31 dicembre 2010, sino a quando tali titoli di debito siano in circolazione.»;	
7) l'articolo 9 è così modificato: a) il paragrafo 6 è sostituito dal seguente: «6. Il presente articolo non si applica ai diritti di voto detenuti nel portafoglio di negoziazione, quale definito all'articolo 11 della direttiva 2006/49/CE del Parlamento europeo e del Consiglio del 14 giugno 2006 relativa all'adeguatezza patrimoniale delle imprese di investimento e degli enti creditizi (*), di un ente creditizio o di un'impresa di investimento, purché: a) i diritti di voto detenuti nel portafoglio di negoziazione non superino il 5 %, e b) i diritti di voto inerenti alle azioni detenute nel portafoglio di negoziazione non siano esercitati né altrimenti utilizzati per intervenire nella gestione dell'emittente. b) sono inseriti i paragrafi seguenti: «6 bis. Il presente articolo non si applica ai diritti di voto inerenti ad azioni acquisite a fini di stabilizzazione in conformità del regolamento della Commissione (CE) n. 2273/2003, del 22 dicembre 2003, recante modalità di esecuzione della direttiva 2003/6/CE del Parlamento europeo e del Consiglio per quanto	*In base a quanto previsto dall'attuale articolo 120, comma 4, del decreto legislativo 28 febbraio 1998, n. 58, la Consob con regolamento (regolamento emittenti) stabilisce casi di esonero e inapplicabilità delle disposizioni in materia di comunicazione delle partecipazioni.*

riguarda la deroga per i programmi di riacquisto di azioni proprie e per le operazioni di stabilizzazione di strumenti finanziari (*), purché i diritti di voto inerenti a tali azioni non siano esercitati né altrimenti utilizzati per intervenire nella gestione dell'emittente. 6 ter. L'AESFEM elabora progetti di norme tecniche di regolamentazione per specificare il metodo di calcolo della soglia del 5 % di cui ai paragrafi 5 e 6, anche nel caso di un gruppo di società, tenendo in considerazione l'articolo 12, paragrafi 4 e 5. L'AESFEM presenta alla Commissione i progetti di norme tecniche di regolamentazione entro il 27 novembre 2014. Alla Commissione è delegato il potere di adottare le norme tecniche di regolamentazione di cui al primo comma conformemente agli articoli da 10 a 14 del regolamento (UE) n. 1095/2010.	
8) all'articolo 12, paragrafo 2, la parte introduttiva è sostituita dalla seguente: «La notifica all'emittente è effettuata tempestivamente ma comunque entro quattro giorni di negoziazione a decorrere da quello in cui l'azionista, o la persona fisica o giuridica di cui all'articolo 10,»;	*In base a quanto previsto dall'attuale articolo 120, comma 4, del decreto legislativo 28 febbraio 1998, n. 58, la Consob con regolamento (regolamento emittenti) stabilisce modalità e termini con cui le comunicazioni sono effettuate.*
9) l'articolo 13 è così modificato: a) il paragrafo 1 è sostituito dal seguente: «1. Gli obblighi di notifica previsti all'articolo 9 si applicano altresì alla persona fisica o giuridica che detiene, direttamente o indirettamente: a) strumenti finanziari che, alla scadenza, conferiscono al possessore, in virtù di un accordo formale, il diritto incondizionato ad acquisire o la facoltà di acquisire azioni, già emesse, che incorporano diritti di voto di un emittente le cui azioni sono ammesse alla negoziazione in un mercato regolamentato; b) strumenti finanziari che non sono inclusi nella lettera a), ma che sono collegati alle azioni di cui alla suddetta lettera e che hanno un effetto economico simile a quello degli strumenti finanziari di cui alla suddetta lettera, che diano o meno diritto a regolamento fisico. La notifica richiesta include la ripartizione per tipo di strumento finanziario detenuto conformemente al primo comma, lettera a), e per strumento finanziario detenuto conformemente alla lettera b) di tale comma, distinguendo tra strumenti finanziari che danno diritto a regolamento fisico e strumenti finanziari che danno diritto a regolamento in contanti.»; b) sono inseriti i paragrafi seguenti: «1 bis. Il numero di diritti di voto è calcolato in base all'intero importo nozionale delle azioni sottostanti allo	*In base a quanto previsto dall'attuale articolo 120, comma 4, del decreto legislativo 28 febbraio 1998, n. 58, la Consob con regolamento (regolamento emittenti) procede a determinare le partecipazioni potenziali ed i criteri di calcolo del numero dei diritti di voto;*

strumento finanziario, eccetto nel caso in cui lo strumento finanziario preveda esclusivamente il regolamento in contanti, nel qual caso il numero dei diritti di voto è calcolato mediante aggiustamento in base ad un coefficiente delta, moltiplicando l'importo nozionale delle azioni sottostanti per il coefficiente delta dello strumento. A tale scopo, il possessore aggrega e notifica tutti gli strumenti finanziari riguardanti lo stesso emittente sottostante. Per il calcolo dei diritti di voto, sono prese in considerazione soltanto le posizioni lunghe. Le posizioni lunghe non sono compensate con le posizioni corte relative allo stesso emittente sottostante. L'AESFEM elabora progetti di norme tecniche di regolamentazione per specificare: a) il metodo per calcolare il numero di diritti di voto, di cui al primo comma, nel caso di strumenti finanziari collegati ad un paniere di azioni o ad un indice, e b) i metodi per determinare il coefficiente delta ai fini del calcolo dei diritti di voto collegati a strumenti finanziari che prevedono esclusivamente il regolamento in contanti come stabilito dal primo comma. L'AESFEM presenta alla Commissione i progetti di norme tecniche di regolamentazione entro il 27 novembre 2014. Alla Commissione è delegato il potere di adottare le norme tecniche di regolamentazione di cui al secondo comma del presente paragrafo, in conformità agli articoli da 10 a 14 del regolamento (UE) n. 1095/2010. 1 ter Ai fini del paragrafo 1 sono considerati strumenti finanziari, purché soddisfino le condizioni di cui al paragrafo 1, primo comma, lettere a) o b): a) i valori mobiliari; b) i contratti di opzione; c) i contratti finanziari a termine standardizzati (future); d) gli swaps; e) gli accordi per scambi futuri sui tassi di interesse; f) i contratti per differenza; e g) altri contratti o accordi con effetti economici simili regolabili fisicamente o in contanti. L'AESFEM elabora e aggiorna periodicamente un elenco indicativo di strumenti finanziari soggetti agli obblighi di notifica di cui al paragrafo 1, tenendo conto degli sviluppi tecnici nei mercati finanziari.»; c) il paragrafo 2 è sostituito dal seguente: «2. La Commissione è autorizzata ad adottare, mediante atti delegati conformemente all'articolo 27, paragrafi 2 bis, 2 ter e 2 quater, e alle condizioni stabilite dagli articoli 27 bis e 27 ter, le misure atte a specificare i contenuti della notifica da effettuare, il periodo di notifica e	*Disposizione che non necessita di recepimento in quanto riguarda l'AEFSM (ESMA)*

i soggetti a cui deve essere effettuata come disposto al paragrafo 1.»; d) è aggiunto il paragrafo seguente: «4. Le esenzioni di cui all'articolo 9, paragrafi 4, 5 e 6, e all'articolo 12, paragrafi 3, 4 e 5, si applicano mutatis mutandis agli obblighi di notifica di cui al presente articolo. L'AESFEM elabora progetti di norme tecniche di regolamentazione per specificare i casi in cui le esenzioni di cui al primo comma si applicano agli strumenti finanziari detenuti da una persona fisica o giuridica che esegue ordini ricevuti dai clienti, che risponde alle richieste del cliente di negoziare a titolo non proprietario, o che copre le posizioni derivate da tali operazioni. L'AESFEM presenta alla Commissione i progetti di norme tecniche di regolamentazione entro il 27 novembre 2014. Alla Commissione è delegato il potere di adottare le norme tecniche di regolamentazione di cui al secondo comma del presente paragrafo, in conformità agli articoli da 10 a 14 del regolamento (UE) n. 1095/2010.»;	
10) è inserito l' articolo seguente: «Articolo 13 bis Aggregazione 1. Gli obblighi di notifica di cui agli articoli 9, 10 e 13 si applicano anche a una persona fisica o giuridica quando il numero dei diritti di voto detenuti direttamente o indirettamente da tale persona ai sensi degli articoli 9 e 10, aggregato al numero dei diritti di voto relativi agli strumenti finanziari detenuti direttamente o indirettamente ai sensi dell'articolo 13, raggiunge, supera o scende al di sotto della soglia definita all'articolo 9, paragrafo 1. La notifica richiesta in base al primo comma del presente paragrafo include la ripartizione del numero dei diritti di voto inerenti alle azioni detenute in conformità degli articoli 9 e 10 e dei diritti di voto collegati agli strumenti finanziari ai sensi dell'articolo 13. 2. I diritti di voto collegati agli strumenti finanziari che sono già stati notificati in conformità dell'articolo 13 sono nuovamente oggetto di notifica laddove la persona fisica o giuridica abbia acquisito le azioni sottostanti e da tale acquisizione ne consegua che il numero totale di diritti di voto inerenti alle azioni emesse dallo stesso emittente raggiunga o superi le soglie stabilite dall'articolo 9, paragrafo 1.»;	*In base a quanto previsto dall'attuale articolo 120, comma 4, del decreto legislativo 28 febbraio 1998, n. 58, la Consob con regolamento (regolamento emittenti) determina le modalità con cui procedere all' aggregazione dei diritti di voto inerenti alle azioni e agli strumenti finanziari detenuti.*
11) all'articolo 16, il paragrafo 3 è soppresso;	

12) all'articolo 19, paragrafo 1, il secondo comma è soppresso;	
13) l'articolo 21, paragrafo 4, è sostituito dal seguente: «4. La Commissione ha il potere di adottare, mediante atti delegati in conformità dell'articolo 27, paragrafi 2 bis, 2 ter e 2 quater, e alle condizioni stabilite dagli articoli 27 bis e 27 ter, misure atte a specificare: a) standard minimi per la diffusione delle informazioni previste dalla regolamentazione di cui al paragrafo 1; b) standard minimi per i meccanismi di stoccaggio centrale di cui al paragrafo 2; c) regole per assicurare l'interoperabilità delle tecnologie dell'informazione e della comunicazione utilizzate dai meccanismi di cui al paragrafo 2 e l'accesso alle informazioni previste dalla regolamentazione a livello dell'Unione di cui al medesimo paragrafo. La Commissione può altresì stilare e aggiornare un elenco di mezzi di comunicazione per la diffusione delle informazioni al pubblico.»;	*Disposizione che non necessita di recepimento in quanto riguarda la definizione di standard tecnici da parte della Commissione.*
14) è inserito l'articolo seguente: «Articolo 21 bis Punto di accesso elettronico europeo 1. Entro il 1o gennaio 2018 è istituito un portale che funge da punto di accesso elettronico europeo («il punto di accesso»). L'AESFEM predispone e gestisce il punto di accesso. 2. Il sistema di interconnessione dei meccanismi designati ufficialmente è composto: — dai meccanismi di cui all'articolo 21, paragrafo 2; — dal portale, che funge da punto di accesso elettronico europeo. 3. Gli Stati membri garantiscono l'accesso ai rispettivi meccanismi di stoccaggio centrale tramite il punto di accesso.»;	*Disposizione che non necessita di recepimento in quanto riguarda l'AEFSM (ESMA)*
15) l'articolo 22 è sostituito dal seguente: «Articolo 22 Accesso alle informazioni previste dalla regolamentazione a livello dell'Unione 1. L'AESFEM elabora progetti di norme tecniche di regolamentazione che definiscono alcuni requisiti tecnici in merito all'accesso alle informazioni previste dalla regolamentazione a livello dell'Unione, così da specificare quanto segue: a) i requisiti tecnici relativi alle tecnologie della comunicazione utilizzate dai meccanismi di cui all'articolo 21, paragrafo 2; b) i requisiti tecnici per il funzionamento del punto di accesso centrale	*Disposizione che non necessita di recepimento in quanto riguarda l'AEFSM (ESMA)*

per la ricerca di informazioni previste dalla regolamentazione a livello dell'Unione; c) i requisiti tecnici relativi all'utilizzo di un identificativo unico per ciascun emittente da parte dei meccanismi di cui all'articolo 21, paragrafo 2; d) un formato standard per la trasmissione delle informazioni previste dalla regolamentazione da parte dei meccanismi di cui all'articolo 21, paragrafo 2; e) una classificazione comune delle informazioni previste dalla regolamentazione da parte dei meccanismi di cui all'articolo 21, paragrafo 2 ed un elenco comune dei tipi di informazioni previste dalla regolamentazione. 2. All'atto dell'elaborazione dei progetti di norme tecniche di regolamentazione, l'AESFEM tiene conto dei requisiti tecnici per il sistema di interconnessione dei registri delle imprese istituito dalla direttiva 2012/17/UE del Parlamento europeo e del Consiglio. L'AESFEM presenta alla Commissione i progetti di norme tecniche di regolamentazione entro il 27 novembre 2015. Alla Commissione è delegato il potere di adottare le norme tecniche di regolamentazione di cui al primo comma del presente paragrafo, in conformità agli articoli da 10 a 14 del regolamento (UE) n. 1095/2010.	
16) all'articolo 23, paragrafo 1, è aggiunto il comma seguente: «Le informazioni da fornire in base alle disposizioni previste dal paese terzo sono depositate conformemente all'articolo 19 e comunicate conformemente agli articoli 20 e 21.»;	*L'attuale articolo 113 del decreto legislativo 28 febbraio 1998, n. 58, già ottempera a quanto previsto dalla disposizione della direttiva.*
17) all'articolo 24 sono inseriti i paragrafi seguenti: «4 bis. Fatto salvo il paragrafo 4, alle autorità competenti sono conferiti tutti i poteri di indagine necessari per l'esercizio delle loro funzioni. Tali poteri sono esercitati in conformità della legislazione nazionale. 4 ter. Le autorità competenti esercitano i loro poteri sanzionatori, conformemente alla presente direttiva e al diritto nazionale, in una qualsiasi delle forme seguenti: — direttamente, — in collaborazione con altre autorità,	*L'attuale articolo 4 del decreto legislativo 28 febbraio 1998, n. 58, già ottempera a quanto previsto dalla disposizione della direttiva.*

— sotto la propria responsabilità mediante delega a tali autorità, — rivolgendosi alle competenti autorità giudiziarie.»;	
18) all'articolo 25, paragrafo 2, è aggiunto il comma seguente: «Nell'esercizio dei poteri sanzionatori e di indagine, le autorità competenti cooperano per assicurare che le sanzioni o le misure producano i risultati voluti e coordinano la loro azione nei casi transfrontalieri.»;	*L'attuale articolo 4 del decreto legislativo 28 febbraio 1998, n. 58, già ottempera a quanto previsto dalla disposizione della direttiva.*
19) dopo l'articolo 27 ter è inserito il titolo seguente: «CAPO VI BIS SANZIONI E MISURE»; 20) l'articolo 28 è sostituito dal seguente: «Articolo 28 Misure e sanzioni amministrative 1. Fatti salvi i poteri delle autorità competenti conformemente all'articolo 24 e il diritto degli Stati membri di prevedere e imporre sanzioni penali, gli Stati membri stabiliscono norme in materia di misure e sanzioni amministrative applicabili alle violazioni delle disposizioni nazionali di recepimento della presente direttiva e prendono tutte le misure necessarie per assicurare che siano attuate. Le misure e le sanzioni amministrative sono efficaci, proporzionate e dissuasive. 2. Fatto salvo l'articolo 7, gli Stati membri assicurano che in caso di violazione degli obblighi a carico di persone giuridiche possano essere applicate, alle condizioni previste dalla normativa nazionale, sanzioni ai membri degli organi amministrativi, di gestione o di sorveglianza e di controllo della persona giuridica e interessata ad altri soggetti responsabili della violazione ai sensi della normativa nazionale.»; 21) sono inseriti gli articoli seguenti: «Articolo 28 bis Violazioni L'articolo 28 ter si applica almeno alle seguenti violazioni: a) mancata pubblicazione da parte dell'emittente, entro il termine richiesto, delle informazioni di cui alle disposizioni nazionali adottate in recepimento degli articoli 4, 5, 6, 14 e 16; b) mancata notifica, entro il termine richiesto, da parte della persona fisica o giuridica dell'acquisizione o della cessione di partecipazioni rilevanti conformemente alle disposizioni nazionali	***Articolo 1, comma 12*** 12. All'articolo 192-bis del decreto legislativo 28 febbraio 1998, n. 58, sono apportate le seguenti modificazioni: a) il comma 1 è sostituito dal seguente: "1. Salvo che il fatto costituisca reato, nei confronti delle società quotate nei mercati regolamentati che omettono le comunicazioni prescritte dall'articolo 123-bis, comma 2, lettera a), si applicano le seguenti misure e sanzioni amministrative: a) una dichiarazione pubblica indicante la persona giuridica responsabile della violazione e la natura della stessa; b) un ordine di eliminare le infrazioni contestate, con eventuale indicazione delle misure da adottare e del termine per l'adempimento, e di astenersi dal ripeterle, quando le infrazioni stesse siano connotate da scarsa offensività o pericolosità; c) una sanzione amministrativa pecuniaria da euro diecimila a euro dieci milioni, ovvero, se superiore, fino al cinque per cento del fatturato complessivo annuo."; b) il comma 1-bis è sostituito dal seguente: "1-bis. Per l'omissione delle comunicazioni indicate al comma 1, nei casi previsti dall'articolo 190-bis, comma 1, lettera a), salvo che il fatto costituisca reato, nei confronti dei soggetti che svolgono funzioni di amministrazione, di direzione o di controllo, nonché del personale, qualora la loro condotta abbia contribuito a determinare l'omissione delle comunicazioni da parte della società o dell'ente, si applicano le seguenti misure e sanzioni amministrative: a) una dichiarazione pubblica indicante la persona responsabile della violazione e la natura della stessa; b) un ordine di eliminare le infrazioni contestate, con eventuale indicazione delle misure da adottare e del termine per l'adempimento, e di astenersi dal ripeterle,

adottate in recepimento degli articoli 9, 10, 12, 13 e 13 bis. Articolo 28 ter Poteri sanzionatori 1. Nel caso di violazioni di cui all'articolo 28 bis, le autorità competenti hanno facoltà di imporre almeno le misure e sanzioni amministrative seguenti: a) una dichiarazione pubblica indicante la persona fisica o giuridica responsabile e la natura della violazione; b) un ordine che impone alla persona fisica o giuridica responsabile di porre termine al comportamento costituente la violazione e di astenersi dal ripeterlo; c) sanzioni amministrative pecuniarie: i) nel caso di persona giuridica: — fino a 10 000 000 EUR o fino al 5 % del fatturato complessivo annuo in base agli ultimi conti annuali disponibili approvati dall'organo di amministrazione; se la persona giuridica è un'impresa madre o una impresa figlia di un'impresa madre che deve presentare conti consolidati ai sensi della direttiva 2013/34/UE, il fatturato complessivo da considerare è il fatturato complessivo annuo, o il tipo di reddito corrispondente ai sensi delle pertinenti direttive contabili, risultante nell'ultimo conto annuale consolidato disponibile approvato dall'organo di gestione dell'impresa capogruppo, o — fino al doppio dell'ammontare dei profitti ricavati o delle perdite evitate grazie alla violazione, ove possano essere determinati, se superiore; ii) nel caso di persona fisica: — fino a 2 000 000 EUR; o — fino al doppio dell'ammontare dei profitti ricavati o delle perdite evitate grazie alla violazione, ove possano essere determinati, se superiore. Negli Stati membri la cui moneta ufficiale non è l'euro il valore in valuta nazionale corrispondente all'importo in euro è calcolato in base al tasso di cambio ufficiale alla data di entrata in vigore della direttiva 2013/50/UE del Parlamento europeo e del Consiglio del 22 ottobre 2013 recante modifica della direttiva 2004/109/CE del Parlamento europeo e del Consiglio, sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato, la direttiva 2003/71/CE del Parlamento europeo e del Consiglio, relativa al prospetto da pubblicare	quando le infrazioni stesse siano connotate da scarsa offensività o pericolosità; c) una sanzione amministrativa pecuniaria da euro diecimila a euro due milioni."; c) dopo il comma 1-ter è aggiunto il seguente: "1-quater. Nei casi di inosservanza dell'ordine di eliminare le infrazioni contestate e di astenersi dal ripeterle, si applica la sanzione amministrativa pecuniaria prevista per la violazione originariamente contestata aumentata fino ad un terzo. Fermo restando quanto previsto per le persone giuridiche nei confronti delle quali è accertata l'inosservanza dell'ordine, si applica la sanzione amministrativa pecuniaria da euro diecimila a euro due milioni nei confronti dei soggetti che svolgono funzioni di amministrazione, di direzione o di controllo, nonché del personale, qualora la loro condotta abbia contribuito a determinare l'inosservanza dell'ordine da parte della persona giuridica.". ***Articolo 1, comma 13*** 13. All'articolo 193 del decreto legislativo 28 febbraio 1998, n. 58, sono apportate le seguenti modificazioni: a) il comma 1 è sostituito dal seguente: "1. . Salvo che il fatto costituisca reato, nei confronti di società, enti o associazioni tenuti a effettuare le comunicazioni previste dagli articoli 114, 114-bis, 115, 154-bis, 154-ter e 154-quater, o soggetti agli obblighi di cui all'articolo 115-bis per l'inosservanza delle disposizioni degli articoli medesimi o delle relative disposizioni attuative, si applicano le seguenti misure e sanzioni amministrative: a) una dichiarazione pubblica indicante la persona giuridica responsabile della violazione e la natura della stessa; b) un ordine di eliminare le infrazioni contestate, con eventuale indicazione delle misure da adottare e del termine per l'adempimento, e di astenersi dal ripeterle, quando le infrazioni stesse siano connotate da scarsa offensività o pericolosità; c) una sanzione amministrativa pecuniaria da euro cinquemila a euro dieci milioni, o se superiore fino al cinque per cento del fatturato complessivo annuo."; b) dopo il comma 1 sono inseriti i seguenti: "1.1. Se le comunicazioni indicate nel comma 1 sono dovute da una persona fisica, salvo che il fatto costituisca reato, in caso di violazione si applicano nei confronti di quest'ultima, salvo che ricorra la causa di esenzione prevista dall'articolo 114, comma 10, le seguenti misure e

per l'offerta pubblica o l'ammissione alla negoziazione di strumenti finanziari, e la direttiva 2007/14/CE della Commissione, che stabilisce le modalità di applicazione di talune disposizioni della direttiva 2004/109/CE (*). 2. Fatti salvi i poteri delle autorità competenti a norma dell'articolo 24 e il diritto degli Stati membri di imporre sanzioni penali, gli Stati membri assicurano che le disposizioni legislative, regolamentari ed amministrative nazionali prevedano la possibilità di sospendere l'esercizio dei diritti di voto inerenti alle azioni in caso di violazioni di cui all'articolo 28 bis, lettera b). Gli Stati membri possono disporre che la sospensione dei diritti di voto debba applicarsi soltanto alle violazioni più gravi. 3. Gli Stati membri possono introdurre sanzioni o misure aggiuntive o sanzioni amministrative pecuniarie di livello superiore rispetto a quelle previste dalla presente direttiva.	sanzioni amministrative: a) una dichiarazione pubblica indicante la persona responsabile della violazione e la natura della stessa; b) un ordine di eliminare le infrazioni contestate, con eventuale indicazione delle misure da adottare e del termine per l'adempimento, e di astenersi dal ripeterle, quando le infrazioni stesse siano connotate da scarsa offensività o pericolosità; c) una sanzione amministrativa pecuniaria da euro cinquemila a euro due milioni. 1.2. Per le violazioni indicate nel comma 1, nei confronti dei soggetti che svolgono funzioni di amministrazione, di direzione o di controllo, nonché del personale, qualora la loro condotta abbia contribuito a determinare dette violazioni da parte della persona giuridica si applicano, nei casi previsti dall'articolo 190-bis, comma 1, lettera a), le sanzioni amministrative previste dal comma 1.1."; c) al comma 1-quater le parole: "La stessa sanzione di cui al comma 1 è applicabile" sono sostituite dalle seguenti: "Le stesse sanzioni indicate ai commi 1, 1.1 e 1.2 si applicano"; d) il comma 2 è sostituito dal seguente: "2. Salvo che il fatto costituisca reato, nei casi di omissione delle comunicazioni delle partecipazioni rilevanti e dei patti parasociali previste, rispettivamente dagli articoli 120, commi 2, 2-bis e 4, e 122, commi 1, 2 e 5, nonché di violazione dei divieti previsti dagli articoli 120, comma 5, 121, commi 1 e 3, e 122, comma 4, nei confronti di società, enti o associazioni, si applicano le seguenti misure e sanzioni amministrative: a) una dichiarazione pubblica indicante il soggetto responsabile della violazione e la natura della stessa; b) un ordine di eliminare le infrazioni contestate, con eventuale indicazione delle misure da adottare e del termine per l'adempimento, e di astenersi dal ripeterle, quando le infrazioni stesse siano connotate da scarsa offensività o pericolosità; c) una sanzione amministrativa pecuniaria da euro diecimila a euro dieci milioni, o, se superiore, fino al cinque per cento del fatturato complessivo annuo."; e) dopo il comma 2 sono inseriti i seguenti: "2.1. Salvo che il fatto costituisca reato, ove le comunicazioni indicate nel comma 2 sono dovute da una persona fisica, in caso di violazione si applicano le seguenti misure e sanzioni amministrative: a) una dichiarazione pubblica indicante la persona responsabile della violazione e la natura della stessa; b) un ordine di eliminare le infrazioni contestate, con eventuale indicazione delle misure da adottare e del termine per l'adempimento, e di astenersi dal ripeterle,

Articolo 28 quater Esercizio dei poteri sanzionatori 1. Gli Stati membri assicurano che, nello stabilire il tipo e il livello di sanzione o misura amministrativa, le autorità competenti tengano conto di tutte le circostanze pertinenti tra cui, se del caso: a) la gravità e la durata della violazione; b) il grado di responsabilità della persona fisica o giuridica responsabile; c) la capacità finanziaria della persona fisica o giuridica responsabile, ad esempio quale risulta dal fatturato complessivo della persona giuridica responsabile o dal reddito annuo della persona fisica responsabile; d) l'importanza dei profitti realizzati o delle perdite evitate da parte della persona fisica o giuridica responsabile, nella misura in cui possano essere determinati; e) le perdite subite dai terzi a causa della violazione, nella misura in cui possano essere determinate; f) il livello di cooperazione della persona fisica o giuridica responsabile con l'autorità competente; g) precedenti violazioni da parte della persona fisica o giuridica responsabile. 2. Il trattamento di dati personali raccolti nell'esercizio dei poteri di vigilanza e di indagine ai sensi della presente direttiva è effettuato a norma della direttiva 95/46/CE e del regolamento (CE) n. 45/2001 a seconda dei casi.	quando le infrazioni stesse siano connotate da scarsa offensività o pericolosità; c) una sanzione amministrativa pecuniaria da euro diecimila a euro due milioni. 2.2. Per le violazioni indicate nel comma 2, nei confronti dei soggetti che svolgono funzioni di amministrazione, di direzione o di controllo, nonché del personale, qualora la loro condotta abbia contribuito a determinare dette violazioni da parte della persona giuridica si applicano, nei casi previsti dall'articolo 190-bis, comma 1, lettera a), le sanzioni amministrative previste dal comma 2.1. 2.3. Nei casi di ritardo delle comunicazioni previste dall'articolo 120, commi 2, 2-bis e 4, non superiore a due mesi, l'importo minimo edittale delle sanzioni amministrative pecuniarie indicate nei commi 2 e 2.1 è pari a euro cinquemila. 2.4. Se il vantaggio ottenuto dall'autore della violazione come conseguenza della violazione stessa è superiore ai limiti massimi edittali indicati nei commi 1, 1.1, 2 e 2.1, del presente articolo, la sanzione amministrativa pecuniaria è elevata fino al doppio dell'ammontare del vantaggio ottenuto, purché tale ammontare sia determinabile."; f) il comma 2-bis è soppresso; g) al comma 3 le parole: "La sanzione indicata nel comma 2, primo periodo, si" sono sostituite dalle seguenti: "Si applica la sanzione amministrativa pecuniaria da euro diecimila a euro un milione e cinquecentomila"; h) dopo il comma 3-ter è aggiunto il seguente: "3-quater. Nel caso di violazione degli ordini previsti dal presente articolo si applica l'articolo 192-bis, comma 1-quater.". ***Articolo 1, commi 15, 16 e 17*** 15. All'articolo 194-quater, comma 1, del decreto legislativo 28 febbraio 1998, n. 58, le parole "115-bis" sono soppresse. 16. All'articolo 194-quinquies, comma 1, lettera c), del decreto legislativo 28 febbraio 1998, n. 58, le parole "comma 1," sono sostituite dalle seguenti: "commi 1, 1.1 e 1.2," e le parole "comma 2" sono sostituite dalle seguenti: "commi 2, 2.1, 2.2 e 2.3,". 17. All'articolo 195-bis, comma 1, primo periodo, del decreto legislativo 28 febbraio 1998, n. 158, le parole "nel Bollettino" sono soppresse e dopo le parole "della Consob" sono inserite le seguenti: ", in conformità alla normativa europea di riferimento.".

	L'art. 194-*bis del decreto legislativo 28 febbraio 1998, n. 58, già ottempera a quanto previsto dalla disposizione della direttiva.*
22) dopo l'articolo 29 è inserito il titolo seguente: «CAPO VI TER PUBBLICAZIONE DELLE DECISIONI»; 23) l'articolo 29 è sostituito dal seguente: «Articolo 29 Pubblicazione delle decisioni 1. Gli Stati membri dispongono che le autorità competenti pubblichino, senza indugio, ogni decisione sulle sanzioni o le misure adottate per una violazione della presente direttiva, fornendo almeno informazioni sul tipo e la natura della violazione e l'identità delle persone fisiche o giuridiche responsabili. Nondimeno, le autorità competenti possono ritardare la pubblicazione di una decisione o pubblicarla in forma anonima in maniera conforme alla normativa nazionale in uno dei seguenti casi: a) qualora, nel caso di una sanzione applicata a una persona fisica, una valutazione preventiva obbligatoria della proporzionalità di tale pubblicazione accerti che la pubblicazione dei dati personali è sproporzionata; b) qualora la pubblicazione metta gravemente a repentaglio la stabilità del sistema finanziario o un'indagine ufficiale in corso; c) qualora la pubblicazione sia tale da arrecare, nella misura in cui ciò si possa determinare, danni gravi e sproporzionati agli enti o alle persone coinvolte. 2. Se la decisione pubblicata di cui al paragrafo 1 è oggetto di ricorso, l'autorità competente ha l'obbligo di includere informazioni in tal senso nella pubblicazione all'atto della pubblicazione stessa, ovvero a modificare la pubblicazione se il ricorso è presentato dopo la pubblicazione iniziale.»;	***Articolo 1, commi 14 e 17*** 13. All'articolo 195-bis, comma 1, primo periodo, del decreto legislativo 28 febbraio 1998, n. 158, le parole "nel Bollettino" sono soppresse e dopo le parole "della Consob" sono inserite le seguenti: ", in conformità alla normativa europea di riferimento.". 14. All'articolo 194-bis, comma 1, del decreto legislativo 28 febbraio 1998, n. 58, dopo le parole "Nella determinazione" sono inserite le seguenti: "del tipo e".
24) l'articolo 31, paragrafo 2, è sostituito dal seguente: «2. Gli Stati membri che adottano misure conformemente all'articolo 3, paragrafo 1, all'articolo 8, paragrafi 2 o 3, o all'articolo 30, le comunicano immediatamente alla Commissione e agli altri Stati membri.»	
Articolo 2 Modifiche della direttiva 2003/71/CE La direttiva 2003/71/CE è così modificata: all'articolo 2, paragrafo 1, lettera m), il punto iii) è sostituito dal seguente: «iii) per tutti gli emittenti di strumenti finanziari	***Articolo 1, comma 5*** 5. All'articolo 93-bis, comma 1, lettera f), n. 3) del decreto legislativo 28 febbraio 1998, n. 58, le parole "2003/71/CE" sono sostituite dalle seguenti: "2013/50/UE" e le parole: "qualora lo Stato membro d'origine non fosse stato

che non sono menzionati nel punto ii) aventi sede in un paese terzo, lo Stato membro nel quale gli strumenti finanziari sono destinati ad essere offerti al pubblico per la prima volta dopo la data di entrata in vigore della direttiva 2013/50/UE del Parlamento europeo e del Consiglio del 22 ottobre 2013 recante modifica della direttiva 2004/109/CE del Parlamento europeo e del Consiglio, sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato, la direttiva 2003/71/CE del Parlamento europeo e del Consiglio, relativa al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di strumenti finanziari, e la direttiva 2007/14/CE della Commissione, che stabilisce le modalità di applicazione di talune disposizioni della direttiva 2004/109/CE (*) o nel quale è stata presentata la prima domanda di ammissione alla negoziazione in un mercato regolamentato a scelta dell'emittente, dell'offerente o della persona che chiede l'ammissione, secondo il caso, salvo scelta successiva da parte degli emittenti aventi sede in un paese terzo nelle circostanze seguenti: — qualora lo Stato membro d'origine non fosse stato determinato da una loro scelta, o — ai sensi dell'articolo 2, paragrafo 1, lettera i), punto iii), della direttiva 2044/109/CE del Parlamento europeo e del Consiglio, del 15 dicembre 2004, sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato.	determinato da una loro scelta;" sono sostituite dalle seguenti: "nelle seguenti circostanze: a) qualora lo Stato membro d'origine non fosse stato determinato da una loro scelta, o b) ai sensi dell'articolo 2, paragrafo 1, lettera i), punto iii), della direttiva 2004/109/CE";
Articolo 3 Modifiche della direttiva 2007/14/CE La direttiva 2007/14/CE è così modificata: 1) l'articolo 2 è soppresso; 2) all'articolo 11, i paragrafi 1 e 2 sono soppressi; 3) l'articolo 16 è soppresso.	
Articolo 4 Recepimento 1. Gli Stati membri mettono in vigore le disposizioni legislative, regolamentari e amministrative necessarie per conformarsi alla presente direttiva entro un termine di 24 mesi dalla data della sua entrata in	

vigore. Essi ne informano immediatamente la Commissione. Le disposizioni adottate dagli Stati membri contengono un riferimento alla presente direttiva o sono corredate di tale riferimento all'atto della pubblicazione ufficiale. Le modalità del riferimento sono stabilite dagli Stati membri. 2. Gli Stati membri comunicano alla Commissione il testo delle disposizioni fondamentali di diritto interno che adottano nel settore disciplinato dalla presente direttiva.	
Articolo 5 Riesame Entro il 27 novembre 2015, la Commissione riferisce al Parlamento europeo e al Consiglio in merito al funzionamento della presente direttiva, anche per quanto riguarda l'impatto sui piccoli e medi emittenti e sull'applicazione delle sanzioni, ed in particolare se esse siano o meno efficaci, proporzionate e dissuasive, e riesamina il funzionamento e valuta l'efficacia del metodo adottato per il calcolo del numero dei diritti di voto relativi agli strumenti finanziari di cui alla direttiva 2004/109/CE, articolo 13, paragrafo 1 bis, primo comma. La relazione è trasmessa, se del caso, unitamente a una proposta legislativa.	
Articolo 6 Entrata in vigore La presente direttiva entra in vigore il ventesimo giorno successivo alla pubblicazione nella Gazzetta ufficiale dell'Unione europea.	
Articolo 7 Destinatari Gli Stati membri sono destinatari della presente direttiva. Fatto a Strasburgo, il 22 ottobre 2013	

Relazione Tecnica

(Articolo 17, comma 3, della legge 31 dicembre 2009, n. 196.)

Schema di decreto legislativo recante attuazione della direttiva 2013/50/UE del Parlamento europeo e del Consiglio del 22 ottobre 2013, recante modifica della direttiva 2004/109/CE del Parlamento europeo e del Consiglio, sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato, la direttiva 2003/71/CE del Parlamento europeo e del Consiglio, relativa al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di strumenti finanziari, e la direttiva 2007/14/CE della Commissione, che stabilisce le modalità di applicazione di talune disposizioni della direttiva 2004/109/CE.

Il Governo, tramite uno o più decreti legislativi, è autorizzato a recepire la direttiva 2013/50/UE ai sensi di quanto previsto dalla legge 9 luglio 2015, n. 114, (legge di delegazione europea 2014), in particolare dall'articolo 1, commi 1 e 3, dall'articolo 5 che reca criteri di delega specifici, e dall'allegato B, recante delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea.

La direttiva 2013/50/UE modifica la direttiva 2004/109/CE, relativa all'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti valori mobiliari negoziati in mercati regolamentati, la direttiva 2007/14/CE che delle precedente stabilisce alcune modalità di applicazione e, infine, per finalità di opportuno, la direttiva 2003/71/CE relativa ai prospetti oggetto di pubblicazione in caso di amissione alla negoziazione di strumenti finanziari o loro offerta pubblica.

Descrizione dell'articolato e degli eventuali impatti sugli equilibri di finanza pubblica.

Tutte le modifiche e le innovazioni apportate dallo schema di decreto legislativo in esame hanno natura meramente procedurale o ordinamentale. Le disposizioni, pertanto, non comportano nuovi o maggiori oneri a carico della finanza pubblica. Alla presente relazione tecnica non è pertanto allegato il prospetto riepilogativo degli effetti finanziari ai fini del saldo netto da finanziare del

bilancio dello Stato, del saldo di cassa delle amministrazioni pubbliche e dell'indebitamento netto del conto consolidato delle pubbliche amministrazioni. Per le stesse motivazioni, non è indicato l'effetto che le disposizioni producono su precedenti autorizzazioni di spesa.

Il decreto consta di tre articoli, di cui il primo contenente le modifiche al decreto legislativo 28 febbraio 1998, n. 58 (TUF), necessarie ad attuare quanto disposto dalla direttiva, il secondo le disposizioni di natura transitoria e finale atte a coordinare l'efficacia e l'entrata in vigore delle novelle con il regime vigente e il terzo, infine, reca la clausola di invarianza finanziaria.

L'articolo 1 (Modifiche al decreto legislativo 28 febbraio 1998, n. 58) reca le disposizioni necessarie ad allineare il contenuto del TUF alle innovazioni apportate dalla direttiva 2013/50/UE.

Il comma 1 apporta modifiche all'articolo 1, comma 1, del TUF, nello specifico all'impianto definitorio.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 2 modifica l'articolo del TUF al fine di separare tra loro le fasi di ammissione alla quotazione e alla negoziazione, delineando due processi distinti.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 3 modifica l'articolo 64 del TUF in modo da coordinarne il contenuto con quello dell'articolo 62 così come innovato dal comma precedente.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 4 introduce il nuovo articolo 91-bis nel TUF, nel quale sono disciplinate le modalità con cui gli emittenti comunicano alla Consob la propria scelta dell'Italia quale Stato membro di origine.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 5 modifica l'articolo 93-bis, comma 1, lettera f), n3) del TUF al fine di coordinarne il contenuto con le innovazioni apportate in materia di scelta e comunicazione dello Stato membro di origine.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 6 modifica l'articolo 113-ter del TUF, eliminando dal novero delle informazioni regolamentate la relazione sul governo societario e quella sulla remunerazione agli amministratori, nonchè abrogando la previsione secondo cui le informazioni regolamentate debbano essere oggetto anche di pubblicazione su giornali quotidiani nazionali.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 7 modifica l'articolo 114, comma 1, del TUF, eliminando la disposizione secondo cui gli emittenti pubblicano su giornali quotidiani nazionali le informazioni privilegiate di cui all'articolo 181.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 8 modifica l'articolo 120 del TUF, prevedendo che sia innalzata dal 2 al 3 per cento la soglia di partecipazione al capitale di un emittente dal cui superamento, o discesa, opera l'obbligo di notifica sia verso l'emittente stesso sia verso la Consob.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 9 elimina dall'articolo 125-bis la previsione secondo cui l'avviso di convocazione dell'assemblea debba essere pubblicato su giornali quotidiani nazionali.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 10 interviene sull'154-ter del TUF in materia di relazioni finanziarie:

a) modificando il comma 1, al fine di allineare il testo a quanto previsto dall'articolo 1, paragrafo 2, lettera b) della direttiva 2013/50/UE, relativamente al termine entro cui gli emittenti quotati aventi l'Italia come Stato membro d'origine mettono a disposizione del pubblico la relazione finanziaria, che è ora fissato in quattro mesi dalla chiusure dell'esercizio;
   Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

b) apportando una modifica di carattere redazionale al comma 1-ter, circa la corretta denominazione del soggetto in caricato di effettuare il controllo legale dei conti;

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

c) emendando il comma 2, in modo da recepire quanto disposto dall'articolo 1, paragrafo 4 della direttiva 2013/50/UE e prevedendo, quindi, che in luogo degli attuali sessanta giorni la relazione finanziaria semestrale debba invece essere pubblicata non oltre tre mesi dalla fine di tale semestre.
Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

d) sostituendo il comma 5 ed introducendo il nuovo comma 5-bis, in quanto l'obbligo di presentare e pubblicare il resoconto trimestrale è stato abrogato dalla direttiva 2013/50/UE. La nuova formulazione del comma 5 e le previsioni del comma 5-bis, nel loro combinato disposto, attribuiscono alla Consob la facoltà di esercitare il potere previsto dalla direttiva consistente nel prevedere obblighi di pubblicazione delle informazioni finanziarie periodiche, con una frequenza maggiore rispetto a quella annuale e semestrale, previo soddisfacimento delle condizioni previste all'articolo 3 della Direttiva 2013/50/UE;
Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

e) apportando al comma 6 modifiche di carattere redazionali o finalizzate ad assicurarne il coordinamento con altre disposizioni.
Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 11 inserisce nel TUF il nuovo articolo 154-quater, rubricato "Trasparenza dei pagamenti ai governi", al fine di coordinare la qualifica di emittente quotato avente l'Italia come Stato membro di origine con il regime di trasparenza dei pagamenti ai governi al quale sono soggetti, ai sensi del decreto legislativo 18 agosto 2015, n. 139, i soggetti operanti nei settori estrattivo e forestale.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 12 modifica l'articolo 192-bis del TUF, recante disposizioni in materia di misure e sanzioni amministrative. Gli interventi emendativi consistono in:

a) sostituzione del comma 1, al fine di integrare la normativa nazionale con le nuove misure, previste dalla direttiva, di cui possono essere destinatari gli emittenti in caso di violazioni o omissioni inerenti le informazioni contenute nella relazione sul governo societario e gli assetti proprietari di cui all'articolo 123-bis del TUF.
Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

b) sostituzione del comma 1-bis, al fine di allineare a quanto disposto dalla direttiva 2013/50/UE le misure e le sanzioni irrorabili agli esponenti aziendali ed al personale per le violazioni in tema di disciplina degli intermediari, dei mercati e della gestione accentrata di strumenti finanziari.
Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

c) inserimento del nuovo comma 1-quater, che completa il regime sanzionatorio definito dai commi 1 e 1-bis, prevedendo ulteriori sanzioni applicabili: i) al caso di inosservanza dell'obbligo di eliminare le infrazioni commesse o dell'astenersi dal ripeterle; ii) agli esponenti aziendali ed al personale che abbiano contribuito al determinare l'inosservanza degli ordini.
Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 13 modifica l'articolo 193 del TUF, recante disposizioni in materia di informazione societaria e doveri dei sindaci, dei revisori legali e delle società di revisione legale. L'adeguamento del regime sanzionatorio a quanto disposto dalla direttiva 2013/50/UE ha comportato la necessità di:

a) modificare il comma 1, riformulandolo in modo da ricomprendere tra le violazioni oggetto di sanzione anche previste dall' 154-quater in materia di relazioni sui pagamenti ai governi.
Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

b) inserire il comma 1.1, che disciplina il regime sanzionatorio da applicarsi alle persone fisiche per le violazioni previste dal comma 1;
Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

c) inserire il comma 1.2, che disciplina il regime sanzionatorio per esponenti aziendali e personale delle persone giuridiche responsabili delle violazioni previste dal comma 1;

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

d) modificare il comma 1-quater, inserendovi il richiamo ai commi 1, 1.1 e 1.2 per questioni di coordinamento e completamento della disciplina;

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

e) modificare il comma 2, prevedendo diverse tipologie di sanzioni amministrative nei casi di omissione delle comunicazioni delle partecipazioni rilevanti, dei patti parasociali e degli altri divieti previsti dagli articoli 120, comma 5, 121, commi 1 e 3, e 122, comma 4;

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

f) inserire il comma 2.1, che disciplina il regime sanzionatorio da applicarsi alle persone fisiche per le violazioni nei casi di omissione delle comunicazioni delle partecipazioni rilevanti, dei patti parasociali e degli altri divieti previsti dagli articoli 120, comma 5, 121, commi 1 e 3, e 122, comma 4 ;

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

g) inserire il comma 2.2, che disciplina il regime sanzionatorio per esponenti aziendali e personale delle persone giuridiche responsabili delle violazioni previste dal comma 1, prevedendo per questi soggetti le medesime sanzioni di cui al comma 2.1 qualora ricorrano i nessi di causalità di cui all'articolo 190-bis, comma 1, lettera a), del TUF;

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

h) inserire il comma 2.3, che indica i minimi edittali da assumersi per ritardi nelle comunicazioni previste dall'articolo 120, commi 2, 2-bis, 3 e 4 del TUF;

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

i) inserire il comma 2.4, che regola i casi in cui i vantaggi derivanti dalle violazioni siano maggiori dei massimi edittali previsti dai commi 1, 1.1, 2 e 2.1, prevedendo che al ricorrere di tale circostanza la sanzione amministrativa sia elevata fino al massimo del vantaggio ottenuto purché questo sia determinabile;

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

j) sopprimere il comma 2-bis, essendo ora le sanzioni applicabili ad esponenti aziendali e personali disciplinate nei commi 1.1 e 2.1;

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

k) modificare il comma 3, tramite eliminazione del rimando al comma 2 per la determinazione della sanzione in quanto non più applicabile, in luogo del quale è invece fissata la sanzione amministrativa pecuniaria da euro diecimila a euro unmilionecinquecentomila.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 14 modifica l'articolo 194-bis, comma 1, del TUF, recante disposizioni in materia di criteri per la determinazione delle sanzioni, inserendo una locuzione necessaria a tenere conto della circostanza che le sanzioni applicabili non consistono, unicamente, in quelle aventi natura pecuniaria ma anche in dichiarazioni pubbliche ed ordini.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 15 modifica l'articolo 194-quater, comma 1, del TUF, eliminando il 115-bis dagli articoli richiamati per le cui violazioni la Banca d'Italia o la Consob, quando esse siano connotate da scarsa offensività o pericolosità, in alternativa all'applicazione di sanzioni amministrative pecuniarie, possono applicare nei confronti delle società o degli enti interessati una sanzione consistente nell'ordine di eliminare le infrazioni contestate.

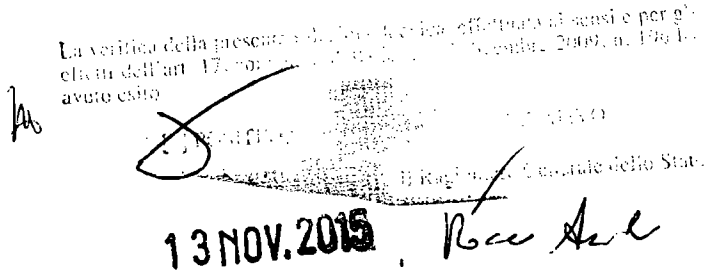
Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 16 interviene sull'articolo 194-quinquies, comma 1, lettera a) del TUF, modificando il richiamo ai commi dell'articolo 193 per effetto delle modifiche ad essi apportate.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.

Il comma 17 modifica l'articolo 195-bis, comma 1, primo periodo, del TUF, eliminando la previsione secondo cui il provvedimento di applicazione della sanzione debba essere pubblicato sul Bollettino della Consob e disponendo che, invece, sia oggetto di pubblicazione sul sito internet dell'Autorità.

Trattasi di disposizioni di carattere ordinamentale che non comportano nuovi o maggiori oneri a carico della finanza pubblica.



ANALISI TECNICO-NORMATIVA

Schema di decreto legislativo recante attuazione della direttiva 2013/50/UE del Parlamento europeo e del Consiglio del 22 ottobre 2013, recante modifica della direttiva 2004/109/CE del Parlamento europeo e del Consiglio, sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato, la direttiva 2003/71/CE del Parlamento europeo e del Consiglio, relativa al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di strumenti finanziari, e la direttiva 2007/14/CE della Commissione, che stabilisce le modalità di applicazione di talune disposizioni della direttiva 2004/109/CE.

PARTE I. ASPETTI TECNICO-NORMATIVI DI DIRITTO INTERNO

1) ***Obiettivi e necessità dell'intervento normativo. Coerenza con il programma di governo.***

Lo schema di decreto legislativo costituisce un provvedimento normativi necessario al recepimento della direttiva 2013/50/UE del Parlamento europeo e del Consiglio del 22 ottobre 2013, recante modifica della direttiva 2004/109/CE del Parlamento europeo e del Consiglio, sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato, la direttiva 2003/71/CE del Parlamento europeo e del Consiglio, relativa al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di strumenti finanziari, e la direttiva 2007/14/CE della Commissione, che stabilisce le modalità di applicazione di talune disposizioni della direttiva 2004/109/CE. La delega legislativa per l'attuazione della direttiva è stata conferita al Governo con la legge 9 luglio 2015, n. 114, (legge di delegazione europea 2014), in particolare dall'articolo 1, commi 1 e 3, dall'articolo 5 e dall'allegato B, recante delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea, pubblicata nella G.U. n. 176 del 31 luglio 2015.

Gli obiettivi dell'intervento normativo sono finalizzati a:

1) chiarire e semplificare la determinazione dello Stato membro d'origine di quegli emittenti provenienti da paesi terzi rispetto all'Unione europea;

2) semplificare gli oneri a carico degli emittenti ed assicurare flessibilità nell'adempimento di taluni obblighi, al fine di rendere i mercati regolamentati più attraenti per le imprese di piccole e medie dimensioni;

3) allineare, ove possibile, taluni obblighi a cui soggiacciono gli emittenti, in alcuni casi preesitenti, a quelli minimi previsti dalla direttiva 2013/50/UE e da altri atti dell'Unione europea, al fine di ottemperare a quanto previsto in materia di generale divieto di mantenimento o introduzione di una regolamentazione superiore a quella minimo previsto dagli atti dell'Unione europea, ai sensi dell'articolo 15, comma 2, della legge 12 novembre 2011, n. 183 (c.d. *gold plating*).

4) delineare un approccio proporzionale, calibrato in ragione delle dimensioni, nella definizione degli adempimenti posti a carico degli emittenti, in modo da gravare al minimo i soggetti piccoli e medi e non disincentivarne l'accesso ai mercati regolamentati;

5) incrementare l'efficacia del regime di trasparenza, in particolare in relazione all'informativa sull'assetto proprietario delle società, con una particolare attenzione all'armonizzazione degli obblighi di notifica ed agli strumenti finanziari la cui detenzione produce effetti simili a quelle delle azioni;

6) rafforzare i poteri sanzionatori tramite la previsione di misure sufficientemente dissuasive consistenti nell'imposizione di misure e sanzioni pecuniarie, di importo anche elevato, irrogabili sia agli emittenti sia ai membri degli organi di amministrazione, di gestione e di controllo delle persone giuridiche interessate, nonché agli altri soggetti che possano essere passibili di violazioni della legislazione nazionale.

Gli obiettivi perseguiti sono coerenti con il programma di Governo, la cui azione è incentrata a semplificare l'ambiente regolamentare e normativo entro cui si svolge l'attività d'impresa, al fine di renderla più agevole ed efficiente.

2) *Analisi del quadro normativo nazionale.*

Destinatari delle disposizioni che costituiscono oggetto dello schema di decreto legislativo sono gli emittenti valori mobiliari negoziati in mercati regolamentati, il cui quadro normativo nazionale di riferimento si compone dei seguenti provvedimenti legislativi e regolamentari attualmente in vigore:

1) Il decreto legislativo 24 febbraio 1998, n. 58 (TUF) ed il regolamento, attuativo di talune sue disposizioni (Regolamento di attuazione del decreto legislativo 24 febbraio 1998, n. 58,

concernente la disciplina degli emittenti, adottato dalla Consob con delibera n. 11971 del 14 maggio 1999 e successivamente modificato);

2) Il Codice Civile, che reca la disciplina generale applicabile per quanto non disposto dal TUF che, invece, costituisce la disciplina speciale di riferimento;

3) Il decreto legislativo 28 febbraio 2005, n. 38, recante esercizio delle opzioni previste dall'articolo 5 del regolamento (CE) n. 1606/2002 in materia di principi contabili internazionali, che nello stabilire quali soggetti siano tenuti a redigere il bilancio di esercizio e quello consolidato secondo gli IAS/IFRS, ricomprende nel suo ambito anche gli emittenti valori mobiliari negoziati in mercati regolamentati;

3) *Incidenza delle norme proposte sulle leggi e i regolamenti vigenti.*

Lo schema di decreto legislativo in esame, modifica ed innova il decreto legislativo 24 febbraio 1998, n. 58 (TUF). Il Regolamento emittenti (regolamento di attuazione del decreto legislativo 24 febbraio 1998, n. 58, concernente la disciplina degli emittenti, adottato dalla Consob con delibera n. 11971 del 14 maggio 1999 e successivamente modificato) sarà oggetto di adeguamento in seguito all'entrata in vigore del decreto legislativo.

4) *Analisi della compatibilità dell'intervento con i principi costituzionali.*

Non si rilevano profili di incompatibilità con i principi costituzionali.

5) *Analisi delle compatibilità dell'intervento con le competenze e le funzioni delle regioni ordinarie e a statuto speciale nonché degli enti locali.*

Non si rilevano profili di incompatibilità con le competenze e le funzioni delle regioni ordinarie e a statuto speciale nonché degli enti locali, in quanto, ai sensi dell'art. 117, secondo comma, lettere e) e l), della Costituzione, lo Stato ha legislazione esclusiva in materia di mercati finanziari, tutela della concorrenza, nonché in materia di ordinamento civile e penale.

6) *Verifica della compatibilità con i principi di sussidiarietà, differenziazione ed adeguatezza sanciti dall'articolo 118, primo comma, della Costituzione.*

Non si rilevano profili di incompatibilità con i principi di sussidiarietà, differenziazione ed adeguatezza sanciti dall'articolo 118, primo comma, della Costituzione.

7) ***Verifica dell'assenza di rilegificazioni e della piena utilizzazione delle possibilità di delegificazione e degli strumenti di semplificazione normativa.***

Non sono previste rilegificazioni di norme delegificate. Lo schema di decreto legislativo ha ad oggetto materie non suscettibili di delegificazione, né di applicazione di strumenti di semplificazione normativa.

8) ***Verifica dell'esistenza di progetti di legge vertenti su materia analoga all'esame del Parlamento e relativo stato dell'iter.***

Non sussistono progetti di legge vertenti su materia analoga all'esame del Parlamento.

9) ***Indicazioni delle linee prevalenti della giurisprudenza ovvero della pendenza di giudizi di costituzionalità sul medesimo o analogo oggetto.***

Non risultano indicazioni delle linee prevalenti della giurisprudenza e non sono pendenti giudizi di costituzionalità sul medesimo o analogo oggetto.

PARTE II. CONTESTO NORMATIVO COMUNITARIO E INTERNAZIONALE

10) ***Analisi della compatibilità dell'intervento con l'ordinamento comunitario.***

Lo schema di decreto legislativo costituisce provvedimento attuativo della direttiva 2013/50/UE.

Ai sensi degli articoli 4, 6 e 7 della direttiva, gli Stati membri adottano e pubblicano entro il 27 luglio 2015 le disposizioni legislative, regolamentari e amministrative necessarie per conformarsi alla direttiva.

11) ***Verifica dell'esistenza di procedure di infrazione da parte della Commissione Europea sul medesimo o analogo oggetto.***

Non sono aperte procedure di infrazione a carico della Repubblica Italiana.

12) ***Analisi della compatibilità dell'intervento con gli obblighi internazionali.***

Il provvedimento legislativo in esame non presenta profili di incompatibilità con gli obblighi internazionali.

13) ***Indicazioni delle linee prevalenti della giurisprudenza ovvero della pendenza di giudizi innanzi alla Corte di Giustizia delle Comunità Europee sul medesimo o analogo oggetto.***

Non risultano indicazioni sulle linee prevalenti della giurisprudenza ovvero della pendenza di giudizi innanzi alla Corte di Giustizia delle Comunità Europee sul medesimo o analogo oggetto.

14) ***Indicazioni delle linee prevalenti della giurisprudenza ovvero della pendenza di giudizi innanzi alla Corte Europea dei Diritti dell'uomo sul medesimo o analogo oggetto.***

Non risultano pendenti giudizi dinanzi alla Corte europea dei diritti dell'uomo sul medesimo o analogo oggetto.

15) ***Eventuali indicazioni sulle linee prevalenti della regolamentazione sul medesimo oggetto da parte di altri Stati membri dell'Unione Europea.***

Trattandosi di recepimento di una direttiva UE, tutti gli Stati membri sono tenuti a darne attuazione. Le differenze possono riguardare solo alcune modalità di adeguamento agli obblighi.

PARTE III. ELEMENTI DI QUALITA' SISTEMATICA E REDAZIONALE DEL TESTO

1) ***Individuazione delle nuove definizioni normative introdotte dal testo, della loro necessità, della coerenza con quelle già in uso.***

Il testo non introduce nuove definizioni normative.

2) ***Verifica della correttezza dei riferimenti normativi contenuti nel progetto, con particolare riguardo alle successive modificazioni ed integrazioni subite dai medesimi.***

I riferimenti normativi contenuti nel provvedimento in esame sono corretti.

3) ***Ricorso alla tecnica della novella legislativa per introdurre modificazioni ed integrazioni a disposizioni vigenti.***

La tecnica della novella legislativa è stata utilizzata per innovare e modificare il decreto legislativo 28 febbraio 1998, n. 58 (TUF).

4) ***Individuazione di effetti abrogativi impliciti di disposizioni dell'atto normativo e loro traduzione in norme abrogative espresse nel testo normativo.***

Non vi sono abrogazioni implicite nel testo normativo.

5) ***Individuazione di disposizioni dell'atto normativo aventi effetto retroattivo o di reviviscenza di norme precedentemente abrogate o di interpretazione autentica o derogatorie rispetto alla normativa vigente.***

Il provvedimento in esame non contiene disposizioni aventi effetto retroattivo o di reviviscenza di norme precedentemente abrogate o di interpretazione autentica o derogatorie rispetto alla normativa vigente.

6) ***Verifica della presenza di deleghe aperte sul medesimo oggetto, anche a carattere integrativo o correttivo.***

La delega legislativa per l'attuazione della direttiva è stata conferita al Governo con la legge 9 luglio 2015, n. 114, (legge di delegazione europea 2014), in particolare dall'articolo 1, commi 1 e 3, dall'articolo 5 e dall'allegato B, recante delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea, pubblicata nella G.U. n. 176 del 31 luglio 2015

7) ***Indicazione degli eventuali atti successivi attuativi; verifica della congruenza dei termini previsti per la loro adozione.***

La modifica da parte della Consob del Regolamento emittenti (Regolamento di attuazione del decreto legislativo 24 febbraio 1998, n. 58, concernente la disciplina degli emittenti, adottato dalla Consob con delibera n. 11971 del 14 maggio 1999 e successivamente modificato) costituisce l'unico atto successivo previsto per dare completa attuazione alla direttiva 2013/50/UE.

8) ***Verifica della piena utilizzazione e dell'aggiornamento di dati e di riferimenti statistici attinenti alla materia oggetto del provvedimento, ovvero indicazione della necessità di commissionare all'Istituto nazionale di statistica apposite elaborazioni statistiche con correlata indicazione nella relazione economico-finanziaria della sostenibilità dei relativi costi.***

Sono stati utilizzati dati informativi raccolti ed elaborati sia dalla Commissione UE nei documenti di valutazione di impatto, sia dalle Autorità di vigilanza italiane.

ANALISI DI IMPATTO DELLA REGOLAMENTAZIONE (A.I.R.)

(all."A" alla Direttiva P.C.M. 16 gennaio 2013)

Schema di decreto legislativo recante attuazione della direttiva 2013/50/UE del Parlamento europeo e del Consiglio del 22 ottobre 2013, recante modifica della direttiva 2004/109/CE del Parlamento europeo e del Consiglio, sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato, la direttiva 2003/71/CE del Parlamento europeo e del Consiglio, relativa al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di strumenti finanziari, e la direttiva 2007/14/CE della Commissione, che stabilisce le modalità di applicazione di talune disposizioni della direttiva 2004/109/CE.

Referente: Dott. Nicola Mango– Dipartimento del Tesoro – Direzione IV – Ufficio IV (Tel. 0647613178)

SEZIONE 1 - Contesto e obiettivi dell'intervento di regolamentazione

A) la rappresentazione del problema da risolvere e delle criticità constatate, anche con riferimento al contesto internazionale ed europeo, nonché delle esigenze sociali ed economiche considerate.

Il Governo, tramite uno o più decreti legislativi, è autorizzato a recepire la direttiva 2013/50/UE ai sensi di quanto previsto dalla legge 9 luglio 2015, n. 114, (legge di delegazione europea 2014), in particolare dall'articolo 1, commi 1 e 3, dall'articolo 5 e dall'allegato B, recante delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea.

Le esigenze sociali ed economiche sottese all'intervento legislativo e le problematiche che esso si prefigge di risolvere consistono, essenzialmente, nelle medesime che hanno indotto la Commissione europea a sottoporre al Consiglio ed al Parlamento europeo la proposta di direttiva, successivamente modificata in corso di negoziato e approvata dai due co-legislatori europei.

Nell'analisi di impatto redatta dai servizi della Commissione, di cui si accludono alla presente sia la versione integrale – disponibile nella sola lingua inglese – sia la sintesi, sono

descritte nel dettaglio le criticità che hanno indotto la Commissione a presentare la proposta di direttiva, le diverse possibili alternative in materia di nuova legislazione e le motivazioni che hanno indotto ad assumere la proposta in seguito oggetto di negoziato.

Le analisi e valutazioni della Commissione sono state svolte con riguardo all'Unione europea nel suo complesso e, pertanto, non sono presente sezioni dedicate ai singoli Stati membri, le cui esperienze e situazioni sono citate su specifiche questioni e non in maniera sistematica.

Le problematiche più importanti che la Commissione ha individuato nella sua analisi possono essere ricondotte a due macro-aggregati:

1) il contesto normativo per i piccoli e medi emittenti necessita di semplificazioni, al fine di garantire un più agevole accesso al mercato dei capitali. Sebbene gli obblighi di trasparenza non siano considerati l'unico aspetto problematico con cui si devono confrontare i piccoli e medi emittenti, essi contribuiscono agli elevati costi di messa in conformità correlati alla quotazione nei mercati regolamentati, alla loro scarsa visibilità presso analisti e investitori e ad una cultura che privilegia il breve termine;
2) La direttiva 2004/109/CE (oggetto di modifica da parte della 2013/50/UE e che è oggetto di recepimento da parte dello schema di decreto a cui questa relazione fa riferimento) impone agli emittenti di notificare al mercato le acquisizioni o cessioni di azioni ammesse alla negoziazione in un mercato regolamentato e che conferiscono diritti di voto (ossia di notificare la percentuale di diritti di voto detenuti qualora essa raggiunga, superi o scenda al di sotto delle soglie del 5%, 10%, 15%, 20%, 25%, 30%, 50% e 75%). L'impiego di strumenti derivati, con regolamento in contanti, è aumentato significativamente nel mercato negli ultimi anni e ciò fa si che tali strumenti possano essere utilizzati per acquisire ed esercitare un influsso su una società quotata o per costituire in essa una partecipazione occulta. Poiché gli strumenti in questione non rientrano, attualmente, nell'ambito di applicazione delle norme in materia di informativa fissate dalla direttiva, la Commissione, l'omissione informativa può portare a possibili abusi di mercato, a inefficienze del meccanismo di formazione dei prezzi, nonché all'espressione del voto in assenza di un interesse economico. La Commissione ha quindi presentato misure volte ad estendere il regime informativo già esistente a tutti gli strumenti con effetto economico simile alla detenzione di azioni e al diritto di acquisire azioni.

A livello nazionale, nell'analisi condotta al fine di individuare le criticità maggiori riscontrate dagli emittenti e dagli investitori nella loro attività (con riferimento agli aspetti

della regolamentazione complessiva ascrivibili a quanto disposto dalla direttiva), le problematiche di maggiore impatto riscontrate sono state individuate:

- nell'onere derivante dalla predisposizione della relazione trimestrale, in particolare per i soggetti di piccole o medie dimensioni, a fronte del quale, non per tutte le categorie di emittenti sono stati riscontrati effettivi benefici in termini di utilità dell'informazione a favore degli investitori configurandosi, invece, in alcuni casi, fenomeni come quelli descritti dalla Commissione e consistenti in un'eccessiva attenzione ai risultati di breve periodo;
- nel valore della soglia della partecipazione azionaria al di sopra o al di sotto della quale opera l'obbligo di prima notifica sia verso la Consob sia verso l'emittente. L'innalzamento della soglia minima può comportare effetti positivi in termini di maggiore afflusso di capitali sul mercato azionario italiano da parte di investitori istituzionali, i quali tendono, compatibilmente con le proprie politiche di investimento, a collocarsi lievemente al di sotto del livello di emersione richiesto dalla disciplina sulla trasparenza degli assetti proprietari, al fine di: i) non sopportare i costi connessi alle operazioni di notifica; ii) non rivelare ai concorrenti le proprie strategie, evitando l' effetto emulazione.

Accanto alle problematiche di cui sopra, sono state individuate altre necessità, sempre di natura tecnica, alla cui soluzione sono rivolte le disposizioni dello schema di decreto e così riassumibili:

1) chiarire e semplificare la determinazione dello Stato membro d'origine di quegli emittenti provenienti da paesi terzi rispetto all'Unione europea;

2) semplificare gli oneri a carico degli emittenti, eliminarne taluni non derivanti da obblighi previsti dal quadro regolamentare dell'Unione ed il cui mantenimento non appare giustificato da particolari esigenze, assicurare maggiore flessibilità nell'adempimento di taluni obblighi, al fine di rendere i mercati regolamentati più attraenti per le imprese di piccole e medie dimensioni;

3) delineare un approccio proporzionale, calibrato in ragione delle dimensioni, nella definizione degli adempimenti posti a carico degli emittenti, in modo da gravare al minimo i soggetti piccoli e medi e non disincentivarne l'accesso ai mercati regolamentati;

4) incrementare l'efficacia del regime di trasparenza, in particolare in relazione all'informativa sull'assetto proprietario delle società, con una particolare attenzione all'armonizzazione degli obblighi di notifica ed agli strumenti finanziari la cui detenzione produce effetti simili a quelle delle azioni;

5) promuovere l'integrazione dei mercati finanziari europei attraverso la facilitazione dell'accesso alle informazioni e il miglioramento della loro qualità;

6) ridurre i costi di transazione associati all'acquisizione o dismissione di partecipazioni, al fine di stimolare l'investimento specialmente da parte di investitori istituzionali;

7) rafforzare i poteri sanzionatori tramite la previsione di misure sufficientemente dissuasive consistenti nell'imposizione di misure e sanzioni pecuniarie, di importo anche elevato, irrogabili sia agli emittenti sia ai membri degli organi di amministrazione, di gestione e di controllo delle persone giuridiche interessate, nonché agli altri soggetti che possano essere passibili di violazioni della legislazione nazionale.

In base ai criteri della delega legislativa e a quelli generali previsti dalla legge 24 dicembre 2012, n. 234, recante norme generali sulla partecipazione dell'Italia alla formazione e all'attuazione della normativa e delle politiche dell'Unione europea, lo schema di decreto legislativo integra e modifica il decreto legislativo 28 febbraio 1998, n. 58.

B) l'indicazione degli obiettivi (di breve, medio o lungo periodo) perseguiti con l'intervento normativo;

Con l'emanazione del decreto legislativo si intende dare attuazione alla direttiva 2013/50/UE e, quindi, conseguire gli obiettivi elencati al precedente punto A), consistenti nel superamento delle criticità lì riportate.

Dal punto di vista temporale, si ritiene che gli obiettivi consistenti nelle esigenze di semplificazione e riduzione dell'onere amministrativo potranno essere conseguiti a partire dalla prima applicazione del nuovo impianto normativo.

Per quanto riguarda, invece, le finalità consistenti nel rendere maggiormente attraente i mercati regolamentati per le società, specialmente quelle di piccole e medie dimensioni, nonché quelle relative all'accrescimento degli investimenti da parte di investitori

professionali, il loro grado di raggiungimento dipenderà anche da quella che sarà la situazione economica del prossimo futuro e le connesse condizioni di mercato.

C) la descrizione degli indicatori che consentiranno di verificare il grado di raggiungimento degli obiettivi indicati e di monitorare l'attuazione dell'intervento nell'ambito della VIR;

L'intervento normativo ha carattere ordinamentale, innovando il decreto legislativo 28 febbraio 1998, n. 58.

Il grado di raggiungimento degli obiettivi dell'intervento normativo, a causa della natura di quest'ultimo, non può quindi essere oggetto di una puntuale valutazione futura in quanto i benefici, in termini di riduzione di costi derivanti dal minore onere amministrativo sopportato, non possono essere quantificati esattamente.

Data l'incertezza che caratterizza le condizioni e le circostanze che possono indurre le società ad accedere ai mercati, non è possibile ipotizzare e quantificare obiettivi sia in termini di numero delle società che potranno decidere di accedere al mercato borsistico, sia in merito all'orizzonte temporale entro cui tali accessi potrebbero realizzarsi. Un indicatore del grado di conseguimento dell'obiettivo potrà consistere nel saldo tra le imprese che saranno ammesse alla quotazione e quelle che, invece, lasceranno i listini, per quanto si ritenga che solo in parte l'intervento normativo in oggetto possa incidere su tale dinamica, la quale risente invece dell'ambiente regolamentare nel suo complesso e delle condizioni economiche generali.

D) l'indicazione delle categorie dei soggetti, pubblici e privati, destinatari dei principali effetti dell'intervento regolatorio.

La direttiva 2013/50/UE modifica la 2004/109/CE che identifica, all'articolo 2, i destinatari negli emittenti valori mobiliari negoziati in mercati regolamentati. In Italia la definziione di emittenti è contenuta nell'articolo 1, comma 1, del decreto legislativo 28 febbraio 1998, n. 58 (TUF) ed i soggetti che rientrano in tale definizione, in base ai dati ottenuti dalla Consob, risultano essere in numero di 240. In merito ai destinatari indiretti, ivi compresi quindi gli utilizzatori delle informazioni oggetto di regolamentazione, questi consistono nella platea di investitori, occasionali e professionali, che operano nei mercati ed il cui numero non è possibile definire.

SEZIONE 2 - Procedure di consultazione precedenti l'intervento

Una consultazione pubblica è stata svolta mediante pubblicazione, sul sito internet del Dipartimento del Tesoro, di un documento che illustrava i contenuti della direttiva.

L'obiettivo è stato quello di informare i destinatari del provvedimento di attuazione della direttiva ed i soggetti comunque interessati dalla normativa di bilancio in merito alle opportunità e criticità che possono derivare da un'innovazione del quadro attuale di riferimento, soprattutto in termini di riduzione dell'onere amministrativo e di miglioramento della qualità dell'informazione, al fine di ottenere commenti e suggerimenti. Sul sito del Dipartimento del tesoro sono reperibili, alla voce "consultazioni pubbliche", i documenti pubblicati, nonché gli esiti della consultazione svolta, cioè le osservazioni pervenute per le quali non è stato negato il consenso alla pubblicazione. Sono stati pubblicati 4 contributi, ricevuti da associazioni rappresentative di emittenti e soggetti comunque operanti nei mercati regolamentati. I contributi ricevuti hanno evidenziato un generale apprezzamento verso le misure proposte.

SEZIONE 3 - Valutazione dell'opzione di non intervento di regolamentazione (opzione zero)

Non è stata presa in considerazione l'opzione di non intervento poiché l'intervento normativo attua una direttiva europea, in conformità ai criteri di delega stabiliti dal Parlamento italiano con la legge di delegazione europea 2014 (legge 9 luglio 2015, n. 114,).

Il recepimento della direttiva è obbligatorio ai sensi della delega contenuta nell'art. 1, comma 1, della legge anzidetta. L'opzione zero non è pertanto configurabile in relazione allo schema di decreto legislativo in esame.

L'opzione di non intervento, nel merito, è stata esclusa dal Legislatore europeo che ha ritenuto necessario intervenire con una direttiva: peraltro, qualora la direttiva non fosse recepita, la Repubblica Italiana violerebbe quanto previsto dai Trattati e si esporrebbe ad una procedura di infrazione dinanzi la Corte di Giustizia da parte della Commissione europea. Per una disamina più approfondita delle ragioni poste a fondamento della scelta dell'intervento normativo effettuata dal legislatore europeo e delle opzioni prese in considerazione, si rinvia

alla valutazione di impatto effettuata dai servizi della Commissione europea in relazione alla proposta di direttiva.

Il non-intervento, dal punto di vista sostanziale, infine, comporterebbe dei pregiudizi per gli emittenti nazionali, in quanto opererebbero in un ambito regolamentare differente e più complesso rispetto a quello in cui agiscono i loro omologhi europei.

Con riferimento alle disposizioni dello schema di decreto, si evidenzia come la sua mancata emanazione comporterebbe il soggiacere degli emittenti ad obblighi vigenti che, invece, si intende abrogare. Le misure di semplificazione a cui si fa riferimento sono, ad esempio, quelle inerenti l'eliminazione dell'obbligo di presentare il resoconto trimestrale (salvo che la Consob non richieda informazioni ulteriori, su base appunto trimestrale, in forza di un suo regolamento non però necessariamente rivolto alla generalità delle società quotate) e l'eliminazione dell'obbligo di pubblicazione degli avvisi a mezzo stampa. Inoltre il mantenimento della soglia di notifica delle partecipazioni all'attuale valore del due percento (per una illustrazione più approfondita si veda la successiva sezione 4) continuerebbe a rendere meno attraente il mercato italiano per gli investitori specializzati.

SEZIONE 4 - Opzioni alternative all'intervento regolatorio.

Per quanto esposto nella "sezione 3" non sono state prese in considerazione, in quanto non percorribili, opzioni alternative a quella dell'intervento normativo.

In merito ai contenuti dello schema di decreto, le possibili opzioni alternative hanno riguardato talune scelte, oggetto tra l'altro di commento da parte dei rispondenti alla consultazione pubblica. In particolare, con riferimento a quanto già accennato nella sezione 2 inerente le procedure di consultazione, i contributi ricevuti hanno evidenziato un generale apprezzamento verso le misure proposte, in particolare verso quella che prevede l'innalzamento dal due al tre percento del valore soglia corrispondente alla partecipazione azionaria al di sopra o al di sotto della quale opera l'obbligo di prima notifica sia verso la Consob sia verso l'emittente. Tale misura può infatti comportare una maggiore partecipazione nel mercato nazionale soprattutto da parte di investitori istituzionali che, in tal modo, non divulgano le proprie strategie ai loro diretti concorrenti e, inoltre, consente loro di non sopportare i connessi costi. I rispondenti avevano manifestato la richiesta di innalzare

ulteriormente il valore percentuale della soglia di prima notifica, adducendo a motivazione l'ulteriore beneficio che ne sarebbe derivato in termini di maggiore attrattività per l'investimento da parte di operatori professionali quali i grandi fondi di investimento. La richiesta non è stata però accolta in quanto, a fronte dei possibili ulteriori benefici, una soglia superiore al tre percento comporterebbe fenomeni di opacità informativa, non consentendo al mercato di avere adeguate informazioni circa il reale assetto proprietario degli emittenti.

Ulteriori misure che hanno riscosso apprezzamento sono quelle consistenti nell'eliminazione dell'obbligo di pubblicazione a mezzo stampa di taluni avvisi, in quanto trattasi di obblighi non previsti dalla direttiva ed a fronte dei quali non si riscontrano particolari benefici informativi e di trasparenza, invece garantiti dall'essere tali notizie, ai sensi della vigente disciplina, oggetto di obbligatoria trasmissione al sistema di diffusione delle informazioni regolamentate (SDIR), cui hanno accesso le agenzie di stampa, e al meccanismo di stoccaggio autorizzato dalla Consob, che ne garantisce la memoria storica, sono altresì di pronta reperibilità per il pubblico dei risparmiatori mediante accesso al sito internet dell'emittente, ove le stesse devono essere pubblicate.

Ulteriore richiesta espressa in consultazione riguardava l'eliminazione di talune informazioni (i.e. relazioni su remunerazione degli amministratori e governo societario) dal novero di quelle c.d. "regolamentate", ovvero soggette ad un particolare regime di divulgazione e conservazione in luogo della sola pubblicazione sul sito internet dell'emittente. Premesso che l'ordinamento europeo non ricomprende tali relazioni tra quelle da assoggettare al particolare regime di quelle "regolamentate", la richiesta è stata accolta, in quanto si è riconosciuto che a fronte dell'onere sopportato dagli emittenti non sono riscontrabili particolari benefici in termini di maggiore informativa, stante l'obbligo di procedere comunque alla pubblicazione dei documenti in questione sul sito internet dell'emittente.

È stata infine accolta la richiesta di distinguere tra loro le fasi di ammissione alla quotazione e alla negoziazione, che nel vigente impianto normativo risultano invece tra loro coincidenti. La separazione, che allinea il procedimento nazionale a quello maggiormente in voga in altri ordinamenti, consente infatti di semplificare l'operatività degli emittenti nel lasso di tempo che intercorre tra i due momenti, in particolare non facendo operare l'obbligo di divulgare informazioni che possono comportare effetti sui prezzi degli strumenti finanziari

prima che sia pubblicato il prospetto di ammissione alla negoziazione e, quindi, i titoli siano effettivamente oggetto di contrattazione.

SEZIONE 5 - Giustificazione dell'opzione regolatoria proposta e valutazione degli oneri amministrativi e dell'impatto sulle PMI

A) gli svantaggi e i vantaggi dell'opzione prescelta, per i destinatari diretti e indiretti, a breve e a medio-lungo termine, adeguatamente misurati e quantificati, anche con riferimento alla possibile incidenza sulla organizzazione e sulle attività delle pubbliche amministrazioni, evidenziando i relativi vantaggi collettivi netti e le relative fonti di informazione;

In merito ai vantaggi delle opzioni scelte nell'ambito della stesura del provvedimento, si rimanda alle considerazioni esposte nella "Sezione 1" alle lettere A) e B). Si ribadiscono, in particolare, i vantaggi che gli emittenti trarranno dall'eliminazione degli obblighi: i) di procedere alla pubblicazione di taluni avvisi sui mezzi di stampa; ii) di produzione obbligatoria e generalizzata del resoconto trimestrale di gestione; iii) in materia di trattamento delle relazioni sulla remunerazione degli amministratori e governo societario quali "informazioni regolamentate", senza che ciò comporti comunque un nocumento per la trasparenza.

Per quanto riguarda, infine, l'incidenza sull'organizzazione e l'attività delle pubbliche amministrazioni, si fa presente che l'intervento normativo non determina, neppure indirettamente, oneri a carico della finanza pubblica, in quanto non contiene disposizioni di natura finanziaria ma solo ordinamentale.

B) l'individuazione e la stima degli effetti dell'opzione prescelta sulle micro, piccole e medie imprese;

L'intervento non prevede una disciplina specifica per le micro, piccole e medie imprese, così come definite dalla Raccomandazione della Commissione n. 361 del 6 maggio 2003 e, dal D.M. 18 aprile 2005 di adeguamento dell'ordinamento nazionale a quanto disposto dalla predetta Raccomandazione.

Lo schema di decreto interviene, infatti, sulla definizione di "piccolo o medio emittente" (PMI), di cui all'articolo 1, comma 1, lettera w-quater) del decreto legislativo 28 febbraio 1998, n. 58. Piccoli e medi emittenti (PMI), ai sensi di quanto previsto dal decreto legislativo 28 febbraio 1998, n. 58, così come emendato dall'intervento normativo, sono infatti imprese, emittenti azioni quotate, il cui fatturato anche anteriormente all'ammissione alla negoziazione delle proprie azioni, sia inferiore a 300 milioni di euro, ovvero che abbiano una capitalizzazione di mercato inferiore ai 500 milioni di euro. Non si considerano PMI gli emittenti azioni quotate che abbiano superato entrambi i predetti limiti per tre anni consecutivi.

C) l'indicazione e la stima degli oneri informativi e dei relativi costi amministrativi, introdotti o eliminati a carico di cittadini e imprese. Per onere informativo si intende qualunque adempimento comportante raccolta, elaborazione, trasmissione, conservazione e produzione di informazioni e documenti alla pubblica amministrazione;

Lo schema di decreto legislativo non introduce nuovi oneri informativi rispetto a quanto previsto dalla legislazione di riferimento esistente.

Il provvedimento procede all'abrogazione dell'obbligo, a carico degli emittenti, di pubblicare su giornali quotidiani gli avvisi relativi a talune vicende societarie. È inoltre prevista l'eliminazione dell'obbligo di produrre sistematicamente una relazione trimestrale, prevedendo che le informazioni in essa contenute possano essere richieste dalla Consob, non necessariamente alla generalità dei soggetti interessati, solo previa conduzione di una valutazione di impatto atta a verificare che la richiesta di informazioni finanziarie periodiche aggiuntive, rispetto a quelle contenute nelle relazioni annuali e semestrali, non comporti un onere finanziario sproporzionato, in particolare per i piccoli e medi emittenti e che, inoltre, il contenuto delle informazioni sia proporzionato ai fattori che contribuiscono alle decisioni di investimento assunte dagli investitori.

Per quanto concerne invece la relazione a cui fa riferimento l'articolo 154-quater che il provvedimento legislativo inserisce nel TUF, trattasi in questo caso di un obbligo informativo già previsto dal decreto legislativo 18 agosto 2015, n. 139, del quale l'articolo disciplina modalità e tempi di messa a disposizione per il pubblico da parte degli emittenti, demandandone alla Consob la definizione in via regolamentare.

D) le condizioni e i fattori incidenti sui prevedibili effetti dell'intervento regolatorio, di cui comunque occorre tener conto per l'attuazione (misure di politica economica ed aspetti economici e finanziari suscettibili di incidere in modo significativo sull'attuazione dell'opzione regolatoria prescelta; disponibilità di adeguate risorse amministrative e gestionali; tecnologie utilizzabili, situazioni ambientali e aspetti socio-culturali da considerare per quanto concerne l'attuazione della norma prescelta, ecc.).

Non si ravvisano fattori prevedibili che potrebbero condizionare o impedire l'attuazione delle nuove norme data la loro natura ordinamentale. La disponibilità di risorse amministrative e gestionali, le tecnologie e le situazioni ambientali non costituiscono fattori ed elementi tali da incidere sull'intervento regolatorio. Eventuali misure di politica economica, intese nel senso più ampio del termine, potrebbero incidere negativamente solo ove queste risultassero penalizzanti per lo svolgimento dell'attività di impresa e, quindi, disincentivanti anche per l'accesso al mercato dei capitali.

SEZIONE 6 – Incidenza sul corretto funzionamento concorrenziale del mercato e sulla competitività del Paese

L'intervento normativo può incidere positivamente sul corretto funzionamento dei mercati e sulla competitività del Paese.

Le misure indirizzate alla riduzione degli oneri amministrativi possono incentivare le imprese, soprattutto di piccole e medie dimensioni, a chiedere l'ammissione alla quotazione mentre, per quanto riguarda gli investitori, un regime che preveda una più alta soglia di notifica delle partecipazioni, sia per operazioni di acquisto sia di dismissione, può comportare una maggiore operatività nei mercati regolamentati nazionali da parte di investitori istituzionali, con conseguente maggiore afflusso di capitali. Tale ultimo aspetto è riscontrato in altri Stati membri ove la soglia è superiore a quella attualmente vigente nell'ordinamento nazionale. Infine, quanto disposto in materia di eliminazione dell'obbligo di produrre la relazione trimestrale, allinea il contesto regolamentare nazionale a quello della maggior parte degli altri Stati membri che, nel recepire la direttiva 2013/50/UE, hanno assunto scelte analoghe.

SEZIONE 7 - Modalità attuative dell'intervento di regolamentazione

La sezione descrive:

A) i soggetti responsabili dell'attuazione dell'intervento regolatorio;

La Consob, quale soggetto preposto alla vigilanza sui mercati ed i soggetti che in essi operano, è l'Autorità preposta alla verifica del corretto assolvimento degli obblighi previsti, nonché competente a comminare le sanzioni che derivano dagli inadempimenti o dalle condotte vietate.

B) le azioni per la pubblicità e per l'informazione dell'intervento (con esclusione delle forme di pubblicità legale degli atti già previste dall'ordinamento);

La realizzazione di una consultazione pubblica ha permesso un'ampia pubblicità del provvedimento in esame.

In particolare, le Associazioni di categoria direttamente interessate, che hanno partecipato alle citate consultazioni, hanno avuto occasione di confronto con gli Uffici competenti del Ministero dell'economia e delle finanze - Dipartimento del Tesoro già a partire dalla fase negoziale che ha avuto ad oggetto la proposta di direttiva della Commissione e terminata con l'adozione della stessa da parte di Consiglio e Parlamento europeo.

Adeguata pubblicità al provvedimento, in seguito alla sua emanazione, sarà assicurata dalla pubblicazione della notizia in merito sia sul sito internet del Ministero dell'economia sia su quello della Consob.

Si rappresenta, infine, che gli uffici competenti nell'attuazione della direttiva e nella redazione del decreto legislativo, potranno dare notizia dell'intervento normativo e dei suoi contenuti agli investitori, soprattutto esteri, con cui hanno regolarmente occasioni di confronto.

C) strumenti e modalità per il controllo e il monitoraggio dell'intervento regolatorio;

Dalle motivazioni esposte alla lettera C) della "sezione 1", deriva l'impossibilità di prevedere strumenti puntuali e modalità atti a condurre un monitoraggio diretto degli effetti dell'intervento normativo al fine di verificarne e quantificarne gli effetti, se non con riferimento all'indicatore descritto nella medesima sezione. Da un punto di vista generale si potrebbe inoltre far riferimento ai volumi di capitali che risulteranno movimentati nei mercati, comparandoli con quelli attuali, per quanto anche in questo caso occorre rimarcare che tale

dinamica dipenderà dall'ambiente regolamentare nel suo complesso e dalle generali condizioni del sistema economico, a livello sia nazionale sia globale.

D) i meccanismi eventualmente previsti per la revisione dell'intervento regolatorio;

La direttiva 2013/50/UE costituisce un intervento emendativo alla direttiva 2004/109/CE del Consiglio e del Parlamento europeo sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato. La Commissione europea, detentrice del potere di iniziativa legislativa, potrà presentare proposte ulteriori di modifica sulla base dell'attività di monitoraggio della legislazione in essere, dei risultati conseguiti e, in generale, degli effetti prodotti. La stessa direttiva prevede che la Commissione riferisca al Parlamento europeo e al Consiglio in merito al suo funzionamento, anche per quanto riguarda l'impatto sui piccoli e medi emittenti e sull'applicazione delle sanzioni, in particolare se esse siano o meno efficaci, proporzionate e dissuasive.

In base ai provvedimenti che verranno assunti in sede europea e alle eventuali modifiche che verranno apportate alla direttiva 2013/50/UE, si procederà ad una revisione della normativa italiana di settore.

E) gli aspetti prioritari da monitorare in fase di attuazione dell'intervento regolatorio e considerare ai fini della VIR.

Le valutazioni e gli elementi forniti alla lettera C) della "sezione 1" e alla lettera C) della "sezione 7" costituiscono le motivazioni a fondamento della richiesta di esonero dalla VIR per il provvedimento legislativo in oggetto.

****

Sezione aggiuntiva per iniziative normative di recepimento di direttive europee

SEZIONE 8 - Rispetto dei livelli minimi di regolazione europea

Il provvedimento non introduce livelli di regolamentazione superiori a quelli minimi previsti dalla direttiva 2013/50/UE ed è quindi conforme a quanto previsto dall'articolo 14,

commi 24-*bis*, 24-*ter* e 24-*quater*, della legge 28 novembre 2005, n. 246, come richiamato, dall'articolo 32, comma 1, lettera c), della legge 24 dicembre 2012, n. 234.

COMMISSIONE EUROPEA

Bruxelles, 25.10.2011
SEC(2011) 1280 definitivo

DOCUMENTO DI LAVORO DEI SERVIZI DELLA COMMISSIONE

SINTESI DELLA VALUTAZIONE DELL'IMPATTO

che accompagna il documento

Proposta di

direttiva del Parlamento europeo e del Consiglio che modifica la direttiva 2004/109/CE sull'armonizzazione degli obblighi di trasparenza riguardanti le informazioni sugli emittenti i cui valori mobiliari sono ammessi alla negoziazione in un mercato regolamentato e la direttiva 2007/14/CE della Commissione

{COM(2011) 683 definitivo}
{SEC(2011) 1279 definitivo}

1. INTRODUZIONE

La direttiva sulla trasparenza[1] (in prosieguo "la direttiva") impone agli emittenti di valori mobiliari negoziati nei mercati regolamentati all'interno dell'Unione europea ("UE") di garantire agli investitori un'adeguata trasparenza, comunicando e diffondendo al pubblico le informazioni previste dalla regolamentazione[2].

A cinque anni dall'entrata in vigore della direttiva, la Commissione ha pubblicato una relazione[3] che valuta l'impatto della direttiva. Secondo la relazione, la direttiva è utile per il funzionamento corretto ed efficiente del mercato, seppur con alcuni settori da migliorare.

Nel 2010 la Commissione ha lanciato una consultazione pubblica sulla modernizzazione della direttiva. I principali argomenti trattati sono stati il grado di attrattiva dei mercati regolamentati per i piccoli e medi emittenti e i modi per migliorare il sistema per le partecipazioni rilevanti con diritto di voto.

L'opinione dei partecipanti alla consultazione pubblica è divergente per quanto concerne la possibilità di migliorare la situazione dei piccoli e medi emittenti apportando alcune modifiche alla direttiva. In riferimento alle partecipazioni con diritto di voto, dalla consultazione pubblica è emerso un consenso unanime sulla necessità di inserire un requisito per la notifica delle partecipazioni in derivati con regolamento in contanti[4] e di aumentare il livello di armonizzazione in questo settore. Inoltre, è stata chiesta maggiore chiarezza su alcuni aspetti tecnici.

Infine, nel 2010 la Commissione ha deciso, di concerto con il Parlamento europeo, di valutare la fattibilità di richiedere ad alcune società di comunicare le principali informazioni finanziarie relative alle attività svolte nei paesi terzi[5]. Da un'altra valutazione dell'impatto realizzata su questo aspetto è emerso che la direttiva sulla trasparenza e le direttive contabili[6] dovrebbero essere modificate in modo tale da includervi un nuovo requisito in materia.

2. DEFINIZIONE DEL PROBLEMA

I problemi individuati nel regime attuale possono essere raggruppati in due categorie principali: a) piccoli e medi emittenti e b) requisiti relativi alla notifica delle partecipazioni rilevanti con diritto di voto.

---

1 Direttiva 2004/109/CE del Parlamento europeo e del Consiglio, del 15 dicembre 2004.

2 Il termine "informazioni previste dalla regolamentazione" include informazioni finanziarie annuali, semestrali e trimestrali, informazioni aggiornate sulle partecipazioni rilevanti con diritto di voto e informazioni *ad hoc* pubblicate conformemente alla direttiva sugli abusi di mercato (direttiva 2003/6/CE).

3 COM(2010) 243 definitivo del 27 maggio 2010. La relazione era corredata da un documento di lavoro più dettagliato dei servizi della Commissione (SEC(2010061)).

4 I derivati azionari con regolamento in contanti si riferiscono a operazioni su azioni regolate tramite pagamento in contanti, senza alcuna consegna fisica dell'azione sottostante.

5 http://register.consilium.europa.eu/pdf/en/10/st15/st15650-ad01.en10.pdf

6 Quarta direttiva 78/660/CEE del Consiglio relativa ai conti annuali e settima direttiva 83/349/CEE del Consiglio relativa ai conti consolidati.

2.1. Problemi individuati in relazione ai piccoli e medi emittenti

A livello UE non vi è alcuna definizione giuridica di piccoli e medi emittenti. I riferimenti ai piccoli e medi emittenti nel presente documento andranno intesi secondo i concetti nazionali esistenti applicati negli Stati membri.

Il miglioramento del contesto normativo per i piccoli e medi emittenti e la semplificazione del loro accesso ai capitali rientrano tra le principali priorità politiche della Commissione[7]. Sebbene gli obblighi di trasparenza non siano considerati l'unico aspetto problematico con cui si devono confrontare i piccoli e medi emittenti, essi contribuiscono agli elevati costi di messa in conformità correlati alla quotazione nei mercati regolamentati, alla loro scarsa visibilità presso analisti e investitori e ad una cultura che privilegia il breve termine.

2.1.1. Elevati costi di messa in conformità per i piccoli e medi emittenti

Obiettivo della direttiva è quello di fornire al mercato informazioni accurate, complete e tempestive. Gli emittenti devono pubblicare informazioni finanziarie su base annua, semestrale e trimestrale[8]. La direttiva impone l'obbligo minimo di pubblicare relazioni intermedie trimestrali sulla gestione di contenuto limitato. Tuttavia, molti Stati membri richiedono maggiori di informazioni. Per i piccoli e medi emittenti i costi sostenuti per la pubblicazione delle informazioni finanziarie trimestrali sono relativamente elevati, mentre l'utilità di quest'obbligo non è affatto chiara.

Inoltre, il rispetto di termini stringenti per la pubblicazione delle relazioni semestrali, unito alla complessità dei contenuti e della tipologia di informazioni da comunicare nelle sezioni esplicative delle relazioni, possono anche rivelarsi costosi e dispendiosi in termini di risorse per gli emittenti.

2.1.2. Focalizzazione sui risultati a breve termine

La necessità di pubblicare informazioni finanziarie trimestrali potrebbe indurre gli organi di gestione a dichiarare utili in ogni singolo trimestre. Inoltre, la rendicontazione trimestrale potrebbe anche essere percepita dagli investitori come un incentivo regolamentare a focalizzarsi sui risultati a breve termine delle società, piuttosto che ad assumere un'ottica a lungo termine.

2.1.3. Minore visibilità dei piccoli e medi emittenti

Le scadenze ravvicinate imposte per le relazioni semestrali (due mesi dopo la fine del periodo coperto dalla relazione) creano al termine del secondo mese una strozzatura che turba il mercato, sovraccarica di informazioni finanziarie gli investitori e gli analisti e accentua la loro tendenza a focalizzarsi sulle grandi imprese leader del mercato, trascurando i piccoli e medi emittenti. Ciò accade per la grande maggioranza degli emittenti europei, per i quali l'esercizio

---

7 Comunicazione della Commissione "Verso un atto per il mercato unico – Per un'economia sociale di mercato altamente competitiva. 50 proposte per lavorare, intraprendere e commerciare insieme in modo più adeguato", COM(2010) 608 definitivo e comunicazione della Commissione "L'Atto per il mercato unico. Dodici leve per stimolare la crescita e rafforzare la fiducia. Insieme per una nuova crescita", COM(2011) 206 definitivo.

8 Relazioni finanziarie trimestrali o relazioni intermedie sulla gestione, generalmente noti anche come informazioni finanziarie trimestrali.

contabile corrisponde all'anno civile e per i quali la scadenza cade pertanto a fine agosto, contribuendo così alla scarsa visibilità dei piccoli e medi emittenti agli occhi di investitori e analisti.

Un altro aspetto che limita la visibilità dei piccoli e medi emittenti è rappresentato dalle difficoltà che devono affrontare gli investitori che desiderano accedere alle informazioni pubblicate, a causa dell'insufficiente interconnessione dei vari meccanismi nazionali di stoccaggio.

2.1.4. Problemi individuati in relazione alla notifica delle partecipazioni rilevanti con diritto di voto

La direttiva impone agli emittenti di notificare al mercato le acquisizioni o cessioni di azioni ammesse alla negoziazione in un mercato regolamentato e che conferiscono diritti di voto (ossia di notificare la percentuale di diritti di voto detenuti qualora essa raggiunga, superi o scenda al di sotto delle soglie del 5%, 10%, 15%, 20%, 25%, 30%, 50% e 75%). Sono stati individuati due problemi nel regime vigente: quello della proprietà occulta, dovuto alle lacune presenti nelle norme in materia di notifica e quello delle divergenze tra le norme di notifica degli Stati membri.

2.1.5. La possibilità della proprietà occulta

Dopo l'adozione della direttiva l'impiego di derivati con regolamento in contanti è aumentato significativamente nel mercato. Questi derivati possono essere utilizzati per acquisire ed esercitare un influsso su una società quotata o per costituire una partecipazione occulta in una società (numerosi sono gli esempi in tal senso[9]). Attualmente essi non rientrano tuttavia nell'ambito di applicazione delle norme in materia di informativa fissate dalla direttiva. Questa omissione può portare a possibili abusi di mercato, a inefficienze del meccanismo di formazione dei prezzi, nonché all'espressione del voto in assenza di un interesse economico (il cosiddetto *empty voting*), con conseguente calo della fiducia degli investitori e disallineamento degli interessi di quest'ultimi con quelli a lungo termine delle società stesse.

2.1.6. Norme di notifica divergenti tra Stati membri, con maggiori rischi di responsabilità e normativi ed elevati costi di messa in conformità per gli investitori transfrontalieri

Norme di notifica differenti tra Stati membri, in particolare riguardanti l'aggregazione delle partecipazioni azionarie con quelle in strumenti finanziari, determinano un aumento dei costi e incertezze di carattere giuridico per gli investitori partecipanti in attività transfrontaliere. La mancata aggregazione delle partecipazioni azionarie con quelle in strumenti finanziari genera anche una riduzione della trasparenza all'interno di alcuni Stati membri.

3. SUSSIDIARIETÀ

L'UE ha il diritto di intervenire in questo settore conformemente agli articoli 50 e 114 del TFUE. Tutti i problemi riscontrati riguardano il mercato UE dei capitali nella sua interezza; pertanto, per essere efficaci le modifiche devono essere introdotte a livello dell'UE.

---

[9] Esempi: LVMH/Hermes, Porsche/VW, Schaeffler/Continental.

Inoltre, i problemi individuati per i piccoli e medi emittenti sono correlati alla normativa UE e degli Stati membri e possono essere risolti solo modificando la normativa dell'Unione. Infine, solo uno strumento adottato a livello UE garantirebbe l'applicazione dello stesso quadro normativo da parte di tutti gli Stati membri sulla base degli stessi principi, ponendo così fine all'attuale frammentazione della risposta normativa in merito alla notifica delle partecipazioni rilevanti.

4. OBIETTIVI

Le misure previste dovrebbero semplificare alcuni obblighi, rendendo così i mercati regolamentati attraenti per i piccoli e medi investitori, migliorando anche la chiarezza giuridica e l'efficacia del regime di trasparenza con riferimento alla comunicazione dell'assetto proprietario delle società.

5. OPZIONI STRATEGICHE: ANALISI DEGLI IMPATTI E CONFRONTO

Allo scopo di realizzare gli obiettivi summenzionati, la Commissione ha elaborato, analizzato e confrontato diverse opzioni strategiche per definire quelle in grado di risolvere in maniera soddisfacente i problemi individuati. Tali opzioni vengono illustrate di seguito.

5.1. Opzioni strategiche per consentire una maggiore flessibilità in tema di frequenza e tempistica della pubblicazione delle informazioni finanziarie periodiche per i piccoli e medi investitori

(1) *Nessuna azione*: questa opzione non realizzerebbe l'obiettivo ed è stata pertanto scartata.

(2) *Abolire l'obbligo di presentare informazioni finanziarie trimestrali per i piccoli e medi emittenti*: questa opzione ridurrebbe sia i costi per i piccoli e medi emittenti sia gli incentivi regolamentari che possono favorire un'ottica a breve termine. Tuttavia, l'introduzione di regimi differenziati in base alle dimensioni delle società quotate nei mercati regolamentati potrebbe essere motivo di confusione per gli investitori e potrebbe anche determinare una minore visibilità dei piccoli e medi emittenti. Questa opzione è stata pertanto scartata.

(3) *Abolire l'obbligo di presentare relazioni finanziarie trimestrali per i piccoli e medi emittenti per un periodo iniziale di 3 anni dall'ammissione alla negoziazione*: sebbene possa alleviare la pressione immediata sui piccoli e medi emittenti, questa opzione andrebbe soltanto a posticipare i costi. L'introduzione di regimi differenziati per le società quotate nei mercati regolamentati in base alle loro dimensioni e agli anni di costituzione, potrebbe confondere gli investitori. Questa opzione è stata pertanto scartata.

(4) *Abolire l'obbligo di presentazione delle relazioni finanziarie trimestrali per tutte le società quotate*: questa opzione consentirebbe di ridurre i costi di messa in conformità delle società. La riduzione media stimata della spesa, ad esclusione dei costi correlati alla redazione delle informazioni trimestrali, varia da 2 000 EUR a 60 000 EUR per anno/emittente per i piccoli e medi emittenti e da 35 000 EUR a 250 000 EUR per anno/emittente per i grandi emittenti. La riduzione dei costi per il

personale incaricato di redigere le informazioni non può essere stimata in termini monetari per i piccoli e medi emittenti: tale riduzione varia ampiamente da un emittente all'altro (da 8 giorni/dipendente a 30 giorni/dipendente per anno). Per i grandi emittenti, la riduzione massima complessiva della spesa (inclusi i costi correlati al personale incaricato di redigere le relazioni) potrebbe essere stimata ad un massimo di 2 milioni di euro annui per ciascun emittente. Ciò dovrebbe consentire ai piccoli e medi emittenti di destinare le proprie risorse alla pubblicazione delle informazioni che più soddisfano i loro investitori. Questa opzione consentirebbe di ridurre la pressione a breve termine sugli emittenti e stimolerebbe gli investitori ad adottare una visione a più lungo termine, e non dovrebbe avere un impatto negativo sulla tutela degli investitori. La protezione degli investitori è già sufficientemente garantita dalla divulgazione obbligatoria dei risultati semestrali e annuali, nonché dalle informazioni richieste dalla direttiva sul prospetto e da quella sugli abusi di mercato[10]. Pertanto, gli investitori sarebbero debitamente informati in merito a fatti ed eventi importanti che potrebbero potenzialmente influenzare il prezzo delle azioni sottostanti, senza bisogno delle informazioni trimestrali previste nella direttiva. Per questa ragione, non appare necessario imporre per legge la pubblicazione di relazioni intermedie sulla gestione. Per essere efficace, questa opzione dovrebbe anche impedire agli Stati membri di imporre la pubblicazione delle informazioni trimestrali nella propria legislazione nazionale. Le società potrebbero decidere, a propria discrezione, di pubblicare tali informazioni.

(5) *Estendere il termine di pubblicazione delle informazioni semestrali a tre mesi dalla fine del periodo coperto dalla relazione per tutte le società quotate*: i piccoli e medi emittenti risparmierebbero sulle spese, sebbene i benefici più rilevanti sarebbero di carattere non monetario. In questo modo, gli emittenti avrebbero più tempo per redigere le proprie relazioni, migliorandone così la qualità. Questa opzione avrebbe anche un impatto positivo sulla visibilità dei piccoli e medi emittenti, dal momento che potrebbero programmare più facilmente la pubblicazione delle loro relazioni, in modo tale da non farla coincidere con la pubblicazione delle relazioni delle grandi società quotate. In questo modo, gli analisti e gli investitori avrebbero più tempo per analizzare i risultati semestrali dei piccoli e medi emittenti.

(6) *Estendere la scadenza per la pubblicazione delle informazioni semestrali a tre mesi dalla fine del rispettivo periodo coperto dalla relazione per i piccoli e medi emittenti*: questa opzione avrebbe un impatto positivo sulla visibilità dei piccoli e medi emittenti. Tuttavia, l'introduzione di regimi differenziati per le società quotate nei mercati regolamentati, in base alle loro dimensioni, potrebbe confondere gli investitori. Questa opzione è stata pertanto scartata.

5.2. Opzioni strategiche per semplificare le sezioni esplicative delle relazioni finanziarie per i piccoli e medi emittenti

(1) *Nessuna azione:* questa opzione non realizzerebbe l'obiettivo ed è stata pertanto scartata.

---

[10] Direttiva 2003/6/CE e direttiva 2003/71/CE.

(2) *Armonizzare il contenuto esplicativo massimo dell'informativa finanziaria a livello UE per i piccoli e medi emittenti*: la standardizzazione del contenuto dell'informativa potrebbe generare un aumento dei costi di messa in conformità per i piccoli e medi emittenti negli Stati membri in cui i requisiti sono attualmente ridotti. In compenso questa opzione faciliterebbe la comparabilità delle informazioni finanziarie nell'UE. Tuttavia, se il livello minimo di contenuto fosse fissato troppo basso a livello UE per consentire agli emittenti di risparmiare sui costi , ne potrebbero derivare conseguenze negative per gli investitori. Questa opzione è stato pertanto scartata.

(3) *Richiedere all'AEFSEM*[11] *di formulare orientamenti non vincolanti (modelli) sui contenuti esplicativi delle relazioni finanziarie per tutte le società quotate*: questa opzione consentirebbe all'AEFSEM di predisporre il modello che garantisca un risparmio sui costi. Ciò faciliterebbe anche la comparabilità delle informazioni per gli investitori e potrebbe aumentare la visibilità transfrontaliera dei piccoli e medi emittenti. Essa comporterebbe alcune spese una tantum a carico dell'AEFSEM.

(4) *Richiedere agli Stati membri di predisporre modelli od orientamenti non vincolanti sui contenuti esplicativi delle relazioni*: questa opzione consentirebbe agli Stati membri di adattare i contenuti delle relazioni al proprio mercato interno. Tuttavia, ciò non faciliterebbe la comparabilità transfrontaliera delle informazioni. Questa opzione è stata pertanto scartata.

5.3. Opzioni strategiche per eliminare il divario esistente nei requisiti di notifica delle partecipazioni rilevanti con diritto di voto

(1) *Nessuna azione*: questa opzione non realizzerebbe l'obiettivo ed è stato pertanto scartata.

(2) *Regime ampio: estensione del regime informativo a tutti gli strumenti con effetto economico simile alla detenzione di azioni e al diritto di acquisire azioni*: questa opzione ricomprenderebbe i derivati con regolamento in contanti, nonché eventuali futuri strumenti finanziari simili. La maggioranza dei partecipanti alla consultazione ha indicato questa opzione come una possibile soluzione ai problemi summenzionati. Essa avrebbe un forte impatto positivo sulla tutela e sulla fiducia degli investitori. Il nuovo regime informativo per tutti i tipi di strumenti finanziari equivalenti alla proprietà di azioni potrebbe generare un aumento dei costi organizzativi e di messa in conformità per i possessori di derivati con regolamento in contanti (i costi una tantum massimi stimati vanno da 100 000 EUR a 600 000 EUR per possessore di derivati con regolamento in contanti, ma riguarderebbero esclusivamente gli investitori in possesso di quantitativi significativi di tali strumenti). Non è stato possibile stimare i costi correnti, in quanto varierebbero in funzione dell'aumento effettivo nel numero di pubblicazioni per ciascun possessore. Tuttavia, sulla scia dell'esperienza del Regno Unito che nel 2009 ha introdotto un regime di questo tipo, si prevede che l'aumento delle notifiche resterà limitato.

(3) *Approccio limitativo: la comunicazione non è richiesta qualora vengano soddisfatti criteri sicuri*: in base a quest'opzione dovrebbero essere comunicati tutti gli strumenti che danno accesso ai diritti di voto sottostanti, a meno che non vengano

---

[11] Autorità europea degli strumenti finanziari e dei mercati.

soddisfatti alcuni criteri specifici. Ciò consentirebbe ancora agli investitori di aggirare lo scopo dell'obbligo di informazione. Questa opzione è stata pertanto scartata.

5.4. Opzioni strategiche per eliminare le divergenze negli obblighi di notifica delle partecipazioni rilevanti

(1) *Nessuna azione*: questa opzione non realizzerebbe l'obiettivo ed è stata pertanto scartata.

(2) *Armonizzare il regime per la comunicazione delle partecipazioni rilevanti con diritto di voto, imponendo l'aggregazione delle partecipazioni azionarie con quelle in strumenti finanziari che danno accesso ad azioni (inclusi i derivati con regolamento in contanti)*: questa opzione armonizzerebbe il metodo utilizzato per calcolare le soglie, ma non le soglie stesse, creando così un approccio uniforme che andrebbe a ridurre le incertezze giuridiche, ad aumentare la trasparenza, a semplificare gli investimenti transfrontalieri e a incrementare il grado di attrattiva dei mercati UE dei capitali. La riduzione stimata dei costi correnti per gli investitori transfrontalieri è di 77 000 EUR annui per operatore. Tuttavia, questa opzione potrebbe generare alcuni costi aggiuntivi correlati alle comunicazioni supplementari negli Stati membri in cui al momento non vigono obblighi di aggregazione.

(3) *Armonizzare il regime per la comunicazione delle partecipazioni rilevanti con diritto di voto imponendo tre regimi distinti di comunicazione: uno per le partecipazioni o le azioni, uno per gli strumenti finanziari che danno accesso ad azioni e uno per i derivati con regolamento in contanti*: questa opzione potrebbe dar vita a un regime uniforme, ma potrebbe influire negativamente sulla tutela e sulla fiducia degli investitori. Pertanto, questa opzione è stata scartata.

(4) *Armonizzare il regime di comunicazione delle partecipazioni rilevanti con diritto di voto, uniformando le soglie per la comunicazione*: la questione delle soglie legate ai diritti di voto non è stata considerata rilevante dalla maggioranza dei partecipanti. Inoltre, le soglie di notifica sembrano essere di difficile armonizzazione, viste le differenze nelle partecipazioni azionarie tra gli Stati membri. Pertanto, questa opzione è stata scartata.

6. STRUMENTI DA UTILIZZARE E ASPETTI RELATIVI AL RECEPIMENTO E ALLA CONFORMITÀ

Solo uno strumento giuridico vincolante sarebbe in grado di garantire che tutti gli Stati membri applichino lo stesso quadro normativo, basato sugli stessi principi. Una direttiva consentirebbe la massima armonizzazione in alcune aree, lasciando però agli Stati membri la possibilità di poter prendere in considerazione la propria situazione specifica in altri settori.

Per assicurare una migliore attuazione della direttiva, e in base alla comunicazione della Commissione "Potenziare i regimi sanzionatori nel settore dei servizi finanziari"[12], anche l'attuale quadro sanzionatorio dovrebbe essere migliorato.

---

12 Comunicazione del 9 dicembre 2010: COM(2010) 716 definitivo.

7. MONITORAGGIO E VALUTAZIONE

La Commissione monitorerà l'attuazione della direttiva da parte degli Stati membri e, all'occorrenza, i servizi della Commissione presteranno loro assistenza. La valutazione dell'impatto dell'attuazione dei provvedimenti legislativi dovrebbe essere effettuata sei anni dopo l'entrata in vigore degli stessi. La Commissione monitorerà l'attuazione della direttiva modificata con l'ausilio dell'AEFSEM e avviando un ampio dialogo con le principali parti interessate.

EUROPEAN COMMISSION

Brussels, 3.2.2012
SEC(2011) 1279 final/2

REPORT FROM THE COMMISSION COMMISSION STAFF WORKING PAPER

IMPACT ASSESMENT

{COM(2011) 683 final}
{SEC(2011) 1280 final}

TABLE OF CONTENTS

1. INTRODUCTION

The Transparency Directive[1] requires issuers of securities traded on regulated markets within the EU to ensure appropriate transparency through a regular flow of regulated information to the markets. Regulated information consists of: yearly, half-yearly and quarterly financial information[2]; on-going information on major holdings of voting rights; and ad hoc information disclosed pursuant to the Market Abuse Directive[3].

Article 33 of the Transparency Directive requested the Commission to review the operation of this Directive within four and half years of its adoption. The Commission report on the operation of the Directive of May 2010[4] shows that, overall, issuers generally comply with financial reporting obligations and that the transparency requirements of the Directive are considered to be useful for the proper and efficient functioning of the market.

Nevertheless, the review of the operation of the Transparency Directive showed that there are areas where the regime created by this Directive could be improved. In particular, evidence that has been gathered demonstrates the need to provide for the simplification of certain issuers' obligations with a view to making regulated markets more attractive to small and medium-sized issuers raising capital in Europe. Furthermore, the effectiveness of the existing transparency regime needs to be improved, notably with respect to the disclosure of corporate ownership.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

The impact assessment is the result of an extensive dialogue and consultation with all major stakeholders, including securities regulators, market participants (issuers, intermediaries and investors), and consumers. It is built upon the observations and analysis contained in the **Commission report** on the operation of the Transparency Directive (see Annex 11) and the more detailed Commission staff working document which accompanied it. This report describes the impact of the Transparency Directive and how it has been applied; and presents the main issues emerging from the application of the Directive. It draws on the findings of a study conducted in 2009 by Mazars[5] for the

---

1 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390 of 31.12.2004, p.38.

2 Either quarterly financial reports or interim management statements as referred to in Article 6 of the Transparency Directive: also referred generally as quarterly financial information.

3 Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003, on insider dealing and market manipulation. OJ L, 12 April 2003, p 16.

4 COM (2010) 243 final of 27 May 2010. This report is accompanied by a more detailed Commission staff working document (SEC(2010)61).
See: www.ec.europa.eu/internal_market/securities/transparency/index_en.htm

5 Mazars (2009).

Commission on the application of selected obligations of this Directive, which includes evidence gathered from market participants through a survey. The report also draws on reports published by the Committee of European Securities Regulators (CESR) (now ESMA)[6] and by the European Securities Markets Expert Group (ESME)[7] in this area. CESR (ESMA) and ESME reports have been particularly valuable to identify areas of the Transparency Directive with unclear provisions and/or which could be improved.

Comments received from stakeholders participating in the **public consultation** launched from 28 May 2010 to 23 August 2010 were also taken into account. The Commission services issued a public consultation document explaining the problems found and suggesting options for the way forward. The Commission services received 111 replies to the consultation. The non-confidential contributions can be consulted in the Commission website[8]. The feedback statement is included in Annex 10.

Three main issues were submitted for comments by stakeholders: the attractiveness of regulated capital markets for **small and medium-sized issuers**; ways to improve the transparency regime for **holdings of voting rights** and the problems encountered with the application of the Directive because of **diverging national measures** and/or **unclear obligations** in the Directive.

About half of the respondents to the public consultation believe that the margin of manoeuvre for reducing the requirements without lowering transparency standards was limited and, consequently, changes to the Transparency Directive could not significantly reduce costs for small and medium-sized issuers. The other half believed that some cost reductions could be achieved without necessarily affecting the level of transparency necessary to protect investors. The following ideas were for example advanced: streamline disclosures; allow for more flexible deadlines for publication of financial reports; abolish the obligation to produce quarterly financial information either definitively or during the first three years of listing.

The majority of respondents to the consultation would be in favour of increasing the level of harmonisation concerning the notification by the investors of the holdings of voting

---

6 CESR was an independent advisory group to the European Commission composed by the national supervisors of the EU securities markets. See the European Commission's Decision of 23 January 2009 establishing the Committee of European Securities Regulators 2009/77/CE. OJ L25, 23.10.2009, p. 18). The role of CESR was to improve co-ordination among securities regulators, act as an advisory group to assist the EU Commission and to ensure more consistent and timely day-to-day implementation of community legislation in the Member States. It has been replaced by European Securities and Markets Authority: ESMA as from 1 January 2011: see Regulation No 1095/2010 of the European Parliament and of the Council of 24 November 2010: OJ L 331/84 of 15 December 2010.

7 ESME was an advisory body to the Commission, composed of securities markets practitioners and experts. It was established by the Commission in April 2006 and operated on the basis of the Commission Decision 2006/288/EC of 30 March 2006 setting up a European Securities Markets Expert Group to provide legal and economic advice on the application of the EU securities Directives (OJ L 106, 19.4.2006, p. 14–17).

8 http://ec.europa.eu/internal_market/securities/transparency/index_en.htm

rights and including the disclosure of cash-settled derivatives into the notification requirements. In addition, some technical adjustments and clarifications were welcomed by the respondents in order to create a better implementation framework for the Directive. These possible adjustments are presented in the Annex 3.

As part of the consultation process, the Commission services organised on 11 June 2010 a **public conference** with the participation of several stakeholders. Discussion focused on the attractiveness of regulated markets to small and medium-sized issuers and the possible enhancement of the transparency obligations regarding corporate ownership disclosures. The outcome of this conference has also been considered in this impact assessment[9].

In March 2010, a **Steering Group** was set up by Directorate General Internal Market and Services to monitor the progress of the impact assessment report. The Steering Group comprised representatives of a number of services of the European Commission, namely the Directorate General Internal Market and Services, the Directorate General Competition, the Directorate General Economic and Financial Affairs, the Directorate General Enterprise, the Directorate General for Health and Consumers, the Directorate General for Information and Society and Media, the Directorate General for Trade, the Legal Service and the Secretariat General. The Steering Group met 3 times (23 March 2010, 17 March 2011 and 7 April 2011). In accordance with the rules for the elaboration of impact assessments, the minutes of the final meeting of the steering group have been submitted to the Impact Assessment Board together with this impact assessment.

The **Impact Assessment Board** delivered its opinion on 10 June 2011. Following the Board's opinion, several changes were made to this IA, in particular the following:

– the report better explains the context and the scope of the initiative, in particular the link with the overall Commission polices to simplify legislation, improve capital market access for small and medium companies and make financial market more stable;

– the analysis of problems arising from quarterly information has been strengthen and now includes experience of third countries, provides greater evidence of excessive administrative burden, short-timer pressure, overlaps with other EU legislative requirements and nuances the stakeholders' views on this issue;

– the justification of some of the policy options has been improved, namely the shift from minimum to maximum harmonisation and the changes in the sanctioning regime;

– the report provides a more comprehensive analysis of cost changes implied by all policy options, explains why the standards cost model has not been used and

[9] See http://ec.europa.eu/internal_market/securities/transparency/index_en.htm

discusses to greater extend the efficiency and effectiveness of the preferred options and their impact on the international attractiveness of EU markets;

– the presentation of the problem definition and policy options with regard to major holdings of voting rights is improved, the exemptions envisaged to the requirement to notify major holdings of voting rights are discussed in greater depth;

– an annex including the Commission report on the operation of the Transparency Directive has been added;

– other technical comments transmitted by the Impact Assessment Board have been incorporated in the report.

Agenda planning or WP reference: initiative listed in the Commission Work Programme for 2011 - Annex III (initiative number 28).

This report does not prejudge the final form of any decision to be taken by the Commission.

3. POLICY CONTEXT AND PROBLEM DEFINITION

3.1. Overview of legislative framework

The following legislative texts provide the framework for transparency rules regarding securities traded on regulated markets:

The Transparency Directive contains rules on disclosure of periodic financial information and ongoing information on major holdings of voting rights (such as deadlines, content, formats, language etc); dissemination of information to the public and the competent authorities; storage of disclosed information; liability of issuers regarding disclosed information; supervision by competent authorities and penalties for lack of compliance. The Transparency Directive was completed by Commission Directive 2007/14/EC[10] which contains implementing measures. The Transparency Directive is further supplemented by soft-law. This notably includes: (i) the Commission recommendation on storage of regulated information[11]; (ii) the standard form developed by the Commission services for the notification of major holdings; and (iii) the interpretative work undertaken by CESR (ESMA) to align the exercise of supervisory powers by the national competent authorities.

---

[10] Commission Directive 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; OJ L 69, 9.3.2007, p. 27.

[11] Commission Recommendation of 11 October 2007 on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/EC of the European Parliament and of the Council, OJ L267, 12.10.2007, p.16.

The Transparency Directive obligations are often closely connected to requirements set out in other Community texts, either in the corporate governance/company law field or in the financial markets/securities field. In particular, the **Prospectus Directive**[12] includes disclosure requirements that are very close to the core area of the Transparency Directive obligations. The Prospectus Directive requires companies offering shares to the public in the EU to issue a prospectus that complies with the detailed rules under the Directive. It also allows companies to issue a prospectus in one EU country that would cover subsequent offers of securities to the public or admission to trading throughout Europe, with minimal translation obligations.

In addition, the Transparency Directive is the instrument for implementing disclosure obligations under other directives, such as the **Market Abuse Directive**, which prohibits abusive behaviour on regulated markets (e.g. insider dealing and market manipulation) and requires issuers to disclose inside information.

Finally, on 22 September 2010, the Commission agreed with the European Parliament, to evaluate the feasibility of requesting certain companies to disclose key **financial information regarding their activities in third countries**[13]. A separate impact assessment on this issue was drafted and submitted to the Impact Assessment Board. This impact assessment concluded that the Transparency Directive and the Accounting Directives should include a new requirement in this respect.

3.2. Problem definition

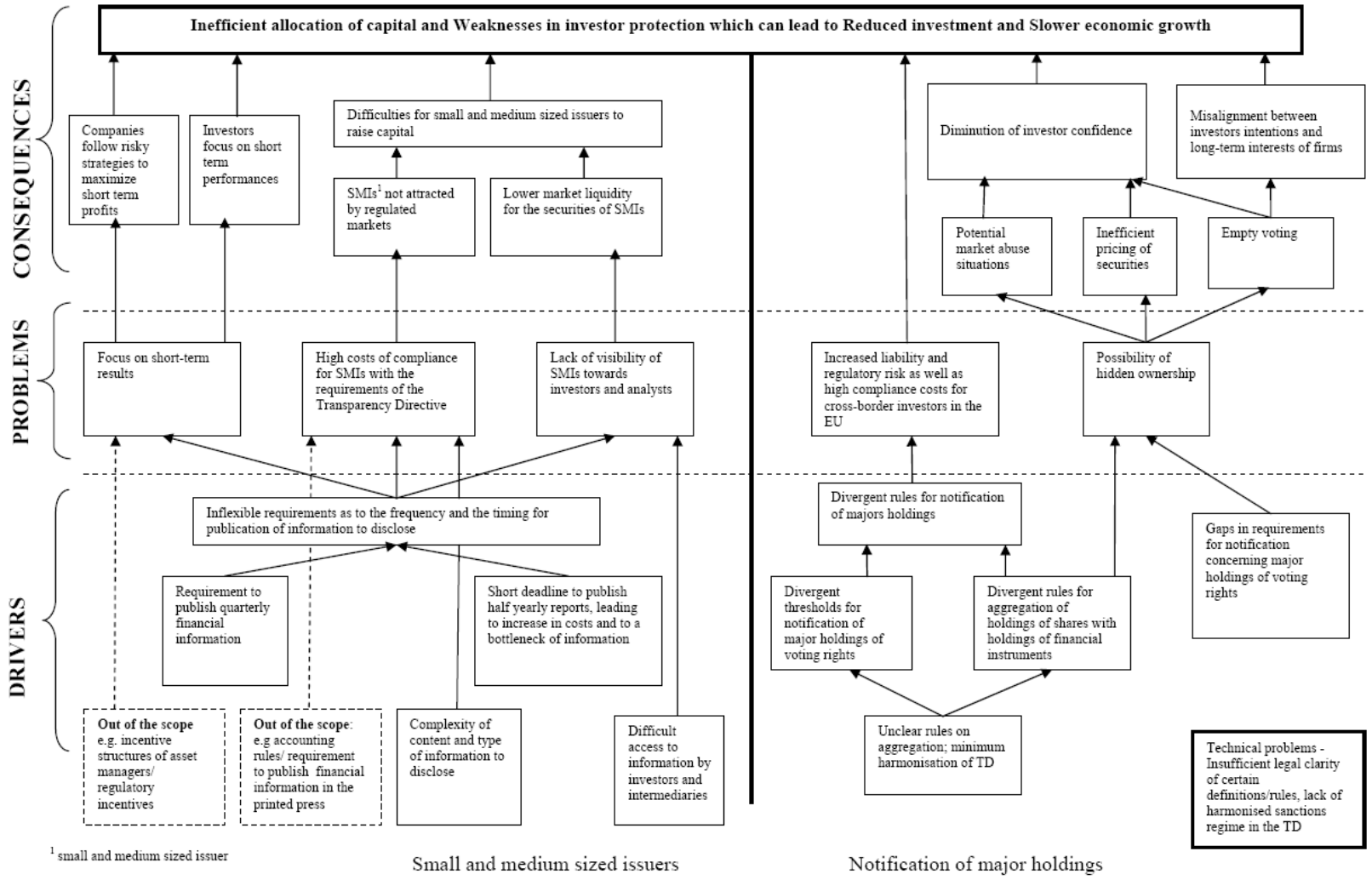
The problems and their drivers are illustrated by the following problem tree and are discussed in detail below. They can be grouped in two main categories: (i) problems identified in relation to small and medium-sized issuers and (ii) problems identified in relation to notification of major holdings of voting rights.

Figure 1: Problem tree

---

[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, OJ L 345, 31.12.2003, p. 64.

[13] http://register.consilium.europa.eu/pdf/en/10/st15/st15650-ad01.en10.pdf


Inefficient allocation of capital and Weaknesses in investor protection which can lead to Reduced investment and Slower economic growth
CONSEQUENCES
PROBLEMS
DRIVERS
Companies follow risky strategies to maximize short term profits
Investors focus on short term performances
Difficulties for small and medium sized issuers to raise capital
SMIs[1] not attracted by regulated markets
Lower market liquidity for the securities of SMIs
Diminution of investor confidence
Misalignment between investors intentions and long-term interests of firms
Potential market abuse situations
Inefficient pricing of securities
Empty voting
Focus on short-term results
High costs of compliance for SMIs with the requirements of the Transparency Directive
Lack of visibility of SMIs towards investors and analysts
Increased liability and regulatory risk as well as high compliance costs for cross-border investors in the EU
Possibility of hidden ownership
Inflexible requirements as to the frequency and the timing for publication of information to disclose
Divergent rules for notification of majors holdings
Gaps in requirements for notification concerning major holdings of voting rights
Requirement to publish quarterly financial information
Short deadline to publish half yearly reports, leading to increase in costs and to a bottleneck of information
Divergent thresholds for notification of major holdings of voting rights
Divergent rules for aggregation of holdings of shares with holdings of financial instruments
Out of the scope e.g. incentive structures of asset managers/ regulatory incentives
Out of the scope: e.g accounting rules/ requirement to publish financial information in the printed press
Complexity of content and type of information to disclose
Difficult access to information by investors and intermediaries
Unclear rules on aggregation; minimum harmonisation of TD
Technical problems - Insufficient legal clarity of certain definitions/rules, lack of harmonised sanctions regime in the TD
[1] small and medium sized issuer
Small and medium sized issuers
Notification of major holdings

3.2.1. Problems identified in relation to small and medium-sized issuers

Following the Commission report and the results of the public consultation, the problems indentified in relation to small and medium-sized issuers linked to the requirements of the Transparency Directive are: (1) high costs of compliance; (2) focus on short-term results; and (3) lack of visibility of small and medium-sized issuers towards analysts and investors, especially cross-border.

3.2.1.1. Background and context

(1) Political background

The improvement of the regulatory environment for small and medium-sized issuers[14] and their access to capital, as well as reduction of administrative burden and simplification[15], are high political priorities for the Commission. The Transparency Directive requirements should therefore be analysed in this more general context.

The Commission presented end October 2010 a policy Communication on the relaunch of the Single Market[16]. In this Communication, the Commission stated that "Poor access to capital is one of the main problems which SMEs face in expanding their business. […] The reasons for this are manifold: often SMEs are not sufficiently visible to potential investors, or may find the listing requirements on capital markets disproportionately complex. Improving SME access to finance is a key political priority and rendering the SME segment of capital markets more dynamic is a central part of this."[17]

Against this background, the Commission committed to adopt an action plan for improving SME access to capital markets in 2011 (proposal No 12). Small Business Act for Europe[18] also pledged to evaluate the impact on SMEs of all proposals for the regulation of financial services and to calibrate them appropriately. As a consequence, in the Communication of April 2011, entitled "Working together to create new growth"[19], the Commission stated "The Transparency Directive, the Regulation implementing the Prospectus Directive and the Market Abuse Directive should also be revised in order to make the obligations applicable to listed SMEs more proportionate, whilst guaranteeing the same level of investor protection"[20]. This communication also mentions a future action plan on SME financing.

In this context, certain requirements of the Transparency Directive deserve to be analysed as regards their proportionality in terms of costs and benefits for small and medium-sized issuers and their investors. The impact assessment will therefore consider this question specifically from the perspective of the Transparency Directive, even if poor access to capital of small and medium-sized issuers is due to many different factors.

---

14 See below for definition of small and medium size issuer.

15 See Commission Communication of 8 October 2010 on smart regulation in the European Union, COM(2010)543 and Commission Communication on a simplified business environment for companies in the areas of company law, accounting and auditing, COM(2007) 394 final.

16 COM(2010) 608 final.

17 Idem, p. 15.

18 COM (2011)78 .

19 COM(2011) 206 final.

20 Idem, p. 21.

.

(2) Difficulties to define small and medium-sized issuers

There is no definition of a small and medium-sized issuer in the EU[21]. In the impact assessment accompanying the modification of the Prospectus Directive which allows for a simplified prospectus for small companies, a small quoted company is defined as a company with a market capitalisation of less than €500 million[22]. In the final text of this modification, a "company with reduced market capitalisation" is defined as a listed company with an average market capitalisation of less than €100 million (on the basis of end-year quotes for the previous three calendar years)[23]. There are two EU definitions of the Small and Medium Sized Enterprise encompassing enterprises which are limited in size[24]. However, these latter definitions do not differentiate between listed and non-listed companies.

The results of the public consultation confirm the difficulty to define a small and medium-sized issuer at the EU level: what is considered to be a small listed company in one Member State could be considered as a large company in another Member State. Therefore, when the present impact assessment refers to "small and medium-sized issuers", it refers to the existing national concepts in different Member States.

3.2.1.2. High costs of compliance for small and medium-sized issuers with the requirements of the Transparency Directive

The objective of the Transparency Directive is to ensure appropriate and adequate information of investors. It aims to reduce information asymmetries between investors and issuers, thus providing a more accurate assessment of market value of shares. Issuers are prepared to incur the costs involved in providing this information because they understand the benefits it will bring them, in particular, access to capital at a fair price. Small and medium-sized issuers often argue that, for them, the costs of compliance with transparency requirements are disproportionate[25]. They consider this is the case both compared to the relative costs borne by larger companies, and in relation to the benefits they obtain from being listed.

Indeed, the smaller issuers do not benefit from increase in investment volumes. In absolute terms, they make up the majority of listed companies on financial markets but they represent only a small part of total market capitalisation and of total trading

---

21 In the US, for the definition of "small reporting company", the SEC uses a $75 million public equity float threshold.

22 See European Commission (September 2009), Annex VI, p.70.

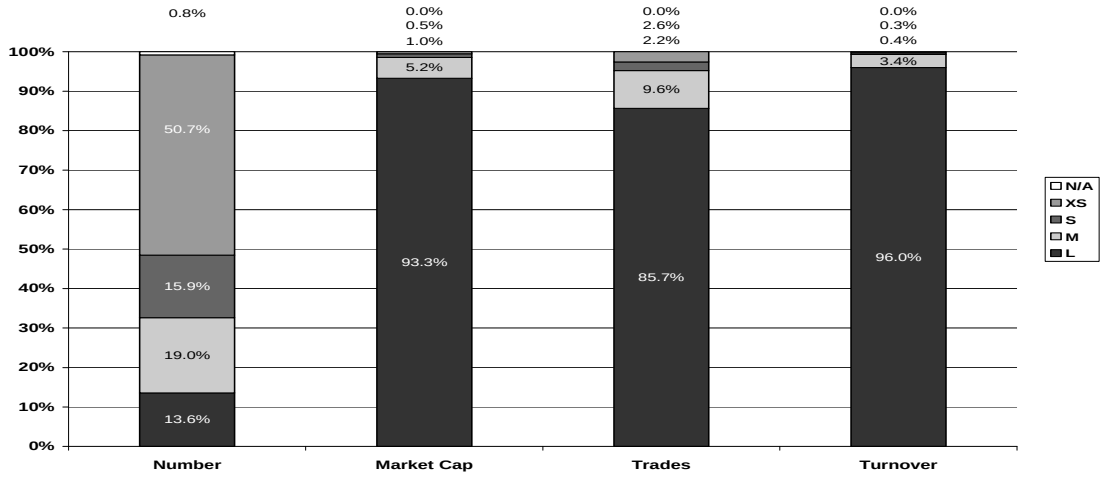
23 See Directive 2010/73/EC introducing a new Article 2(1) (t) in the Prospectus Directive.

24 See Recommendation 2003/361/EC where SME is defined as a company which employs fewer than 250 persons and which either has an annual turnover not exceeding 50 million euro or a balance sheet not exceeding 43 million euro. See also Articles 11 and 27 of the Directive 78/660/EEC on annual accounts of certain types of companies where an SME is defined as a company which employs fewer than 250 persons and which either has an annual turnover not exceeding 35 million euro or a balance sheet not exceeding 17,5 million euro.

25 See for instance replies from EuropeanIssuers, QCA and Middlenext to consultation on the Modernisation of the Transparency Directive (the question of disproportionate costs was not asked as such in this consultation). This view is also supported by Demarigny (2010). According to Mazars (2009), 34, 6 % of mid-cap companies and 38,1% of small listed companies consider that compliance with the Transparency Directive has been onerous for them: see section 2.3.5, p. 71.

volumes. This is particularly the case on Regulated Markets[26], as illustrated by the Figure 2 below.

Figure 2: Relative importance of listed companies on EU regulated markets by size



Source: FESE (2009). (Federation of European Securities Exchanges) which establishes four categories of companies: micro caps (XS ≤ €50M)), small caps (S: between €50M and €150M), mid caps (M: between €150M and €1b) and large cap (L: ≥ €1b). The first column presents the relative importance (%) by number of listed companies (equity issuers); the second column by market capitalisation; the third column shows the trades, in numbers, while the fourth column shows the turnover, in volume.

Low trading volumes mean lower market liquidity and more difficulties for small and medium-sized companies to raise capital on regulated markets, compared to larger companies. However, small and medium-sized listed companies still bear the full costs associated with the listing[27]. According to recent research[28], the explosion of private equity market in the last twenty-five years suggests that for some firms, especially small firms in R&D intensive sectors, disclosure costs are substantial.

In this context, calls are made to review legislation and to eliminate unnecessary administrative burden for companies by focusing on what is actually essential for investor protection rather than only desirable for some investors.

Whilst there is a consensus that yearly and half-yearly reports are necessary for investor protection, this is not the case for quarterly information and a number of voices call to alleviate the requirement to publish it (see point 1 below and Section 3.2.1.3). Annual and half-yearly reports are prepared according to the accounting standards. Therefore, they provide an accounting guidance and assurance for investors, including though statutory audit (for the yearly reports and for the half-yearly reports in many Member States). In contrast, the Directive does not provide for any quality standards for quarterly reports. Therefore, quarterly information is not standardised, is not prepared according to common standards and is not subject to any audit. As a consequence, it does not provide assurance or allow for comparability of information for investors.

---

26 See Glossary Annex 4.

27 Many aspects of these costs do not directly result from the requirements of the Transparency Directive but are linked to national additional measures or other legislative texts (e.g. obligation to publish all regulated information in the printed press, accounting rules), which are particularly problematic for smaller companies. However, these costs are out of the scope of this impact assessment.

28 Zingales (2009) p.18.

In addition, narrative parts of the financial reports[29] are considered as complex as regards the content and type of information to be disclosed, which result in significant costs/operational complexity for small listed companies.

Finally, certain costs such as the workload of boards and senior management linked to the short publication deadline for half-yearly financial statements are considered as problematic. By contrast, the deadline for publication of the annual reports does not seem to create any problems for issuers[30]. According to the Mazars study, some issuers even argue that the 4 months deadline is in fact too long.

(1) Requirement to publish quarterly financial information

The requirement that all issuers of shares must provide quarterly financial information was introduced through the revision of the Transparency Directive in 2004 in order to provide for more frequent updates on a company's progress[31]. Article 6 of Transparency Directive imposes a minimum requirement to publish Quarterly Interim Management Statements[32] with limited content. However, in implementing this Article in their national legislation, many Member States have required additional items to be disclosed (See Annex 5).

During the negotiations of the proposal of the Transparency Directive and before its adoption in 2004, the requirement to publish quarterly financial information was fiercely debated. At that time, many voices opposed any form of mandatory quarterly financial information as leading to short-termism (see Section 3.2.1.3. below). Its relevance was also questioned. It was argued, for instance, that "quarterly reporting is not a high priority. It has not helped to prevent corporate scandals in the US, and there is a risk that mandatory quarterly reports will encourage short-termism as management becomes overly focused on the next reporting deadline[33]."

In this context, it was agreed that the European Commission would evaluate the impact of the requirement to publish quarterly information by 20 January 2010 (see Article 6.3 of the Transparency Directive). It results from the Commission report on the operation of the Transparency Directive that it could contribute to the short termism (concerning short-termism see further Section 3.2.1.3).

Also, quarterly information is not a necessary tool in order to ensure investor protection. In fact, all material information that is likely to have a significant effect on the price of financial instruments listed on regulated markets has in any case to be disclosed as quickly as possible to the market according to the Market Abuse Directive[34]. One could question whether other information, which does not need to be disclosed to the market

---

29 See Glossary Annex 4.

30 Mazars (2009) section 2.5.1 p.79

31 As explained in recital 16 the objective was to provide more timely and more reliable information about issuers' performance. See Annex 5 for an overview of some jurisdictions outside the EU.

32 See Glossary Annex 4

33 See Financial Times from 27 January 2003 which published a letter from Pierre Bollon, Director General AFGASFFI (Association Française de la Géstion Financière) and Peter Montagnon, Head of Investment Affairs Association of British Insurers.

34 See Article 6(1) MAD which requires issuers of financial instruments to inform the public as soon as possible of inside information which directly concerns the said issuers. The inside information is defined in the MAD as information is likely to have a significant effect on the prices of financial instruments.

immediately, should necessarily be disclosed quarterly. It could as well be disclosed in the yearly or the half-yearly financial statements, which are prepared in accordance with the accounting standards and give high quality and comparable information to investors.

However, the requirement of the Transparency Directive to publish quarterly financial information entails direct and indirect costs for listed companies[35]. The average direct monetary costs to produce quarterly information linked to editing, printing and translating the reports could be estimated as varying from 2 k€ per year/ per issuer to 60 k€ a year/ per issuer for small and medium-sized issuers (see Annex 2).

Other direct costs are related to the staff involved in the preparation of these reports. According to an external study, these costs are much higher than the costs linked to editing, printing and translating[36]. However, these costs could not be estimated in monetary terms for small and medium seize issuers: they are varying per issuer from eight man-days per year to prepare these reports to 30 man-days per a year[37]. The costs of preparation of full quarterly reports according to the accounting standards would be much higher as underlined by the respondents to the public consultation. A report estimated, for example, that the total cost of producing and disclosing periodic financial information as well as compliance with other rules applied to public companies ranges from €150 k€ to €500 k€ a year for small issuers (below €150 million of market capitalisation)[38]. Recently, the Deputy of the Central Chamber of Commerce of Finland pointed out that "reporting four times a year is too often for small listed companies and the reporting costs quite much"[39].

The indirect costs linked to the requirement to publish quarterly reports were also identified; they are the so called "opportunity costs", i.e. management spending time to check quarterly reports instead of devoting their time to more useful tasks.

Therefore, quarterly information is a source of high administrative burden for issuers while its relevance can be questioned.

(2) Complexity of the content and type of information to disclose

Around half of the respondents to the relevant question in the public consultation considered that the various rules requiring the disclosure by listed companies of narrative reports[40] were causing high costs for the small and medium-sized issuers[41]. The opportunity cost related to the time spent by boards and senior management was particularly highlighted, since there was little scope to delegate this task to more junior

---

35 The issues described in point 1 for the reports of narrative nature also apply to quarterly information.

36 Europe Economics (2009), p. 110, table 5.18. See also Annex 2.

37 The standard cost model was not used to estimate the total costs because, as explained in Annex 2, concerning existing costs, it was decided to ask the issuers themselves to provide an estimate on costs of quarterly information. As the issuers were not able to provide such full estimates, it was decided to provide information received rather than give a theoretical estimate that would result from the application of the standard cost model.

38 Demarigny (2010).

39 km-DNS-FI Thursday, April 7, 2011.

40 See Glossary Annex 4.

41 Such a view is confirmed by a survey done by the UK Association of Chartered Accountants "ACCA": 71% of the survey participants consider the main challenges in producing a narrative report to be the number of requirements placed on it and the cost and time involved in preparing it. See ACCA (2010) p.8.

staff. The bulk of the cost seems to consist of understanding what each requirement meant, how much text was required, what should be the content and what degree of detail was required. Narrative reports need also to be checked, proofread and compared to other narrative reports, which generates a significant amount of work for companies. Additionally, it was mentioned during the public consultation that auditors and lawyers were increasingly involved in the preparation of narrative reports due to their growing complexity, which contributed to increase the related costs.

(3) Short deadline to publish half-yearly financial statements

The Transparency Directive sets a two-month deadline for the publication of the half-yearly financial report. Small and medium-sized issuers have difficulties respecting this deadline[42] since they are less equipped and/or can devote fewer resources to the production of financial information as compared to larger companies[43]. Meeting this requirement is even more difficult and costly when half-yearly accounts should also be audited by an external auditor, as required by some Member States[44].

3.2.1.3. Focus on short-term results

Recent research related to risk-taking and compensation schemes in the financial sector suggests that short-term investors (including institutional investors) put pressure on management using short-term incentives (such as compensation schemes) adopt risky strategies with a view to meeting, inter alia, quarterly targets[45]. Whilst remuneration structures are out of the scope of this impact assessment, publication of quarterly results exacerbates the run for short-term profit, leading to excessively risky business strategies and incentivises investors to focus on short-term performance of companies.

Another recent research shows that issuers criticize the demand for frequent reporting due to the pressure for short-termism that it may create[46]. Recently, the report of the Reflection Group on the Future of EU Company Law stated that "transparency and reporting rules should be reconsidered and reviewed to see whether and where those rules focus too much on a short-term perspective. An example is quarterly reporting, which could be considered to be made subject to an opt-out by listed companies"[47]. Another example is provided by Paul Polman, Unilever's CEO, stating in 2010 that in an ideal world the company would not report quarterly results: ‘a lot of problems the world has found itself in are because people were chasing quarterly targets"[48].

---

42 See Mazars (2009), section 2.5 and Annex 5.

43 This deadline was shorten following the revision of the Directive in 2004, previously the deadline was four months.

44 Additionally, the cost of such audit is presumably higher considering the short deadline.

45 Cheng, Hong & Scheinkman (2009), section IV.E.

46 Brunzell, Liljeblom and Vaihekoski (2009). Results of a questionnaire directed to the Chairpersons, CEOs, and CFOs of all listed companies on five Nordic stock exchanges indicates that they very strongly believe that quarterly reporting creates more short time pressure and that it requires too much effort compared to the benefits realized. Stock exchanges concerned are: Denmark, Finland, Iceland, Norway, and Sweden. The survey was realized in 2007 and early 2008. See also FC expert blog (2010), which states: "Under pressure from the market and from the Board, the quarterly focus devalues the investment in people-based initiatives ".

47 Reflection Group On the Future of EU Company Law (2011).

48 Accountancy Magazine 6 August 2010.

In the US, there is also a debate on quarterly reporting, even if this debate takes place in a different context[49]: there, investors put pressure on issuers to publish quarterly earning guidance that is used as a reference point by the analysts to build their forecasts.

Issuers feel themselves under pressure to meet these quarterly targets. Many stakeholders are opposed that companies should provide such guidance as this exacerbates the obsession with the short-term results for both investors and issuers. In this respect, an important report by Centre for Financial Market Integrity argues that management is prevented from focusing on the long-term health of the business for fear of missing quarterly targets[50]. This report states that "Short-termism refers to the excessive focus of some corporate leaders, investors, and analysts on short-term, quarterly earnings and a lack of attention to the strategy, fundamentals, and conventional approaches to long-term value creation. An excessive short-term focus combined with insufficient regard for long-term strategy can tip the balance in value-destructive ways for market participants, undermine the market's credibility, and discourage long-term value creation and investment. Such short-term strategies are often based on accounting-driven metrics that are not fully reflective of the complexities of corporate management and investment. Warren Buffett, the widely respected and emulated CEO of Berkshire Hathaway Inc., addressed the issue in his letter to shareowners in 2000 by encouraging management teams to place their attention and focus on long-term strategy, not quarterly earnings"[51].

Consequently, it could be argued that an obligation to issue quarterly reports place companies under a perceived obligation to produce "positive results" each and every quarter. Strategies to deliver short term "good results" may imply adoption of riskier strategies by issuers which will try to find business strategies with fast returns (and follow bubbles, trends), whereas many models would deliver returns not gradually and linearly but on the longer term.

Short-termism is arguably counter-productive even in the case of larger companies, but it is clearly totally inappropriate in the case of the small and medium-sized companies which have a vocation to growth and therefore need longer-term investment. Short-termism contributes to difficulties of small and medium-sized issuers to raise capital: dominant business model today mainly focuses on short-term performance and high liquidity. Investors do not have the time to consider the promising long-term stories that small companies may offer.

Although interim management statements are perceived as providing less focus on short-term results than more elaborated quarterly reports containing more quantitative data (in the US full quarterly reports prepared according to the accounting standards are published), both forms could be seen as a regulatory incentive contributing to the general culture of short-termism in financial decision-making. In this context, some respondents to the public consultation underlined the links between quarterly information and short-

---

49 For example, a testimony from a senior scholar before a Senate Committee during a hearing entitled "Short-termism in Financial Markets" stated "one cause of short-termism is the federal securities laws, which encourage Wall Street's quarterly earnings fixation. This is an example of the unintended consequences of regulation, as the quarterly reporting requirements of the Securities laws actually make the problem worse. Analysts predict quarterly earnings, and companies feel pressure to meet those predictions": see J.W. Verret (2010).

50 CFA (2006).

51 CFA (2006), p.3.

termism. However, the Mazars study finds that "The balance achieved by the Directive to avoid the "short-termist" effect of the publication of full quarterly reports is supported by stakeholders"[52].

3.2.1.4. Lower visibility of small and medium-sized issuers towards analysts and investors

Coverage of small and medium-sized issuers does not fit in the business model of most equity analysts which tend to be integrated into structures providing broking services and are financed by brokerage commissions. A lack of turnover in small and medium-sized companies makes it difficult for analysts to generate such commissions. According to a recent report, "analysts get paid on generating commissions. If there is no trade, they're not going to write the research note"[53]. This feature contributes to the vicious circle of illiquidity: since the cost of information collecting and processing on small caps cannot be covered by earning commissions[54], brokerage research and trading resources are dedicated to small and medium-sized issuers only sporadically or such companies are simply neglected[55]. This further reduces turnover and hence the attractiveness of these companies[56].

Some rules of the Transparency Directive appear to also contribute to this low visibility problem.

(1) Bottlenecks of financial information caused by short deadline for the publication of the half-yearly financial report

The Transparency Directive required issuers to publish half-yearly reports at the latest two months after the end of the reporting period. This short deadline, in addition to causing additional costs to companies, leads to an unintended bottleneck of information at the end of the second month – in particular for most European issuers whose accounting year corresponds to the calendar year (end June + 2 months = late August). This bottleneck disrupts the market by overloading the capacity of investors and analysts to digest this information within a short period of time ("the half-yearly release season")

---

52 See Mazars (2009), p. 68.

53 PWC (2010), p.9.

54 Rasch (1994) explains that this fact is a direct consequence of the information paradox described by Grossman/Stieglitz (1980). If information is costly, an equilibrium evolves in which the cost of information will equal the marginal benefit of that additional piece of information. The additional benefit, however, depends on the stock's liquidity: the higher the volume that can be traded without influencing the market price, the higher the potential return on research activities. The extent to which company information is collected and processed and, therefore the degree of informational efficiency depends directly on the marketability and liquidity of a company's share. Thus, event the twentieth or fiftieth research study of a standards stock may be profitable whereas no even the first study of many smaller companies will cover its costs. See Rasch (1994), p. 24.
Interestingly, Grant Thornton (2009) also adds that in the US, the best sell-side analysts fled to the buy-side in search of better compensation. This would have resulted in lower quality of sell-side analysis. See Grant Thornton (2009), p.22.

55 The CBI reported that small caps below £100 million had on average fewer than 2 analysts covering their performance, compared to 12-16 analysts for companies between £500 million to £5 billion. See CBI (2001), p.16. This trend has not improved.

56 In the UK, the CBI reported in 2001 that the lack of interest of the fund management industry in the small caps "*has made it increasingly uneconomic to stakeholders and banks to produce in-depth research on smaller quoted companies, leading to a vicious circle of 'no research, no liquidity, no investment, no research*'. See CBI (2001) p. 6, 8 and 16.

and the financial media to process the information being produced. This accentuates the inherent tendency to focus exclusively on the market-leading large cap companies to optimise the time devoted to analyse the information as this first tier concentrates the transactions flow. This effect also contributes to poor cross-border visibility for smaller listed companies (sometimes referred to as the "black hole" problem)[57].

(2) Difficult access to financial information

In addition, access to financial information on listed companies on a pan-European basis is burdensome: interested parties need to go through 27 different national databases in order to produce even the most basic intra-sectoral comparisons[58]. The original objective of current European legislation was to ensure easy access for investors/information intermediaries to regulated information that was already disclosed, but the result is far from satisfying this initial objective and the level of interconnection between the 27 national storage mechanisms is insufficient. Lack of a centralised storage system is thus a major barrier to the functional integration of European securities markets, and the creation of an effective pan-European marketplace for capital.

3.2.1.5. Conclusion

Small and medium-sized issuers perceive themselves as paying a high price for a poor return: from their perspective, listing on regulated capital markets is increasingly unattractive on a cost-benefit basis and they are forced, whether they like it or not, to consider other means of financing. In addition, the requirement for quarterly information contributes to the culture of short-termism, having negative consequences for all issuers but in particular for the small caps.

3.2.2. Issues linked to notification of major holdings of voting rights

The Commission report as well as the results of the public consultation have identified the following problems linked to notification of major holdings of voting rights: (1) possibility of hidden ownership and (2) divergent notification rules across the EU.

3.2.2.1. Background and context

Article 9 of Transparency Directive requires shareholders who acquire or dispose of shares admitted to trading on a regulated market and to which voting rights are attached, to notify the issuer of the proportion of voting rights held when that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %. Article 13 of Transparency Directive refers to Article 9 and specifies that the

---

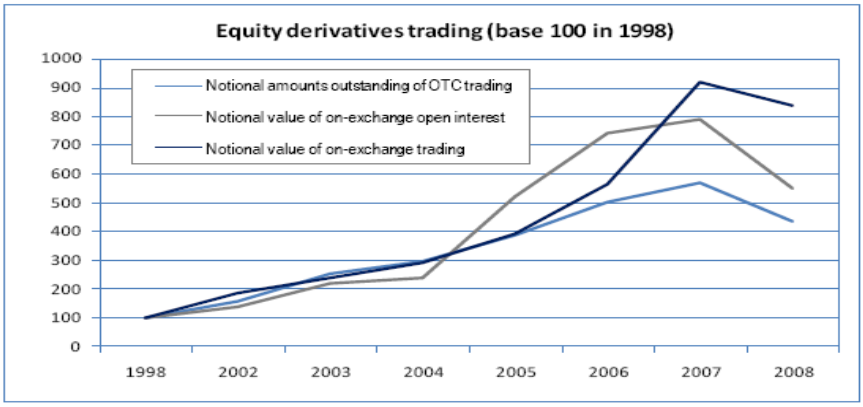
[57] While large investors seem to consider that the Directive has facilitated access to information disclosed by smaller listed companies, many smaller listed companies generally complain about the lack of interest by foreign investors. Investors and analysts are considered to concentrate on major companies. As outlined by the external study, "market players seem to be in a "catch 22" situation: SMEs regret the low level of cross-border interest of analysts and investors and therefore are reluctant to spend money to ensure wider dissemination (translation into English in particular). On their side, analysts and investors believe that they do not receive sufficient information from non domestic SMEs, and therefore are reluctant to invest in those companies." See Mazars (2009), section 4.3.2.5.

[58] In the Directive, these databases are referred to as "officially appointed mechanism for the central storage of regulated information" (cf. Article 21(2)). Additionally, according to Mazars (2009), stakeholders complain about the lack of harmonisation on the practical functioning of these databases (see section 1.8.1 of that Study).

notification requirements also apply to holdings of financial instruments that result in an entitlement to acquire, on holder's own initiative alone, under a formal agreement, already issued shares to which voting rights are attached.

The Commission Report on the operation of the Transparency Directive as well as the results of the public consultation show that the rules of the Directive do not, currently, guarantee that issuers and investors have full knowledge of relevant information concerning major holdings of voting rights, primarily because of financial innovation i.e. increased use of cash-settled derivatives[59] to acquire economic exposure to shares without acquiring voting rights. The figure 3 below shows the considerable growth of the market for equity derivatives.

Figure 3: Equity derivatives trading: trends since 1998, May 2009



Source: International Options Market Association, Derivative trading: trends since 1998, May 2009

A cash-settled derivative is a contract where a counterparty, often a financial institution, sells to the holder of the instrument an economic exposure to changes in price of the share without the right for the holder to acquire such share. On the maturity date (the date of expiration of the contract) this counterparty will pay the difference in price of the share to the holder of the instrument.

Despite the fact that several recent cases have demonstrated that these derivatives can be used in order to acquire and exercise potential influence in a listed company or build a secret stake in such a company bypassing the disclosure requirements, disclosure of cash-settled financial instruments is not currently required by the Directive[60]. These cases (described in Annex 8) illustrate the limits of the current disclosure obligations with respect to these financial instruments. Such cases cause distortion of the European

---

[59] See Glossary Annex 4.

[60] There are views that Article 10 g of Transparency Directive already requires disclosure of such instruments. This article provides for disclosure of voting rights attached to shares in which a person or entity has the life interest. However, interpretations of this provision are divergent in the EU: see in particular, Zetzsche (2009). CESR also considers that if the holder of cash settled instrument is able to exercise influence on voting rights and bears the economic risks, it could in some cases fall under Article 10 g. CESR considers however that there should be a general requirement to disclose such instruments: see CESR (January 2010). In its opinion, ESME states that Article 10 (g) "*was not introduced for large positions in cash settled derivatives, but for the market practice of custodians or for situations of "at arms length" investment management. The provision is rather narrowly framed to support a widening of disclosure rules to cash settled financial instruments*": See ESME (November 2009).

market as they affect investors from all the Member States. However, it should be noted that the majority of cash-settled derivatives are used only to gain an economic exposure to the issuer's shares. Only the small minority is used to acquire or influence the exercise of the voting rights. However, if these derivatives are used for the purpose to acquire hidden ownership, the consequences for the European capital markets are very negative as illustrated in Section 3.2.2.2 below.

3.2.2.2. Hidden ownership: possibility to built secret in companies due to gaps in current notification regime

Under the current transparency regime, holdings of cash-settled equity derivatives do not trigger notification to the extent that they do not entitle the holder of the instrument to acquire the underlying shares. But, in practice, the holder will acquire an economic exposure to such shares and thus be directly concerned by the changes in their price. This leads to the situations of "hidden ownership": according to Hu and Black, "hidden (morphable) ownership" describes the combination of undisclosed economic ownership plus probable informal voting power[61]. This raises some transparency concerns.

(1) Possibility of market abuse situations: price manipulation to avoid a take-over premium

The counterparty to the derivative contract which sells the economic exposure to the shares and will have to pay the difference in share price to the holder of the derivative instrument, usually will hold throughout the duration of the contract a matching number of physical shares to hedge[62] its position and being able to pay the difference in price of the share to the holder if this price goes up. When the contract expires, these shares need to be sold. If the holder of the cash-settled derivative instrument wants to acquire these shares, he will be in a privileged position to do this. Consequently, although there is no formal right of the holder to acquire the underlying shares, it can be the case in practice.

The holder of a cash-settled derivative can thus benefit from the surprise effect of acquiring a major holding in a company without having ever disclosed his intentions. This makes it easier for such holder, for instance, to succeed in a takeover attempt, and it also could make the take-over bid less expensive. Indeed, as it allows building up hidden stakes without other investors becoming aware, the share price is likely to remain stable[63], thus eliminating or reducing any take-over premium[64]. In this way, lack of transparency harms the interests of minority shareholders, and prevents competitors from making a fair alternative offer[65].

(2) Empty voting: de facto control over the voting rights

The holder of a cash-settled derivative, although not directly holding voting rights, could potentially influence the exercise of the voting rights attached to the underlying shares.

---

61 Hu & Black (2006).
62 See Glossary Annex 4.
63 Corporate Governance Research (2010).
64 It will cause a lower mandatory bid price according to the Takeover Bid Directive.
65 CESR (January 2010).

The counterparty that holds the physical shares for hedging purposes does not have a real interest in the underlying company and could use such "empty" voting[66] rights in a way which suits the holder of the economic interest by following the holder's voting instructions. A survey carried out in the UK[67] suggests that holders of contracts for difference[68] do sometimes approach financial institutions holding shares for hedging purposes in order to influence voting strategies. Even if general policy of investment banks is not to vote shares in accordance with holders' wishes, it cannot be absolutely excluded that such situations do arise in practice. This potential "empty voting" represents a threat to other shareholders' rights and their long-term interests. Furthermore, lack of transparency makes it difficult for companies to ascertain not only who owns them but also who holds potentially significant voting power[69].

(3) Lack of efficient pricing of the underlying shares

According to the Transparency Directive, disclosure of major holdings of voting rights allows investors "to acquire or dispose of shares in full knowledge of changes in the voting structure"[70].

Without full ownership disclosure, investors are unable to make an informed assessment of how the ownership structure of a particular firm may over time come to influence the value of the shares. Ownership disclosure also creates transparency of trading interest, which in turn means that shares are priced more efficiently. Without such disclosure, shareholders may be unable to analyse share price movements correctly, which may lead them to make investment decisions that are sub-optimal, or even lead to loss of capital[71].

Without transparency with regard to important capital movements, the market cannot estimate the size of the free float, i.e. the proportion of the total outstanding shares that are actually available for trading. When real ownership levels are concealed, the market's perception of the size of the free float may be distorted. And this in turn, through its impact on liquidity, can lead to shares being mis-priced[72].

(4) Conclusion

The transparency is essential for investment decisions and efficiency of the market. Existing gaps in information linked to lack of disclosure of cash-settled derivatives lead to a possible inefficiency of the price formation mechanism, potential market abuse situations and empty voting. As a result, the level of investors' confidence is suboptimal and investors' intentions and long-term interests of companies are misaligned. Some Member States have already reacted to the risks described above by introducing legislation requiring disclosure for cash-settled derivative instruments and other are in the process of doing so (see Annex 7). Lower level of transparency is also due to lack of maximum harmonisation of the rules for notification of major holdings as explained below.

---

66 See Commission staff working document (SEC(2010)61) p.83.
67 See FSA 07/20 (November 2007).
68 See Glossary Annex 4.
69 Corporate Governance Research (2010).
70 See Recital 18 of the Transparency Directive.
71 Schouten (2010) and Corporate Governance Research (2010).
72 Schouten (2010); See also the case Porsche versus Volkswagen in Annex 8.

3.2.2.3. Diverging transposition of the Directive requirements by Member States concerning the disclosure of major holdings

Transparency Directive does not put in place maximum harmonisation regime for notification of major holdings of voting rights. This uneven implementation of Transparency Directive requirements results in compliance difficulties for cross-border investors. More stringent and additional rules at national level as well as provisions in the Directive allowing for derogations/discretion at national level also result in a fragmented internal market for financial services.

(1) Aggregation of holdings of shares with those of financial instruments

Lack of harmonisation concerning aggregation of major holdings is considered to be the most problematic issue according to the perception of stakeholders and the legal analysis made by Mazars[73].

In fact, Member States have taken different views on whether investors must aggregate their holdings of voting rights (within the meaning of Articles 9 and 10 TD) with their holdings of financial instruments giving access to shares (within the meaning of Article 13 TD) for the purposes of evaluating whether the relevant thresholds referred to in Article 9 of the Transparency Directive are reached or crossed and therefore the notification obligation triggered (See Annex 9).

Parallel compliance with different national requirements faced by investors seems to be an important source of costs and burden[74]. On this issue, ESME indicated that "a major complaint among investors is the cost to investigate and report according to 27 systems across Europe (and around 60 systems internationally) with different approaches to what holdings are required to be reported as well when." [75]

An external study[76], looking at costs of complying with the Transparency Directive for the asset managers, showed that the results for cross-border asset managers compared to those that largely operate in just one Member State are markedly different. The latter consistently had a lower cost of compliance with the Transparency Directive. The additional costs for cross-border asset managers are mainly due to the fact that the notification process can not be fully automatic and that manual entries are necessary due to the existing divergences in national requirements.

In addition to increased costs for cross-border investors, lack of harmonisation concerning aggregation of holdings of financial instruments with holdings of shares creates an uneven level of transparency across the EU. In the Member States where there is no aggregation and the initial threshold of 5% was retained (see Annex 9), an investor holding, for example, 4,5% in voting rights and 4,5% in financial instruments in a company can artificially avoid the disclosure, although this investor cumulatively holds 9% of economic interest in a company.

(2) Different thresholds for disclosure of major holdings across the EU

---

73 See Mazars (2009), section 3.1.
74 Europe Economics (2009), page 76.
75 ESME (December 2007) p.5, in fine.
76 Europe Economics (2009), p. 76.

The Transparency Directive allows Member States to adopt more stringent requirements as regards the thresholds for notification of major holdings. As a consequence, several Member States have adopted lower initial thresholds (and additional thresholds) in addition to the minimum thresholds required by the Directive (see Annex 9). Although such differences could result in potential difficulties for cross-border investors, the question of divergence of thresholds was considered as secondary by many respondents to the public consultation, as compared to the divergence of the method to calculate the thresholds.

(3) Conclusion

The existing regime lacks consistency regarding the conditions for triggering the disclosure obligations. Insufficient harmonisation leads to higher cost and administrative burden for cross-border investors in the EU. Lack of harmonisation increases liability and regulatory risk as it is sometimes difficult for investors to correctly identify the rules applicable in each Member State.

4. BASELINE SCENARIO, SUBSIDIARITY AND PROPORTIONALITY

4.1. Baseline scenario, expected development if no EU action is taken

(1) Small and medium-sized issuers

It is predicted that market developments, on their own, will not be able to improve access of the **small and medium-sized issuers** to regulated markets and make the investment in their equity more attractive.

The trend over recent years is for fewer small and medium-sized companies to access regulated markets, as companies prefer to raise funds in other, less demanding ways, or are simply unable to proceed with their business development plans for lack of investor support. As shown in the table below, small and medium-sized issuers are even delisting from Regulated Markets: either completely or preferring to list on a MTF (See Glossary)[77].

[77] In France, a new law in 2009 established the rules for the transfer of companies from Euronext to Alternext. See Middlenext (2009). Since then, several companies have taken this option.

Figure 4: Number of newly listed and de-listed companies in major EU exchanges

Stock Exchange	Newly listed companies (domestic companies only)		De-listings (domestic companies only)	
	2009	2008	2009	2008
Borsa Italiana	8	9	11	16
Deutsche Börse	4	43	53	31
London SE	47	143	287	318
Nasdaq OMX	11	31	38	58
NYSE Euronext	9	24	37	55

Source: data from World Federation of Exchanges: domestic companies are small and medium-sized issuers.

A realignment of incentives between investors and company's management towards long-term investment strategies is not likely to happen in the absence of a regulatory action to deal with the existing potential regulatory biases in EU legislation encouraging the focus on short-term results. If no action is taken concerning the lowering of disclosure costs for small and medium-sized issuers, costs of compliance for these issuers will remain high and perceived as disproportionate given the benefits. Investment levels in such companies are likely to continue to be low if nothing is done to improve the visibility of small and medium-sized issuers. Such an environment is not favourable for both innovation and competition. Companies with growth potential will not be appropriately funded and therefore will not grow as much as they could potentially do.

Furthermore, inefficient functioning of capital markets for small and medium-sized issuers has negative impacts on employment levels. For instance, research conducted in the US[78] points at the fact that 92% of the job growth occurs after a company goes public[79]. In a UK 2002 report, it was estimated that small listed companies in the UK (defined as those quoted in the London Stock Exchange but outside the FTSE 350 and those quoted on AIM[80]) accounted for 5% of the total market capitalisation of all quoted companies but 13% of their total sales and, importantly, 18% of total employment[81] (see figure 5).

78 NVCA (2009).

79 Grant Thornton (November 2009) estimated that a lack of a functional IPO market may have cost the US 22 million jobs over the last decade. See Grant Thornton (November 2009), p. 26.

80 Alternative Investment Market.

81 Kearns and Young (2002), p.26.

Figure 5: Comparative statistics of large and small caps: UK (2002)

Comparative statistics of larger and smaller quoted companies(a)

Index	Number of members (b)	Total market capitalisation £ billion (b)	Average market cap. £ billion (b)	Average employment (c)	Average sales £ million (c)
FTSE 350	354	1,420.0	4.01	21,224	2,990.8
FTSE SmallCap	371	50.0	0.13	2,544	260.7
FTSE Fledgling	641	14.6	0.02	763	67.6
FTSE AIM	598	10.5	0.02	289	19.2

Sources: Bloomberg, Thomson Financial Datastream and Bank of England.

(a) The London Stock Exchange in its report, *A statistical analysis of smaller companies on the London Stock Exchange 2000*, defines smaller companies as those outside the FTSE 350 (ie companies in the FTSE SmallCap and Fledgling indices and companies quoted on AIM).
(b) Data as at 28 February 2002.
(c) Data as at end-2001 accounts (2000 year-end accounts if 2001 accounts not yet released).

In some Member States national authorities and stock exchanges have taken measures to lower the compliance costs for the majority of listed companies in Regulated Markets. Recent changes in the UK regarding the standard listing and the premium listing segments, ensuring that no gold plating to EU directives is imposed on companies within the standard listing[82] is an good example. A proportionate corporate governance code for small caps in France is the other one[83]. However, these measures remain isolated and a number of more stringent national requirements remain in place in many Member States. Additionally, the EU minimum rules constitute a minimum floor for costs of compliance.

It has to be noted that different actions are being undertaken to address these issues: in particular, there is a plan to modify the MIFID[84] in order to create a Multilateral Trading Facility for small and medium-sized issuers, which should increase the attractiveness of small and medium-sized issuers in non-regulated markets. In addition, the proposed review of the accounting directives[85] would allow a significant reduction of financial reporting costs and harmonisation of accounting rules at the EU level for the SMEs. There will be also an action plan in order to promote access to finance for the SMEs. These initiatives address different problems encountered by small and medium-sized issuers. Any changes to the Transparency Directive should therefore be seen in this context, as alone these changes would only have a limited impact on the problems faced by the small and medium-sized issuers, as these problems have multiple causes and the rules of the Transparency Directive are in no case the most important drivers for these problems. However, the problems described in Section 3 linked to the requirements of the Transparency Directive would persist if no action were taken at the level of this directive.

---

82 The distinction between premium and standard listing exist in other Member States too (e.g. DE). Premium listing is addressed mainly to the biggest listed companies which accept to follow stricter rules in order to benefit from the "premium" listing label.

83 Corporate Governance Codes prepared by Middlenext applicable to small and mid caps

84 Directive 2004/39/EC of the European Parliament and of the Council: "Markets in Financial Instruments Directive".

85 The Fourth Council Directive 78/660/EEC on annual accounts and the Seventh Council Directive 83/349/EEC on consolidated accounts.

(2) Notification of major holdings

Concerning **disclosure of cash-settled derivatives**, if no action is taken, a significant loophole in the notification regime of the Transparency Directive would continue to exist. One of the goals of the Directive which is to ensure efficient pricing in capital markets will not be achieved. This is likely to undermine investor confidence. The issues of creeping control and hidden ownership will also continue to pose problems. Cases such as those described in the Annex 8 (LVMH/Hermes, Porsche/VW, Schaeffler/ Continental…..) are likely to happen again. Some Member States have already taken actions to address the current gap in the legislation[86]. However, given the interrelatedness of financial markets, without an EU action there would be no common approach at the EU level and no harmonised view on this question, which is likely to result in regulatory arbitrage and distort competition within the EU.

If no action is taken to increase the **level of harmonisation** of the notification requirements, the regime of disclosure of major holdings will lack consistency regarding the conditions for triggering the disclosure obligations. Lack of harmonisation will continue to generate higher costs and administrative burden for cross-border investors in the EU, which may deter cross-border investment.

In the absence of EU action, further convergence might be achieved through cooperation by national competent authorities in the new ESMA authority. ESMA could issue recommendations, guidelines and adopt common standards. However, the problems described in Section 3 linked to lack of harmonisation and gaps in the current disclosure requirements can only be addressed through the modification of the Transparency Directive.

4.2. Subsidiarity and proportionality

Subsidiarity: The existing Directive is based on Articles 50 and 114 of the Treaty on the Functioning of the European Union which give the European Commission the right to act in this area. The problems detected in Section 3.2.1 concerning small and medium-sized issuers stem both from EU and national legislation and can only be addressed through changes in the EU legislation. In addition, the issue of small and medium-sized issuers concerns the EU capital markets as a whole and should therefore be addressed at the EU level. Concerning issues identified in Section 3.2.2, only an action at the EU level would ensure that all Member States apply the same regulatory framework based on the same principles. Again, the issue of holding of voting rights is of a cross border nature and should therefore be addressed at the EU level. The creation of ESMA also opens the possibility to deal with the technical aspects of the proposed new provisions by empowering ESMA to develop draft binding technical standards in some areas.

Proportionality: The principle of proportionality will be examined for each proposed option.

---

[86] UK and Portugal (see Annex 7). Germany and Italy are planning to introduce a requirement to disclose cash settled derivatives. France has introduced a limited notification obligation which proved to be inefficient (see Annex 7).

5. OBJECTIVES

The objectives of this review are presented in the following table:

<table>
<tr><th>General objectives</th><th>Specific Objectives:</th><th>Operational Objectives:</th><th>Drivers:</th></tr>
<tr><td rowspan="4">Increase the attractiveness of regulated markets to small and medium-sized issuers (SMIs)</td><td>Discourage focus on short-term results and encourage long-term sustainability/performance</td><td rowspan="3">Allow for more flexibility regarding the frequency and the timing of publication of periodical financial information for SMIs</td><td>Requirement for SMIs to publish quarterly financial information</td></tr>
<tr><td>Increase the visibility towards investors and analysts of SMIs</td><td>Short deadline to publish half yearly reports leads to increase in costs to a bottleneck of information and to a lack of attention of investors and intermediaries for SMIs</td></tr>
<tr><td rowspan="2">Decrease the compliance costs for SMIs with disclosure requirements of Transparency Directive</td><td rowspan="2">Complexity of content and type of information to disclose</td></tr>
<tr><td>Simplify the narrative parts of financial reports for SMIs</td></tr>
<tr><td rowspan="3">Increase the legal clarity and effectiveness of the existing transparency regime for disclosure of major holdings of voting rights</td><td rowspan="2">Increase the transparency of corporate ownership</td><td rowspan="2">Eliminate the gaps in requirements for notification concerning major holdings of voting rights</td><td>Gaps in requirements for notification concerning major holdings of voting rights</td></tr>
<tr><td>Divergent rules for aggregation of holdings of shares with holdings of financial instruments</td></tr>
<tr><td>Decrease the liability and regulatory risk as well as high compliance costs for cross-border investors</td><td>Eliminate divergences in notification requirements of major holdings</td><td>Divergent rules for notification of majors holdings</td></tr>
</table>

The problem concerning difficult access by investors to financial information due to insufficient interconnection of national storage mechanisms is identified in the present impact assessment but improving the current storage mechanism is not one of its objectives. Indeed, a separate impact assessment would be needed in the future, to consider possible options to improve the current situation. The European Commission has already received in this respect a technical advice from CESR (ESMA)[87] and it has also commissioned an external study in this field which is currently under preparation.

[87] CESR (December 2010).

Drafting an impact assessment on this point would need to cover technical aspects, different from the ones described in the present impact assessment and it is unclear when an action concerning this point should be taken (depending on the results of the external study it could be concluded that more time is necessary to assess the capacity of the national storage mechanisms to create a working network at the EU level). As a consequence, the Transparency Directive should be modified to include delegating or implementing measures for the European Commission in order to address in the future the problem identified.

6. POLICY OPTIONS, ANALYSIS OF IMPACTS AND COMPARISON

In this Section, options will be identified and analysed for policies which could target the problems described in Section 3 and could realise the objectives set out in Section 5. Then the choice of instrument will be discussed.

For the purposes of the discussion, the options will be analysed according to the operational objectives. Within each group, the options will be measured against the following criteria:

Impact on effectiveness	The options should achieve the operational objectives
Impact on efficiency	The options should be efficient in terms of costs
Impact on investor protection	The options proposed should maintain and, when necessary, enhance the level of investor protection achieved by the Directive. The disclosures that are necessary for the investors' decisions should be required.

Where relevant, other additional criteria will be used:

- For the policy options aiming to increase the attractiveness of regulated markets to small and medium-sized issuers: impact on reducing disclosure costs for small and medium-sized issuers, impact on visibility of small and medium-sized issuers (level of interest of investors) and impact on short-termism (excessive focus of issuers, investors and analysts on short term results).

- For the policy options aiming to increase the legal clarity and effectiveness of the existing transparency regime for disclosure of major holdings of voting rights: impact on market liquidity and efficiency, impact on the market for ownership control, impact on costs for cross-border investors and impact on the transparency regarding corporate ownership of issuers of shares.

A detailed description, analysis and comparison of the options is provided in Annex 1 together with the reasons why some of the options have been rejected. The costs are presented in Annex 2.

6.1. Comparison of policy options to increase the attractiveness of regulated markets to small and medium-sized issuers

The following tables show the options aimed to increase the attractiveness of regulated markets to small and medium-sized issuers as well as their impacts. These options are classified according to operational objectives they aim to achieve. The preferred options are in bold characters.

6.1.1. Options to achieve the first operational objective: allow for more flexibility regarding the frequency and the timing of publication of periodical financial information for small and medium-sized issuers

Options	Effectiveness to achieve the operational objective	Impact on reducing disclosure costs for small and medium-sized issuers	Impact on visibility of small and medium sized-issuers	Impact on reducing the focus on short-term results	Impact on investor protection	Cost savings (global costs savings for the whole EU regulated market)	Efficiency
Option 1: No new action	=	=	=	=	=	=	=
Option 2: Abolishing the obligation to present quarterly financial reports and/ or interim management statements (IMS) for small and medium-sized issuers	++	++	=/-	+	-	About 487 M€ per year plus staff cost savings which are difficult to estimate but which are relatively higher	+
Option 3: Abolishing the obligation to present quarterly financial reports and/ or IMS for small and medium-sized issuers during an initial period of 3 years after admission to trading	+	+	=/-	=	-	? Difficult to estimate as the number of newly listed companies varies in time. Average cost saving per issuer should amount to 47 725 €	+
Option 4: Abolishing the obligation to present quarterly financial reports and/ or IMS for all listed companies	++	++	=	++	=	573 M€ per year for publication, plus staff cost savings which are difficult to estimate but which are relatively higher	++
Option 5: Extending the deadline for publishing half yearly reports to 3 months after the end of the respective reporting period for all listed companies	++	+	+	n.a.	=	? opportunity cost savings, extra hours cost savings for all listed companies	++
Option 6: Extending the deadline for publishing half yearly reports to 3 months after the end of the respective reporting period for small and medium-sized issuers	++	+	++	n.a.	=/-	? opportunity cost savings, extra hours cost savings only for small issuers	+

Magnitude of impact as compared with the baseline scenario: ++ strongly positive; + positive; – – strongly negative; – negative; = marginal/neutral; ? uncertain; n.a. not applicable

The preferred policy options to achieve this objective are **Options 4 and 5**. While the main target of the these objective are small and medium-sized issuers, the majority of respondents to the public consultation believe that it is not desirable to have differentiated regimes for companies listed on regulated market according to their size, as this could be confusing for the investors. It is therefore preferable to adapt the standard regime to make it better suited to the needs of smaller companies, rather than to introduce a separate regime based on market capitalisation. That is why Options 2, 3 and 6 have been rejected.

(1) Option 4

Option 4 would consist in abolishing the requirement for quarterly information for all listed companies. It will effectively achieve the objective of more flexibility regarding the frequency of publication of financial information for small and medium-sized issuers without creating double reporting standards on regulated markets which could be potentially harmful to these issuers and have a negative impact their visibility. This Option will have a strong positive impact on reducing administrative burden and other costs linked to disclosure of financial information as well as on reducing focus on short-term results. However, this positive impact could be mitigated by the possibility of "coordination failure", i.e. small and medium-sized issuers may wait for each other to modify the frequency of their reporting. Nevertheless, the proposed Option should send a strong signal to the market and stimulate a debate which should encourage behavioural changes. Also, Option 4 should not have a negative impact on investor protection.

It should be noted from the start that although quarterly financial information is considered useful by a number of stakeholders, the results of the public consultation are non clear-cut on this point. The majority of respondents to the public consultation find quarterly financial information valuable. In this respect, 59% of respondents to the relevant question in the public consultation believed that waiving the obligation to disclose quarterly financial reports or interim management statements for small listed companies would result in a diminution of transparency and would therefore reduce investor protection and confidence. However, 100 % of issuers and 50% of investors who have responded to this question were of the view that this requirement could be abolished for small and medium-sized issuers without negative impact on transparency.

Those respondents that opposed the abolishment of quarterly information for small and medium-sized issuers were the stock exchanges (100%), public authorities (90%) and auditors and accountants (100%). One important argument of these respondents was that a differentiate transparency regime according to the size of the issuer would confuse the investors. As the question on the abolishment of mandatory quarterly reporting for all companies was not asked in the public consultation, it is not possible to conclude what would have been the reaction of these stakeholders to this option.

According to Mazars, the majority of stakeholders in the EU (68,8%) consider that publication of quarterly information is useful for the transparency and the efficient functioning of the market. However, a different result comes from three important capital markets in the EU: 66,7% of the stakeholders from the UK, 50 % from Luxembourg and 44% from France consider that this information is not useful[88].

Nevertheless, the fact that quarterly financial information is considered as useful by a number of investors does not mean that it is necessary for investor protection. In fact, Market Abuse Directive already requires issuers to disclose inside information as soon as possible to the market. This inside information includes all information that is likely to have a significant effect on the prices of financial instruments listed on regulated markets. In addition, Prospectus Directive requires issuers of securities admitted to trading on regulated markets to publish a prospectus for each new share issuance which increases issuer's capital, subject to some exceptions. This prospectus contains financial information, including the management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered

[88] See Mazars (2009) section 2.6.3 and Annex 5.

by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods. Therefore, investors should be duly informed about important events and facts that could potentially influence the price of the underlying shares independently of the quarterly information currently required by the Transparency Directive.

In addition, interim management statements are not prepared according to the accounting standards and therefore the information they provide might not offer adequate quality nor give sufficient assurance to investors. Information disclosed in this kind of reports is also not easily comparable. Therefore, information which does not need to be immediately disclosed to the market could be better disclosed in the yearly or the half-yearly financial statements which are prepared under the accounting standards, are subject to statutory audit and therefore give high quality information to the investors.

Finally, consequently, it seems possible not to require the mandatory disclosure of quarterly information but to leave it to the market. Each issuer then will decide whether there is a market demand for such information and whether the publication of such information is cost-efficient compared to derived benefits. In addition, removing the requirement for quarterly information would allow companies to redirect their resources to other channels and methods of informing investors and intermediaries of events they deem important (press releases, ad hoc reports, meetings with analysts and investors, site visits, media coverage,…), and to focus their energy on other means they deem best able to ensure maximum visibility for their operations.

Option 4 will also eliminate an inappropriate legislative incentive encouraging the focus on short-term results. Emphasis on short-term financial performance has multiple causes, but the obligation to provide quarterly information is a regulatory incentive exacerbating this culture. By making quarterly reporting voluntary, this option would contribute to reducing this pressure even if the issue of short-termism is much larger and cannot be solved only by this measure[89].

(2) Option 5

Option 5 would consist of extending the deadline for publishing half-yearly reports to 3 months after the end of the respective reporting period for all listed companies. This Option will effectively achieve the underlying objective of leaving flexibility to the issuers to publish their half-yearly reports at the time that they consider as the most suitable, within the limits of the extended deadline. This option would have a positive impact on costs reduction for smaller issuers at it would give issuers extra time to draft their reports which could in turn reduce the bottleneck of financial information, improve the quality of the output and reduce costs linked to external advice and the opportunity costs. Moreover, this Option would avoid that the publication of the reports falls in the month of August where the market activity is reduced, which is now the case for the majority of listed companies, as explained in Section 3. Therefore, it would leave more time for analysts and investors to look at and analyse the half-yearly results of issuers,

[89] A wider picture concerning this issue is presented in the European Commission Green Paper "Corporate governance in financial institutions and remuneration policies" COM(2010) 284 from 2 June 2010 and European Commission Green Paper "The EU corporate governance framework" COM(2011) 164 from 5 April 2011.

including the smaller ones. This option would also have a positive impact on the visibility of small and medium-sized issuers, as they will be able to adjust more easily the timing of publication of their reports so as not to fall at the same time as the disclosure of the reports by large listed companies.

This option should not have any negative impact on investors' protection as all information that has to be taken into account by the investors immediately is already provided to them according to the Market Abuse and Prospectus Directives as explained above.

(3) Options 4 and 5: maximum harmonisation.

In order to be effective, Options 4 and 5 should include a provision to prevent Member States from imposing more stringent requirements at national level. Currently, many Member States impose stricter disclosure requirements than the minimum foreseen in the Directive. Therefore, preventing Member States from gold plating is proportionate to the objective to eliminate unnecessary administrative burden for companies. In order to meet this objective, it has to be ensured that Member States do not require more than what is necessary concerning the issues indentified in the present impact assessment. Maximum harmonisation will also ensure that all listed companies in the EU benefit from equal treatment and that the administrative burden is effectively reduced.

6.1.2. Options to achieve the second operational objective: simplify the narrative parts of financial reports for small and medium-sized issuers

Options	**Effectiveness to achieve the operational objective**	**Impact on reducing disclosure costs for small and medium-sized issuers**	**Impact on visibility of small and medium-sized issuers**	**Impact on short-termism**	**Impact on investor protection**	**Cost savings**	**Efficiency**
Option 1: No new action	=	=	=	n.a.	=	=	=
Option 2: Harmonising the maximum narrative content of financial reports at the EU level for small and medium-sized issuers	-	-	++	n.a.	-	? costs savings linked to opportunity costs and cost of external advice	+
Option 3: Requiring ESMA to prepare non binding guidance (templates) on narrative content of the financial reports for all listed companies	++	++	++	n.a.	+	? Idem	++
Option 4: Requiring Member States to prepare non-binding templates or guidance at national level on the narrative content of financial reports for all listed companies	++	++	+	n.a.	=	? Idem	+

Magnitude of impact as compared with the baseline scenario: ++ strongly positive; + positive; – – strongly negative; – negative; = marginal/neutral; ? uncertain; n.a. not applicable

Option 3 has been chosen as a preferred policy option to achieve the underlying objective as it is the most efficient and proportionate as compared to other options. Under Option 3, ESMA would be required to design non-binding guidelines (templates) for

narrative reports for different categories of listed companies. When preparing the guidelines, ESMA should take into account in particular the capacities of the small and medium-sized issuers. This Option would effectively facilitate the drafting of narrative parts of financial reports for these issuers and therefore spare the external legal and compliance advice. It should therefore have a positive impact on cost reduction for smaller companies. On the other hand, as the templates would not be binding, the issuers not willing to use them would not be required to do so.

Indeed, maximum harmonisation across Europe of the content of narrative reports (Option 2) could lead to an increase in financial reporting obligations, and hence in compliance costs, for those small and medium-sized issuers which, for the time being, have to provide a limited number of information in these narrative reports. Maximum harmonisation could also have a negative effect on investors' protection. Whilst it would allow for more comparability of information for cross border investors and thus facilitate their investment decisions, respondents to the public consultation highlighted that the quality of the narrative reporting was crucial for investors. If the threshold at the EU level for the content of the narrative reports were set too low in the hope of saving costs, this may have negative implications for investors. Option 2 is therefore discarded.

In addition, Option 3 could increase the visibility of small and medium-sized issuers at the EU level as the information disclosed would be more comparable throughout the EU and could therefore be more easily analysed by cross border investors. More comparability of information should also facilitate investor decisions. This is the reason why Option 3 is preferable to Option 4 which provides for elaboration of templates at national level.

6.2. Comparison of policy options to increase the legal clarity and effectiveness of the existing transparency regime for disclosure of major holdings of voting rights

The following table shows the options aimed to increase the legal clarity and effectiveness of the existing transparency regime for disclosure of major holdings of voting rights. These options are classified according to operational objectives they aim to achieve. The preferred options are in bold characters.

6.2.1. Options to achieve the third operational objective: eliminate the gaps in requirements for notification concerning major holdings of voting rights

Options	Effectiveness to achieve the operational objective	Impact on market liquidity and efficiency	Impact on and on the market for ownership control	Impact on investor protection	Associated costs	Efficiency
Option 1: No new action	=	=	=	=	=	=
Option 2: Broad regime: disclosure regime extended to all instruments of similar economic effect to holding shares and entitlements to acquire shares	++	=/+	=	++	One-off costs of 100 to 600 k€ (below 0,1 % of average operating costs), ongoing cost is difficult to estimate and will depend on the increase of the number of disclosures/per holder in practice	+
Option 3: Limitative approach: disclosure not required in case "safe harbor" criteria are met.	+	=	=	+	One-off costs should not be significant, ongoing cost is difficult to estimate and will depend on the increase in the number of disclosures/per holder in practice	++

Magnitude of impact as compared with the baseline scenario: ++ strongly positive; + positive; – – strongly negative; – negative; = marginal/neutral; ? uncertain; n.a. not applicable

Option 2 has been chosen as a preferred policy option. Option 2 would include a general provision in the Transparency Directive that would require notification of all instruments of similar economic effect to holdings of shares and entitlements to acquire shares. The intention would be to cover all instruments that could be used to create an economic interest in shares listed on regulated markets. It would capture the cash-settled derivatives as well as any other similar financial instruments not yet available on the markets to take account of fast financial innovation. This option is supported by the vast majority of respondents to the public consultation (81% of respondents to the relevant question) which considered that the disclosure of holdings of cash-settled derivatives would be beneficial to the market. A broad approach similar to the one proposed in this option was adopted by the UK in 2009 and more recently by Portugal. Germany is planning to adopt a similar approach. Italy is considering also such an approach (see Annex 7).

This general principle should be subject to exemptions in order to avoid providing the market with irrelevant information and spare notification costs for market players which by definition should not exercise any influence on voting policies or acquire a secret stock in the underlying company. These exemptions should at least cover instruments held by market makers and instruments held on the trading book of financial institutions, which already apply to notifications of financial instruments. The UK experience shows that these exemptions are in general sufficient and should cover the bulk of unnecessary notifications. However, to take account of market developments, it is envisaged to

empower ESMA to develop draft technical standards to adapt the existing exemptions if necessary, for instance, with regard to the notification of instruments linked to a basket of shares or for aggregation of instruments held by a financial institution on behalf of a client. In developing these draft technical standards, ESMA should take account of possible misuse of additional exemptions to circumvent notification requirements. Finally, is it envisaged to harmonise the existing exemptions, so that the same exemptions apply in all Member States.

Option 2 appears to be the most effective and would have a strong positive impact on investor protection and investor confidence as compared to the baseline scenario, as well as have a positive impact on issuers. This option would enhance transparency, reducing the possibility of hidden ownership and creeping control, and therefore improve market efficiency, as further explained in Section 6.3.2 below. It may have a potential negative impact on market liquidity and on the market for ownership control, as described in Annex 1. However, according to UK experience, these potential negative impacts have not realised in practice.

Option 2 , although entailing one-off costs estimated at 100 k€ to 600 k€ per holder of significant number of cash settled derivatives, should nevertheless be efficient and proportionate to address the problems described in Section 3.2.2.2, and should have limited on-going costs for companies linked to processing and making additional disclosures to the market. Option 3 would be less costly but its effectiveness seems to be limited as it would be easy to circumvent the disclosure obligation. Therefore, Option 2 will be the preferred option to achieve the operational objective and other options should be discarded.

6.2.2. Options to achieve the fourth operational objective: eliminate divergences in notification requirements for major holdings

Options	Effectiveness to achieve the operational objective	Impact on the transparency regarding corporate ownership of issuers of shares	Impact on investor protection	Impact on costs for cross-border investors	Cost savings	Associated costs	Efficiency
Option 1: No new action	=	=	=	=	=	=	=
Option 2: Harmonising the regimes of disclosure of major holdings of voting rights by requiring aggregation of holdings of shares with those of financial instruments giving access to shares	+	++	++	++	An average of 2M€/operator for one-off incremental costs for new cross-border investors and 77k€/year/per operator on average in ongoing costs	? costs difficult to estimate, should be linked to necessity to adapt the IT systems and to the potential increase in the number of notifications	+
Option 3: Harmonising the regime of disclosure of major holdings of voting rights by requiring three separate regimes of disclosure: one for holdings of shares, one for financial instruments giving access to shares and one for the cash settled derivatives.	+	-	-	++	idem	Idem, but the potential increase in the number of notifications should be lower	+
Option 4: Harmonising the regime of disclosure of major holdings of voting rights by harmonising the thresholds for disclosure	++	-	-	++	idem	? costs difficult to estimate, should be linked to necessity to adapt the IT systems	-

Magnitude of impact as compared with the baseline scenario: ++ strongly positive; + positive; – – strongly negative; – negative; = marginal/neutral; ? uncertain; n.a. not applicable

Option 2 is the preferred policy option. Option 2 will harmonise the method of calculation of thresholds for disclosure of major holdings by introducing the requirement to aggregate holdings of shares with holdings of financial instruments (including cash settled derivatives). It will also provide for the method of such aggregation. Option 2 is the most effective as compared to the baseline scenario and to Option 3 to achieve the result of uniform application of EU rules and increased transparency of corporate ownership, as explained further in Annex 1. It will eliminate divergences in Member States concerning the way to calculate the thresholds triggering notification, which is seen as a major problem by the cross-border investors. Whilst it may seem less effective than Option 4, as it will not harmonise the thresholds for notification, it is more proportionate as it leaves sufficient flexibility to Member States to take account of the existing national differences in ownership concentration, which are quite significant. In

addition, the majority of investors do not consider different national thresholds as being a major source of additional costs. It is therefore the best option in terms of impacts on transparency and on investor protection and in terms of proportionality.

Although Option 2 could be a source of costs for investors linked to additional disclosures in Member States where there is currently no aggregation requirement, the exact amount of these costs is difficult to estimate as it would vary depending on the increases of the number of disclosures in practice. Nevertheless, investors are in favour of more harmonisation and seem to consider these costs as lower compared to the spared administrative burden linked to the introduction of a uniform regime for aggregation. This option should therefore be efficient in achieving the underlying objective.

6.3. Expected impacts of the preferred policy options

6.3.1. Policy options to increase the attractiveness of regulated markets to small and medium-sized issuers

This Section summarises that main impacts of the preferred options on different stakeholders and third countries. Other impacts (impact on environment and employment) are analysed in Annex 1.

(1) Abolishing the obligation to present quarterly financial reports and/or interim management statements for all listed companies

Impact on issuers: This option would enable all listed companies to reduce the costs associated with listing on regulated markets by making the publication of quarterly financial information voluntary rather than mandatory. Those companies which do not estimate useful to publish such information could therefore omit quarterly reporting, and redeploy the resources made available elsewhere. The average estimated cost reduction, excluding costs linked to preparation of the quarterly information, is varying from 2 k€ to 60 k€ per year/per issuer for the small and medium-sized issuers and from 35 k€ to 250 k€ per year/per issuer for large issuers. The reduction in costs concerning the staff employed to prepare this information could not be estimated in monetary terms for small and medium seize issuers: this reduction is varying, per issuer, from 8 man/days/a year to 30 man/days/ a year. For large issuers, the maximum total cost reduction (including costs linked to the staff involved in preparation of these reports) could be estimated as being 2 M €/ a year/per issuer.

It is expected that larger companies will continue to publish quarterly information if there is a demand from analysts, investors and the stock exchanges and in order to maintain their 'brand' image. Therefore the estimated cost reduction would be particularly relevant for small and medium-sized issuers.

This option is not expected to have negative impact on the visibility of small and medium-sized issuers as there will be no differentiation of rules applicable to the issuers according to their size. Also smaller issuers would be able to redirect their resources in order to publish information of more interest to investors.

By making quarterly information voluntary, this option would eliminate an existing regulatory incentive contributing to the short term pressure on issuers, particularly the small and medium-sized ones. This will help to create an investment environment more

favourable to securing long-term support for ambitious and innovative projects based on an in-depth understanding of the underlying business model.

Impact on investors: As explained in Sections 3.2.1.2 and 6.1 above, quarterly information does not appear necessary for investor protection. Investor protection is already sufficiently guaranteed through the mandatory disclosure of half-yearly and yearly results, as well as through the disclosures required by the Market Abuse and Prospectus Directives. If there is no mandatory requirement to publish quarterly information, small and medium-sized issuers will be free to publish whatever information they consider will be most useful for their investors and analysts, who in turn will be able to engage in a dialogue with them about what information they most need, and to "vote", via their capital allocation decisions, against those companies which do not take their criteria into account. Larger issuers are expected to continue publish quarterly information, especially if their investors consider it as useful.

This option would not entail costs for regulators.

(2) Extending the deadline for publishing half yearly reports to 3 months after the end of the respective reporting period for all listed companies

Impact on issuers: This option would have a limited monetary cost reduction, which is however, difficult to precisely estimate. This cost reduction should especially benefit the small and medium-sized issuers. Some non-monetary advantages are also expected: in particular, greater flexibility that would enable the issuers to better organise the necessary work, relieve administrative complexities, improve the quality of the output and secure the services of auditors. Again, this action should benefit mainly the small and medium-sized issuers who have difficulties to respect the current deadline of publication of the half-yearly reports.

This option would also have a positive impact on the visibility of small and medium-sized issuers, as they will be able to adjust more easily the timing of publication of their reports so as not to fall at the same time as the disclosure of the reports by large listed companies.

Impact on investors: some stakeholders expressed negative views on the possibility of extending the deadline for publication of financial information as being damageable to investor protection. According to them, late publication of financial reports could lead to the circulation of outdated information which is less valuable to the market and would increase the risk of market abuse. However, information that could lead to market abuse has in any event to be disclosed according to the Market Abuse Directive. In addition, any new issuance of listed securities has to be accompanied by updated financial information according to the Prospectus Directive. Therefore, investors should be provided with all necessary information that has to be taken into account in a short period of time to make investment decisions. This option also gives issuers extra time to draft their reports which could in turn improve the quality of the output.

This option will allow the analysts to devote more time to the analysis of the half yearly results of small and medium-sized issuers. Also in the Member States where the half yearly reports need to be audited, auditors will have more time to provide their opinion.

This option should not entail any additional costs for regulators.

(3) Requiring ESMA to prepare non binding guidance (templates) on narrative content of the financial reports for all listed companies

Impact on issuers: This option would allow, for all the issuers, for some reduction in costs of preparing financial reports, although these costs could not be estimated. The savings achieved should be particularly beneficial for the small and medium-sized issuers as these issuers have more difficulties in preparing disclosures of narrative nature. The use of templates prepared at the EU level could increase the visibility of small and medium-sized issuers in the EU as the information disclosed would be more comparable and could be more easily analysed by the cross border investors.

Impact on investors: This option should not have negative effects on investors' protection. The templates should find a good balance between regulatory requirements and needs of the investors. The templates should also be adapted to the size of the issuers, thus providing investors with tailor-made information and giving a minimum guarantee as to the quality of such information. This option should also improve the comparability of information for cross border investors and thus facilitate their investment decisions.

This option should not entail any additional costs for regulators.

6.3.2. Policy options to increase the legal clarity and effectiveness of the existing transparency regime for disclosure of major holdings of voting rights

The impacts of the preferred options are:

(1) Disclosure regime extended to all instruments of similar economic effect to holding shares and entitlements to acquire shares

Impact on issuers: This option would enhance transparency of holdings of economic interest in shares, therefore reducing the possibility of hidden ownership and creeping control as companies and the market would have a clearer idea of who holds key interests in listed companies. It would help issuers to identify their potential shareholders, leading to more effective communication of issuers with investors, shareholders and the market. This option will also lead to less information asymmetry, reducing the volatility of share price and lowering cost of capital. On the other hand, it will improve market efficiency, reducing the possibility for holders of cash-settled derivatives to benefit from not having to pay a premium on the share price in case of a future take-over. This option should have limited impact on ongoing costs for companies linked to processing and making additional disclosures to the market.

Impact on investors: The new disclosure regime covering all types of financial instruments equivalent to share ownership might cause an increase of the organizational and compliance costs for holders of these instruments (the maximum estimated one off costs are from 100 k€ to 600 k€ per holder of cash settled derivatives, but they would concern only investors who hold significant number of these instruments). It is estimated that the most significant holders that would mainly incur the one-off costs should be essentially the hedge funds and the investment banks which will need to update their IT systems. For the investment banks, the one off costs could be higher as they will need to put in place a more sophisticated internal process.

The ongoing costs of the requirement to disclose the holdings of the cash settled derivatives could not be estimated as they would vary depending on the increase per holder of the number of disclosures in practice.

This option will be beneficial for investors as the new regime will have a strong positive impact on investor protection. It will decrease information asymmetry and contribute to protect investors from market price manipulation by hidden stock-building. Minority shareholders will also benefit in case of a take-over as potential bidders will have to pay the take-over premium for the shares of the underlying company.

No material costs are expected for the regulators.

(2) Harmonise the regimes of disclosure of major holdings of voting rights by requiring aggregation of holdings of shares with those of financial instruments giving access to shares

Impact on issuers: This option would have a positive effect on issuers as the principle of aggregation would improve the transparency and reduce the possibility to circumvent disclosure requirements by investors who would otherwise acquire holdings of shares and financial instruments with the aggregate economic position well beyond the threshold for notification without disclosing it to the market.

Impact on investors: This option will have a positive impact on investor protection as it would provide for an uniform and more transparent regime across the EU and inform the market of the real economic position of the investors. This option could be a source of costs linked to additional disclosures in some Member States where there is currently no aggregation requirement. These ongoing costs could not be estimated as they would depend on the number of additional disclosures that would take place in practice. However, investors are in favour of a harmonised regime for disclosure of major holdings as they consider it would bring a cost reduction. The estimated cost reduction in on-going cost is of 77 k€/year/ per operator for the cross border investors. This option will also reduce legal uncertainty for cross border investors as it will harmonise the method of calculation of the thresholds.

No material costs are expected for the regulators.

6.4. Impact on third countries and on international attractiveness of EU markets

As the third countries issuers are also listed in the EU stock exchanges, they would benefit from the new measures reducing their administrative burden and the European markets should therefore become more attractive for third countries issuers. The attractiveness of European capital markets to third countries' investors should not be affected. In particular, it is not expected that there exist a reputational risk for the perceived standards of EU markets relative to third countries' markets linked to the removal of the obligation to publish quarterly information.

As explained in Annex 5, some other jurisdictions require publication of quarterly information. However, contrary to the EU, they do not require interim management statements but full quarterly reports. In the US, for example, there are no specific half-yearly reports but three quarterly statements established according to the accounting standards. In the EU, imposing full quarterly financial reporting was not considered as

necessary for the purpose of investor protection on the occasion of the revision of the Transparency Directive in 2004. Therefore, quarterly information currently required for companies listed on the regulated markets in the EU is already less elaborated than what is for example required in the US and there are no voices criticizing European capital markets in this respect.

Equally, Switzerland does not require quarterly financial information at all on its regulated markets. However, there is nor evidence that Swiss standards are considered as not providing sufficient protection to investors.

In addition, the EU stakeholders are not alone in questioning the requirement for quarterly information. In the US, there is also a debate on quarterly reporting even if this debate takes place in a different context as explained in Section 3.2.1.3 above.

Finally, the new regime of disclosure of major holdings of voting rights should have positive effects for international attractiveness of EU markets for both issuers and investors (the impacts will be similar to the ones identified for these categories in the EU).

6.5. Choice of instrument

Concerning the issues linked to the small and medium-sized issuers, only a binding instrument can modify the current minimal requirements at the EU level and prevent Member States from re-imposing similar obligations at the national level. A binding legal instrument should also ensure that all Member States applied the same regulatory framework based on the same principles, thereby ending the current fragmentation of the regulatory response concerning the regime of notification of major holdings. However, it is necessary to define whether the appropriate legal instrument should be a Directive or a Regulation.

(1) Partial modification of the current Directive

A Directive has the advantage of being a legally binding instrument which at the same time leaves to Member States the flexibility to adapt some measures to their legal and economic environment. This option would therefore provide an opportunity to aim for maximum harmonisation concerning the regime of notification of major holdings while leave, (with exception) the current nature of minimum harmonisation Directive for the part on periodic disclosure of financial information. This principle of minimum harmonisation on periodic disclosure of financial information will have some exceptions as discussed in Section 6 above and in Annex 1. Also concerning the objective of harmonisation of the regime of notification of major holdings, the analysis of the impacts concluded that the maximum harmonisation would not apply to all the provisions. For example Member States would be able to adopt lower thresholds for disclosure of major holdings of voting rights. Therefore a Directive seems an appropriate instrument to achieve the operational objectives.

(2) Introduce a Regulation as a new instrument in this field

In this option, the revised Directive would be transformed into a directly applicable Regulation. While a Directive requires national implementing provisions to be adopted, leaving scope for interpretation, the direct applicability of a Regulation would offer greater legal certainty for those subject to the legislation across the EU. Furthermore, a

Regulation would offer the highest degree of harmonisation and any subsequent changes to it would be directly applicable without transposition delay. Once in force, it would override incompatible provisions in domestic legislation.

However, maximum harmonisation is not considered as the best option for some provisions of the Transparency directive. For example the part of the current directive concerning periodic financial information could not be fully harmonised. Also concerning major holdings, some flexibility has to be left to the Member States.

On this basis, the Commission services concluded that replacing the existing Transparency Directive by a Transparency Regulation is not the most proportionate option. The most proportionate option to achieve the objectives would be to partially modify the current Directive.

7. TRANSPOSITION AND COMPLIANCE ASPECTS AND ADMINISTRATIVE BURDEN

7.1. Transposition and Compliance

In order to ensure a better implementation of the Directive and following the Commission's communication from December 2010 "Reinforcing sanctioning regimes in the financial services sector"[90], the existing framework for sanctions[91] should be improved as explained in Annex 3.

In particular, the following changes are envisaged in the Transparency Directive:

a) **Give all competent authorities the power to suspend the exercise of voting rights**: certain sanctioning powers are particularly important to respond adequately to key violations of the Transparency Directive. It should be therefore ensured that all competent authorities have at their disposal those powers. In particular, suspend the exercise of voting rights seems the most effective sanction for an issuer who had violated the notification requirements for disclosure of major shareholdings of voting rights.

b) **Automatic publication of sanctions**: publication of sanctions is considered to be one of the most deterrent tools to prevent violations, particularly because of the reputational damage that the author of the violation will incur. While almost all competent authorities are allowed to publish sanctions, this does not ensure that sanctions are published on a systematic basis in all Member States. This could be achieved by the introduction of a general obligation to publish sanctions.

c) **Introduce criteria to determine the sanctions to be imposed in a particular case**: some criteria are particularly important to adapt the sanction to be imposed, and particularly the level of the administrative fine, to the seriousness and the consequences of the violation and to the personal conditions of the author of the violation, which would help ensuring effectiveness, proportionality and dissuasiveness of the sanctions actually applied.

---

90 European Commission (December 2010).

91 CESR (2009) presented an overview of the different sanctions applicable in the Member States concerning the violations of the provisions of the Transparency Directive. See also ESMA (2011).

d) **Set a minimum level of the maximum amount of administrative fines:** the amount of fines which can be applied to violations of the Transparency Directive should be sufficiently high to ensure that the fine has a deterrent effect.

The levels of fines provided for in national legislation vary across Member States and may be too small in some Member States compared to the benefits that could be realised by infringing the rules, for example concerning lack of notification of major holdings of voting rights.

The following **fundamental rights** of the EU Charter are of relevance for these measures: the right to an effective remedy and fair trial (Art. 47), presumption of innocence and right of defence (Art 48), freedom to conduct a business (Art 16), data protection (Art 8), consumer protection (Art 38), and – even though Art. 49 on the legality and proportionality of criminal offences and penalties may not be directly applicable to all of the administrative sanctions envisaged – the general principles of legality and proportionality underpinning the Charter.

In relation to these fundamental rights, the envisaged measures would ensure that a violation of reporting and notification requirements would be subject to the same type of administrative sanctions across the EU. These uniform rules would particularly ensure that the types and levels of administrative sanctions that can be imposed are proportionate to each specific violation across all Member States. This option will not harmonise the national liability regimes and will not affect the procedure for the imposition of administrative sanctions. Therefore, it will preserve Member States' current arrangements ensuring compliance with procedural rights such as the right to an effective remedy and to a fair trial (Art. 47), the presumption of innocence and the right of defence (Art.48). The obligation to publish sanctions may have a negative impact on the right to protection of personal data (Art. 8) in regard individuals concerned. However, publication of sanctions is an important element in ensuring that sanctions have a dissuasive effect on the addressees and is necessary to ensure that sanctions have a dissuasive effect on the general public.

7.2. Administrative burden

Abolishing the requirement for quarterly reports and prolongation of deadline for publication of the half yearly reports would bring a significant reduction of administrative burden for all the issuers as explained in Section 6 above and would not entail any additional costs for regulators. Taking into account that there is about 12 000 listed companies in Europe[92], waiving the obligation to present quarterly information would bring a potential global cost reduction of about 573 M€, considering only the costs of editing, printing and translating the information and not including the potential cost reduction linked to preparation of such information, which is difficult to numerically estimate but which, according to Annex 2, should be largely superior to other costs linked to disclosure of quarterly information. Requiring ESMA to prepare templates or guidance at national level on the narrative content of financial statements would bring a cost reduction for issuers.

[92] Source : European Issuers.

The requirement to disclose cash settled derivatives together with the principle of aggregation of holdings of shares with those of the financial instruments would entail additional costs on off for investors as explained in Section 6 above. The ongoing costs could not be estimated. However, maximum harmonisation regarding rules for calculation of thresholds and other rules for notification of major holdings should reduce the ongoing administrative costs for about 77 k€/year/ per operator for the cross border investors.

The implementation of the framework on sanctions will not create an administrative burden on companies, which are already today subject to sanctioning regimes in all Member States. More uniform sanctioning regimes throughout the EU may in fact lead to reduced compliance costs for market participants through the simplification of the legal framework for cross-border financial institutions.

The total additional resources for ESMA for the tasks that would be conferred to it by the proposal are estimated to be less than one person a year and should be covered by the reallocation of the existing staff. The resources for the European Commission that would arise from exercising its implementing powers and monitoring tasks would also be covered by the reallocation of the existing staff.

8. MONITORING AND EVALUATION

The Commission is the guardian of the Treaty and therefore will monitor how Member States have implemented the changes of the Transparency Directive. Where needed, the Commission services will offer assistance to Member States for the implementation of the legislative changes in the form of transposition workshops with all the Member States or bilateral meetings at the request of any of them. When necessary, the Commission will pursue the procedure set out in Article 258 of the Treaty in case any Member State fails to respect its duties concerning the implementation and application of Community Law.

The Commission will be monitoring the application of the Transparency Directive, as amended, through ESMA and an extensive and continuous dialogue with all major stakeholders, including market participants (issuers, investors). It may also use of the findings of studies carried out by stakeholders. The main indicators that would be used during the evaluation would be the following:

– Impact of abolition of the requirement to publish quarterly information on issuers and investors;

– Impact of the new disclosure regime for major holdings on transparency of corporate ownership given in particular the possibility that the market develops new financial instruments.

The evaluation of the consequences of the application of the revised Directive could take place six years after the entry into force of the legislative measure in the form of a Commission report to the Council and the European Parliament. Indeed, the period of 4 and half years left for evaluation of the current Transparency Directive proved to be too short to obtain informative quantitative figures measuring the impact of the Directive in

all the areas concerned[93]. In order to measure efficiently the impacts mentioned above, 6 years period seems also appropriate as it is necessary to take into account the possible progressive modification of behaviour of the different stakeholders (progressive abandon of quarterly information) and the possible development of new financial instruments over time.

ESMA can be usefully involved in the evaluation process by providing information to the Commission on the supervisory practice, the number of infringements, actions taken, and on any undesired effects the Directive might have on market liquidity or trading.

[93] That was one of the conclusions of the Mazars study: see for example the executive summary p. XI.

REFERENCES

ACCA (2010), "Hitting the notes, but what's the tune?" ACCA in partnership with Deloitte, September 2010. Available at: http://www.accaglobal.com/af/narrative

Brunzell, Liljeblom, Vaihekoski (2009), "Short-Term Expectations in Listed Firms: The Mitigating Impact of Large Owners", December 2009. Available at: http://ssrn.com/abstract=1400734

Burnison, (January- February 2009): "Wall street's leadership crisis: looking for the culprit behind today's market woes? Try quarterly reporting" Available at: http://findarticles.com/p/articles/mi_m4070/is_238/ai_n31376094/pg_2/?tag=content;col1

CBI (2001), "A bigger share – Encouraging growth in smaller quoted companies".

CEBS (2009), "Mapping of supervisory objectives, including early intervention measures and sanctioning powers", March 2009, available on http://www.c-ebs.org/home.aspx

CESR (2009), Report on the mapping of supervisory powers, administrative and criminal sanctioning regimes of Member States in relation to the Transparency Directive (TD).

CESR (January 2010), Consultation paper: CESR proposal to extend major shareholding notifications to instruments of similar economic effect to holding shares and entitlements to acquire shares.

CESR (December 2010), Report to the European Commission "Development of Pan-European Access to Financial Information Disclosed by Listed Companies".

Cheng, Hong & Scheinkman (2009), "Yesterday's Heroes: Compensation and Creative Risk-Taking", Princeton Working Paper, December 2009. Available at: http://www.princeton.edu/~hhong/heroes_dec09.pdf

CFA (2006), Centre for Financial Market Integrity/ Business Roundtable Institute for Corporate Ethics "Breaking the Short Term Cycle", 2006.

Corporate Governance Research (2010), "Derivatives and hidden ownership: not just a German problem", May 2010, www.cheuvreux.com

Demarigny (2010), on "An EU listing small business act". Available at: http://www.eurocapitalmarkets.org/node/446

ESMA (2011), "Mapping of the Transparency Directive – Options, Discretions and "Gold-plating", 7 July 2011.

ESME (December 2007), "First Report of ESME on the Transparency Directive". Available at: http://ec.europa.eu/internal_market/securities/docs/esme/05122007_td_report_en.pdf

ESME (November 2009), "Views on the issue of transparency of holdings of cash settled derivatives". Available at: www.ec.europa.eu/internal_market/securities/esme/index_en.htm

Europe Economics (2009), "Study on the Cost of Compliance with Selected FSAP Measures, Final Report by Europe Economics", January 2009.

European Commission (July 2007), Communication of 10 July 2007 on a simplified business environment for companies in the areas of company law, accounting and auditing, COM(2007) 394 final.

European Commission (September 2009), Commission Staff Working Document accompanying the Proposal for a Directive of the European Parliament and of the Council amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 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 – Impact Assessment, SEC(2009) 1223, 23 September 2009.

European Commission (May 2010), Commission Staff Working Document, The review of the operation of Directive 2004/109/EC: emerging issues. Accompanying document to the Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions 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, SEC(2009) 611, 27.5.2010.

European Commission Green Paper "Corporate governance in financial institutions and remuneration policies" COM(2010) 284 from 2 June 2010.

European Commission (8 October 2010), Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, "Smart regulation in the European Union", COM(2010)543 final.

European Commission (27 October 2010), Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, "Towards a Single Market Act - For a highly competitive social market economy - 50 proposals for improving our work, business and exchanges with one another", COM(2010) 608 final.

European Commission (December 2010), Communication of 9 December 2010 "Reinforcing sanctioning regimes in the financial sector" COM(2010)716 final.

European Commission (February 2011), Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, "Review of the "Small Business Act for Europe": COM(2011) 78 final.

European Commission Green Paper "The EU corporate governance framework" COM(2011) 164 from 5 April 2011.

European Commission (April 2011), Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, "Single Market Act -Twelve levers to boost growth and strengthen confidence - Working together to create new growth": COM(2011) 206 final.

FC Expert Blog (2010), Quarterly Earnings Kill People-Based Innovation. Available at: http://www.fastcompany.com/1680514/quarterly-earnings-kill-people-based-innovationhellipguess-what-all-innovation-is-people-bas
FSA 07/20 (November 2007), Disclosure of Contracts for Difference, Consultation and draft Handbook text, November 2007.

FSA 08/17 (October 2008), Disclosure of Contracts for Difference, Feedback and policy statement on CP07/20, and further technical consultation, October 2008.

Grant Thornton (2009), "A wake-up call for America", November 2009.

Hu & Black (2006)," The New Vote Buying: Empty Voting and Hidden (Morphable) Ownership", 79 S. CAL. L. REV. 811, 815, 816 (2006).

IOSCO (February 2010), Technical Committee of the International Organisation of Securities Commissions, Principles for Periodic Disclosure by Listed Entities – Final Report, February 2010. Available at: www.iosco.org.

Kearns and Young (2002), "Provision of finance to smaller quoted companies: some evidence from survey responses and liaison meetings, Bank of England". Quarterly Bulletin (2002).

Kirchmaier et al. (2009), Kirchmaier, Grant and Kirshner, "Financial Tunnelling and the Mandatory Bid Rule", FMG Discussion Paper No. 536, January 2009.

Lemos-Stein (2008), "Poison Pills Target Derivatives", WALL ST. J., June 18, 2008.

Mazars (2009), Transparency Directive Assessment Report, external study conducted for the European Commission.

Middlenext (2009), Transfert Euronext vers Alternext: synthèse des éléments distinctifs significatifs.

NVCA (2009), National Venture Capital Association releases Recommendations to Restore Liquidity in the U.S. Venture Capital Industry.

PWC (2010), "Securing AIM's future". Available at: http://www.pwc.co.uk/eng/publications/aim_research.html

Rasch (1994), "Special Stock Market Segments for Small Company Shares in Europe – What Went Wrong?," Discussion Paper No 94-13, Zentrum für Europäische Wirtschaftsforschung GmbH.

Report of the Reflection Group On the Future of EU Company Law (2011), April 2011. Available at: http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf

CIMA, PWC, Tomorrow's Company (2011), "Tomorrow's Corporate Reporting: A critical system at risk", April 2011. Available at: http://www.pwc.co.uk/eng/publications/tomorrows-corporate-reporting-a-critical-system-at-risk.html

Schiller and de Vegt (2010), "Interim Reporting and Accounting Quality" August 19, 2010. Available at SSRN: http://ssrn.com/abstract=1661592

Schouten (2010), "The Case for Mandatory Ownership Disclosure", 15 Stanford Journal of Law, Business & Finance 127-182.

Verret (2010), Assistant Professor, George Mason University School of Law, Senior Scholar, Mercatus Center at George Mason University, Hearing before the Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Economic Policy, hearing entitled "Short-termism in Financial Markets", April 29, 2010. Available at: http://mercatus.org/sites/default/files/publication/JW%20Testimony%20-%20Short-termism%20-%204%2028%202010.pdf

Zetzsche (2009) "Hidden Ownership in Europe: BAFin's decision in Schaeffler v. Continental", European Buisiness law Review 10:115-147 p.132- 134.

Zingales (2009) "The future of Securities Regulation", January 29, 2009, Social Science Research Network Electronic Paper Collection http://ec.europa.eu/internal_market/securities/transparency/index_en.htm

ANNEX 1

Detailed analysis: impacts of the policy options

1. POLICY OPTIONS WITH REGARD TO SMALL AND MEDIUM-SIZED ISSUERS

1.1. Description, analysis and comparison of policy options to allow for more flexibility regarding the frequency and the timing of publication of periodical financial information for small and medium-sized issuers

The options described and analysed in this Section are not mutually exclusive and preferred option could be a combination of different options. In addition to the criteria presented in Section 6 of the impact assessment document, there is a need to assess the impact of the options in this Section, on visibility of small and medium-sized issuers, on reduction of costs for the small medium issuers and the impact on short-termism.

1.1.1. Option 1 – No new action

This option would result in no change to the present situation as described in the first part of the baseline scenario in the impact assessment document, Section 4.1. This option will not achieve the objective.

*1.1.2. Option 2 - abolish the obligation to present quarterly financial reports and/ or interim management statements **for small and medium-sized issuers***

(1) Effectiveness

This option would be effective to achieve the operational objective at the level of the EU legislation. However, removing the requirement for quarterly information in the Transparency Directive would not, under the actual regime, prevent Member States from maintaining an obligation at national level to publish such information for the small and medium-sized issuers.

Indeed, already today Member States often go far beyond the minimum requirements of the Directive and introduce their own additional obligations at national level (see Annex 5). In order to be effective, therefore, this option should include a provision to prevent Member States from re-imposing an analogue reporting requirement at national level for small and medium-sized issuers. Also, as one of the objectives of the review is to eliminate unnecessary administrative burden for companies, it has to be ensured that Member States do not require more than necessary i.e. "gold plate". Maximum harmonisation concerning this provision will then ensure that all the listed companies in the EU benefit in an equal manner from the reduction of the administrative burden.

However, 69% of the respondents to the public consultation that provided an answer to the relevant question were not in favour of a maximum harmonisation approach if a differentiated regime for small listed companies were added to the Transparency Directive. Some of the respondents underlined that if such maximum harmonisation approach was implemented, the issuers should be free to publish quarterly information.

Under this option, even if there is no mandatory requirement to publish quarterly information, small companies that find it useful to do so or because they are pressured by

their investors or the stock exchanges they chose to list on, would be able to provide the same information as the large companies.

Therefore, this option would avoid over-regulation, and at the same time allow issuers to adapt their disclosure to the investors' and markets' needs.

(2) Impact on reducing disclosure costs for small and medium-sized issuers

This option would enable smaller companies to reduce the costs associated with listing on regulated markets by making the publication of quarterly financial information voluntary rather than mandatory. Those companies which do not estimate useful to publish such information could therefore omit quarterly information, and redeploy the resources made available elsewhere.

Preparing financial information has costs in terms both of additional expenditure for printing and editing the reports and allocation of human resources within the company to prepare these reports (these costs are further explained in Annex 2).

The average estimated cost reduction, excluding costs linked to preparation of the quarterly information, is varying from 2 k€ to 60 k€/per year/per issuer for the small and medium-sized issuers. The reduction in costs concerning the staff employed to prepare this information could not be estimated in monetary terms for small and medium seize issuers: this reduction is varying, per issuer, from 8 man-days/a year to 30 man-days/ a year. The costs of preparation of full quarterly reports according to the accounting standards would be much higher as underlined by the respondents to the public consultation.

Opportunity costs for the management and the Board which have to spend time to approve the quarterly information should also be reduced. Smaller companies, by definition, have fewer staff than larger companies, and their management resources are generally stretched already. Removing the obligation of quarterly financial information will free up management time for other more useful tasks and therefore reduce the "opportunity costs" associated with listing the company's shares on a regulated market.

(3) Impact on visibility of small and medium-sized issuers

Some stakeholders consider that reducing the amount of mandatory public information for small and medium-sized issuers would have the effect of diminishing their visibility even further. Just because these companies are considered as more risky by investors than larger companies, they need to provide as much periodic information as possible in order to counteract this perception and reassure the market. It is also argued that if a lighter disclosure regime is established for small and medium issuers, it will have a negative impact on their visibility.

However, the potential benefit to be derived from disclosure of quarterly financial information is controversial, and is often considered by the actors themselves as negligible. Quarterly financial reports and interim management statements rarely serve the purpose of disclosing market-sensitive information which can change perceptions of fundamental value or trigger price movements, since any material information will already have been announced to the market under on-going disclosure requirements as laid down by the Market Abuse Directive.

Smaller companies have fewer shareholders and free float, and their investors are generally located in the market where the company has its operations. As a result, for many small and medium-sized issuers, first-hand knowledge of a company's operations plays a far greater role in determining investment decisions than access to more formal sources of financial information. This explains why these companies are among the most vocal in denouncing the disproportional cost of compliance with the current provisions of the Transparency Directive[94].

In addition, removing the requirement for quarterly information would allow small companies to redirect their resources to other channels and methods for informing investors and intermediaries of events they deem important (press releases, ad hoc reports, meetings with analysts and investors, site visits, media coverage,…), and to focus their energy on other means they deem best able to ensure maximum visibility for their operations.

Nevertheless, although the benefits for quarterly information are questionable, investor community could perceive a differentiated transparency regime for these companies as a wrong signal to the market and thus such a differentiated regime could negatively impact the visibility of smaller issuers.

(4) Impact on short-termism

The emphasis on short-term financial performance has multiple causes, but is the obligation to provide quarterly information is a regulatory incentive exacerbating this culture. By making quarterly reporting voluntary, this option would contribute to reducing this pressure on small and medium-sized issuers, and help create an investment environment more favorable to securing long-term support for ambitious and innovative projects based on an in-depth understanding of the underlying business model. Not only small issuers would not be required to disclose their quarterly financial position but they will be also able, if they wish so, to redirect their resources in order to develop communications about their long term strategy and values[95].

(5) Impact on investor protection

This option would not have a negative impact on investor protection. When the interim management statements were introduced in 2004, it was decided that full quarterly reporting would not be necessary for investor protection in the EU: full quarterly reports are also more costly in terms of burden imposed on listed companies; especially the smaller ones and they could be even a bigger inventive for the short termism than the interim management statements are. Investor protection is already sufficiently guaranteed through the mandatory disclosure of half yearly and yearly results, as well as through the disclosures required by the Market Abuse and Prospectus Directives. In fact, Market Abuse Directive already requires issuers to disclose inside information as soon as possible to the market. This inside information includes all information that is likely to have a significant effect on the prices of financial instruments listed on regulated markets. In addition, Prospectus Directive requires issuers of securities admitted to trading on regulated markets to publish a Prospectus for each new share issuance which increases issuer's capital, subject to some exceptions. This Prospectus contains financial information, including the management's explanation of factors that have affected the

---

94 Mazars (2009), section 2.3.5.

95 Such form of communication is for example envisaged by CFA Institute: see CFA (2006).

company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

Therefore, investors should be duly informed about important events and facts that could potentially influence the price of the underlying shares independently of the quarterly information as foreseen in the Transparency Directive. Other information, which does not need to be disclosed to the market urgently, is better disclosed in the yearly or the half yearly financial statements which are prepared under the accounting standards and give high quality information to the investors. In contrast, interim management statements are not prepared according to the accounting standards and therefore the information they provide might be of lower quality. Information disclosed in this kind of reports is also not easily comparable.

Lack of comparability of information contained in the interim management statements is in particular relevant for the small and medium sized issuers. Indeed, investors (and intermediaries) often consider that the kind of information small and medium-sized issuers disclose is not sufficiently focused and streamlined for it to be easily comparable, thus leading to a discouragingly high research burden in order for it to be made usable[96]. There is also a general perception that the total amount of information communicated to the markets is currently too high[97]. Investors often underline that what matters most is the quality of information, not the quantity. Recent research shows that there are many circumstances in which interim reporting does not improve accounting quality, sometimes, it even reduces it[98]. Thus, it does not seem necessary to mandate disclosure of interim management statements in legislation.

On the other hand, quarterly financial information is considered to be useful by a number of stakeholders. The results of the public consultation are non clear cut on this point. The majority of respondents to the public consultation find quarterly financial information valuable and believe that it enhances the transparency and efficiency of the markets. In this respect, 59% of respondents to the relevant question in the public consultation believed that waiving the obligation to disclose quarterly financial reports or interim management statements for small listed companies would result in a diminution of transparency and would therefore reduce investors' protection and confidence. However, 100 % of issuers and 50 % of investors who have responded to this question were of the view that this requirement could be abolished for small and medium-sized issuers without negative impact on transparency. Those respondents that opposed to abolishment of quarterly information for small and medium-sized issuers were the stock exchanges (100%), public authorities (90%) and auditors and accountants (100%). One important argument of the respondents to this question, opposed to the removal of the obligation to publish quarterly information for small and medium-sized issuers, was that a differentiate transparency regime according to the size of the issuer would confuse the investors.

According to the external study performed by Mazars, the majority of stakeholders in the EU (68,8%) consider that publication of quarterly information is useful for the transparency and the efficient functioning of the market. However, a different result

---

96 Such views were for example expressed during the public conference from June 2010: http://ec.europa.eu/internal_market/securities/transparency/index_en.htm

97 See for example: Tomorrow's Corporate Reporting (2011).

98 Schiller and de Vegt (2010).

comes from three important capital markets in the EU: 66,7% of the stakeholders from the UK, 50 % from Luxembourg and 44% from France consider that this information is not useful[99].

Whereas quarterly information could be useful for a number of investors, it does not seem necessary to guarantee investor protection, as explained above. Therefore, it seems possible to leave to the market and to issuers themselves to decide on whether it is useful to provide such information on the market or not.

If there is no mandatory requirement to publish quarterly information, small and medium-sized issuers will be free to publish whatever information they consider will be most useful for their investors and analysts, who in turn will be able to engage in a dialogue with them about what information they most need, and to "vote", via their capital allocation decisions, against those companies which do not take their criteria into account.

However, 60% of respondents to the public consultation that have provided an answer to the relevant question believe that a differentiated regime for small listed companies would result in a perceived gap in investor protection.

(6) Efficiency

This option would entail costs for regulators linked to the need to periodically check the size of the companies which do not publish quarterly financial reports to ensure that they remain eligible for this exemption. These costs could not be estimated as they would depend of the method retained to define a small and medium-sized issuer.

*1.1.3. Option 3 – abolishing the obligation to present quarterly financial reports and/ or interim management statements for small and medium-sized during an initial **period of 3 years after admission to trading***

In his report, Demarigny[100] proposed that the publication of Quarterly Interim Management Statements should become compulsory for small and medium-sized issuers only after three years of admission to trading on a regulated market. Such an option was also put forward by some respondents to the public consultation.

(1) Effectiveness

This option would be less effective to achieve the operational objective as it would only temporarily alleviate the requirement to publish quarterly reports. Similarly to Option 2, in order to be effective, this option should include a provision to prevent Member States from re-imposing an analogue reporting requirement at national level.

(2) Impact on reducing disclosure costs for small and medium-sized issuers

This option would allow cost savings only during the first three years after admission to trading. Therefore its impact to reduce costs for small and medium-sized issuers will be limited. However, the first three years of listing are the most critical for issuers in terms

---

[99] See Mazars (2009) section 2.6.3 and Annex 5.

[100] Demarigny (2010) p. 26, Recommendation Number 9.

of burdens and therefore it is especially important to reduce costs for the newly listed companies.

(3) Impact on visibility of small and medium-sized issuers

The same impacts as these described for Option 2 apply for this option. It could be argued that newly listed companies need to provide even more information than the others in order to increase their visibility. However, as for Option 2, their operational transparency could be more appropriately ensured through information and material event disclosure requirements, rather than through a further layer of financial reporting obligations. Nevertheless, creating a differentiate regime for these companies could have a negative impact on their visibility.

(4) Impact on short-termism

This option would, compared to the other options, have a more limited impact on short-termism as it would apply to limited number of listed companies and for a limited period of time.

(5) Impact on investor protection

The same impacts as these described for Option 2 would apply. Nevertheless, introducing a different transparency regime according to the size and the age of an issuer operating in the same regulated market could potentially be confusing for investors. Also some stakeholders argue that quarterly information is mostly necessary during the first three years after admission of trading. Before introduction of quarterly information in the Transparency Directive, in the UK, quarterly reporting was for example required only for companies with a listing track record of less than three years.

(6) Efficiency

This option would entail costs for regulators linked to the need to periodically check the size and the age of the companies which do not publish quarterly financial reports to ensure that they remain eligible for this exemption.

1.1.4. Option 4 – abolishing the obligation to present quarterly financial reports ***for all listed companies***

(1) Effectiveness

This option would be as effective as Option 2 in achieving the operational objective. In addition, if the requirement for quarterly information is abolished for all listed companies, there will be less pressure on small listed companies to produce quarterly reports.

However, as for Option 2, simply abolishing this obligation at EU level would not prevent Member States from maintaining an obligation at national level to publish quarterly financial information. In order to be effective, Option 4 should therefore also prevent Member States from re-introducing such a requirement at the national level.

This option would, however, leave it open for the companies themselves to publish this information if they deem it useful for their investors or analysts.

For larger companies, it can be considered that, whatever their legal obligations are, the majority would continue to publish quarterly financial information as at present if there is a demand from analysts, investors and stock exchanges on which they chose to list[101] and in order to maintain their 'brand' image.

(2) Impact on reducing disclosure costs for small and medium-sized issuers

Option 4 would produce the same cost reductions for small and medium-sized companies as under Option 2 described above. The average estimated cost reduction, excluding costs linked to preparation of the quarterly information, is varying from 35 k€ to 250 k€/per year/per issuer for large issuers. The maximum total cost reduction (including costs linked to the staff involved in preparation of these reports) could be estimated as being maximum 2 M €/per year/per issuer (See Annex 2). Although, if larger companies continue to publish quarterly financial information in practice (as described under (1) above), this cost reduction would only concern minority of large issuers.

The positive impact for the small and medium-sized issuers could also be mitigated by the possibility of "coordination failure": i.e small and medium-sized issuers may wait for each other to modify the frequency of their reporting. Nevertheless, the proposed Option should send a strong signal to the market and stimulate a debate which should encourage behavioural changes.

(3) Impact on the visibility of small and medium-sized issuers

Option 4 would have the same effect in this respect as would Option 2 described above.

However, Option 4 would avoid the possible negative impact on the visibility of small and medium-sized issuers that could be identified under Option 2: the same rules would apply to all listed companies, irrespective of their size, avoiding the risk that the visibility of small and medium-sized issuers is hampered by a lighter transparency regime applied to them.

(4) Impact on short-termism

Option 4 would produce the same results as would Option 2, described above. Short-term performance pressure on management and investment strategies has negative consequences for small as well as for large issuers, even if it is particularly harmful for smaller emerging companies. Consequently, the benefits described under Option 2 above would also potentially extend to a far larger number of companies. Removing mandatory quarterly information for all issuers would thus be coherent with recent Commission initiatives encouraging financial institutions and issuers to establish incentives for a longer-term vision[102].

---

[101] There is for example a distinction between premium and standard listing for example in UK or Germany. Premium listing is addressed mainly to the biggest listed companies which accept to follow stricter rules in order to benefit from the "premium listing" label.

[102] The European Commission has, for instance, recommended that remuneration of directors in issuers and financial institutions takes into account the long term behaviour of companies. See European Commission Recommendation 2009/384/EC of 30.4.2009 *on remuneration policies in the financial services sector*, OJ L 120, 15.5.2009, p. 22; and Commission Recommendation 2009/385/EC of 30.4.2009 *complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime*

(5) Impact on investor protection

Option 4 will potentially produce the same impact on investor protection as described under Option 2, although the number of companies to which Option 4 would apply would be greater. However as the same rules will apply to all issuers irrespective of their size, there is no risk of confusion of investors as identified under Option 2 and 3.

(6) Efficiency

Option 4 should have the same impact on efficiency as described under Option 2 above. However, Option 4 would avoid the need for supervisors to periodically check the size of the companies which are allowed not to publish quarterly financial information, as all companies will be exempted from such requirement. Consequently, Option 4 will be more efficient as compared to Options 2 and 3 with regard to related costs for supervisory authorities.

1.1.5. *Option 5 – extending the deadline for publishing the half yearly reports to 3 months after the end of the respective reporting period* ***for all listed companies***

(1) Effectiveness

This option leaves flexibility to the issuers to publish their half yearly rapports at the time that they consider to be the most suitable, within the limits of the extended deadline. In order to be effective, this option should not allow Member States to shorten the deadline of publication of half yearly reports.

(2) Impact in reducing disclosure costs

A quarter of respondents to the relevant question in the public consultation believed that extending the deadline of publication of financial reports, in particular, half-yearly reports, would result in a reduction in costs for issuers. The following types of costs which could be reduced were mentioned: the burden on boards and senior management (opportunity cost); accounting costs (e.g. less need to hire external staff/consultants in certain periods for accounting needs because workload of internal staff would be better spread throughout the year, less overtime paid); auditing costs (e.g. easier for auditors to cope with the work); extra hours (both of in-house staff and of external auditors).

However, it seems that the monetary cost reduction linked to the extension of deadline for publication of half-yearly reports would be marginal (about half of the respondents did not believe that an extension of the deadline for publication of financial reports would result in any significant cost reduction).

Nevertheless, some of the respondents to the public consultation were enthusiastic about the non-monetary advantages, in particular greater flexibility that could result from an extension of the deadline for the publication of half-yearly reports from two to three months. This would enable the issuers to better organise the necessary work, relieve

---

for the remuneration of directors of listed companies, OJ L 120, 15.5.2009. See also European Commission Green Paper "Corporate governance in financial institutions and remuneration policies" COM(2010) 284 from 2 June 2010 and European Commission Green Paper "The EU corporate governance framework" COM(2011) 164 from 5 April 2011.

administrative complexities, improve the quality of the output and secure the services of auditors.

(3) Impact on visibility of small listed companies

This option would contribute to solve the issue of visibility described in Section 3.2.1.4. Indeed, this Option would avoid that the publication of the reports falls in the month of August where the market activity is reduced, which is now the case for the majority of listed companies, as explained in Section 3. Therefore, it would leave more time for analysts and investors to look at and analyse the half-yearly results of issuers, including the smaller ones. In addition, small and medium-sized issuers will be able to adjust more easily the timing of publication of their reports so as not to fall at the same time as the disclosure of the reports by large listed companies.

This option goes also into the direction indicated by the respondents to the consultation: it provides for the same rules for all listed companies. It avoids the risk that visibility of smaller listed companies would be hampered by lighter transparency regime applicable to them.

(4) Impact on short termism

This option should not have any impact on short termism.

(5) Impact on investor protection

Some stakeholders express negative views on the possibility of extending the deadline for publication of financial information as being damageable to investor protection. According to them, late publication of financial reports could lead to the circulation of outdated information which is less valuable to the market and would increase the risk of market abuse.

However, this argument is not convincing. Information that could lead to market abuse has in any event to be disclosed according to the Market Abuse Directive. In addition, any new issuance of listed securities has to be accompanied by updated financial information according to the Prospectus Directive. Therefore, investors should be provided with all necessary information that has to be taken into account in a short period of time. This option also gives issuers extra time to draft their reports which could in turn improve the quality of the output and therefore could be beneficial for investors' protection.

Again, as previously described, the majority of respondents to the public consultation call for a single set of rules for disclosure, irrespective of the size of issuers. A single set of rules would better insure investor protection. This option is on line with this approach.

(6) Efficiency

This option should not entail any additional costs for issuers or supervisory authorities and is therefore cost-efficient.

1.1.6. Option 6 - extending the deadline for publishing half yearly reports to 3 months after the end of the respective reporting period ***for small and medium-sized issuers***

(1) Effectiveness

This option would extend the current deadline for the publication of the half-yearly financial reports for small and medium-sized issuers and leave the current deadline of two months unchanged for larger companies. The suggestion of having different deadlines for smaller listed companies has been recommended by IOSCO[103] and is currently practiced in the US[104]. It is also recommended in the External Study in order to enhance market efficiency[105]. This option will be efficient to achieve the operational objective if Member States are not allowed to shorten the deadline of publication of half-yearly reports for small and medium-sized issuers.

(2) Effectiveness in reducing disclosure costs

The same as for Option 5. However, the cost reduction will concern a more limited number of companies.

(3) Impact on visibility of small listed companies

This option is expected to have a positive impact on the visibility of small and medium-sized issuers: as the half yearly reports will not be issued at the same time for all the companies, this will avoid the bottleneck of the financial reports and users would be able to devote more time to analyse the results of the small and medium-sized issuers. However, as explained above, a similar result could be achieved by extending the deadline for all issuers.

(4) Impact on short-termism

This option should not have any impact on short-termism.

(5) Impact on investor protection

The impact on investor protection should be the same as for Option 5. However, this option introduces a differentiation of rules according to the size of an issuer. Such different rules could be confusing to the investors.

(6) Efficiency

This option entails a cost for the regulators linked to the need to check the size of the company subject to the extension of the deadline for publication of financial reports on regular basis. As compared to Option 5, this option would therefore be less cost-efficient.

1.1.7. Conclusion

Given that quarterly information is not necessary in order to ensure investor protection, that this requirement has relatively high costs and the fact that it makes a non-negligible

---

[103] IOSCO (February 2010), p.23.
[104] See Annex 5.
[105] See Mazars (2009), Possible Improvement n°4.

contribution to the short-term pressure on all issuers, it does not appear desirable to maintain a legal obligation on issuers at EU level to publish such information (Option 4).

While the main target of this action are small and medium-sized issuers, the majority of respondents to the public consultation believe that it is not desirable to have differentiated regimes for company listed on regulated market according to their size, as this could undermine investors' protection. It would therefore be preferable to adapt the standard regime to make it better suited to the needs of smaller companies, rather than to introduce a separate regime based on the size of the issuer.

There is also some evidence that the deadline of publication of half yearly reports could be prolonged for all listed companies. Option 5 should have a positive impact on visibility of small and medium-sized issuers. It will also reduce costs for all the listed companies but specifically for the small and medium-sized issuers without having negative impact on investor protection.

In addition, Options 4 and 5, which foresee a single voluntary regime for all companies, regardless of size, represent the most efficient options as compared to related costs. These options are also proportionate to achieve the operational objectives as they bring significant benefits for small and medium-sized issuers without creating a specific set of rules for disclosure of periodic information according to the size of the issuers that could have negative effects on investor protection and that could entail costs for regulators.

It would therefore seem that Options 4 and 5 are the best policy option, Options 1, 2, 3 and 6 should therefore be rejected.

Table 1: Impact of options to allow for more flexibility regarding the frequency and the timing of publication of periodical financial information for small and medium-sized issuers

Options	Effectiveness	Impact on reducing disclosure costs for small and medium-sized issuers	Impact on visibility of small and medium-sized issuers	Impact on short-termism	Impact on investor protection	Efficiency
Option 1: No new action	=	=	=	=	=	=
Option 2: Abolishing the obligation to present quarterly financial reports and/ or interim management statements (IMS) for small and medium-sized issuers	++	++	=/-	+	-	+
Option 3: Abolishing the obligation to present quarterly financial reports and/ or IMS for small and medium-sized issuers during an initial period of 3 years after admission to trading	+	+	=/-	=	-	+
Option 4: **Abolishing the obligation to present quarterly financial reports and/ or IMS for all listed companies**	**++**	**++**	**=**	**++**	**=**	**++**
Option 5: **Extending the deadline for publishing half yearly reports to 3 months after the end of the respective reporting period for all listed companies**	++	+	+	n.a.	=	++
Option 6: Extending the deadline for publishing half yearly reports to 3 months after the end of the respective reporting period for small and medium-sized issuers	++	+	++	n..a	=/-	+

Magnitude of impact as compared with the baseline scenario: ++ strongly positive; + positive; – – strongly negative; – negative; = marginal/neutral; ? uncertain; n.a. not applicable

1.2. Description, analysis and comparison of policy options to simplify the narrative parts of financial reports for small and medium-sized issuers

In addition to the criteria presented in Section 6, there is a need to assess the impact of the options on visibility of small and medium-sized issuers and on reduction of costs for the small medium issuers.

1.2.1. Option 1 – No new action

This option would result in no change to the present situation as described in the first part of the baseline scenario in the impact assessment document, Section 4.1. This option will not achieve the objective.

1.2.2. Option 2 - Harmonising the maximum content of narrative parts of financial reports at the EU level for small and medium-sized issuers

The following disclosure requirements were identified (in addition to the obligation to publish quarterly reports as described above) by the respondents to the public consultation as particularly complex for small listed companies with regard to the narrative content of financial reports: compliance with the corporate governance requirements and corporate social responsibility disclosures. The obligations that fall on small listed companies could be made simpler if the narrative part of the annual financial report and of half-yearly were subject to maximum harmonisation at EU level.

(1) Effectiveness

This option would be effective to achieve harmonised standards for narrative reporting which could simplify the current obligations for small and medium-sized issuers in some Member States. However, it could make the content of these reports more complicated for the small and medium-sized issuers located in the Member States where currently only a limited amount of information has to be provided.

(2) Impact on reducing disclosure costs for small and medium-sized issuers

Some respondents to the public consultation considered that a measure of cost reduction could be achieved by this means. In particular, internal administrative costs could be reduced because it would be possible to partly automate the process of preparing reports. Still, most respondents could see no scope for cost reductions arising from maximum harmonisation of narrative reports for small and medium-sized issuers. On the contrary, according to these respondents, maximum harmonisation across Europe of the content of narrative reports could lead to an increase in financial reporting obligations, and hence in compliance costs, for those small and medium-sized issuers which for the time being have to provide a limited number of information in these narrative reports.

(3) Impact on visibility for small and medium-sized issuers

Maximum harmonisation at the EU level could increase the visibility of small and medium-sized issuers at the EU level as the information disclosed would be more comparable and could be more easily analysed by the cross border investors.

(4) Impact on investor protection

On the other hand, whilst maximum harmonisation at the EU level would allow for more comparability of information for cross border investors and thus facilitate their investment decisions, respondents to the public consultation highlighted that the quality of the narrative reporting was crucial for investors. If the threshold at the EU level for the content were set too low in the hope of saving costs, this may have negative implications for investors.

(5) Efficiency

Harmonising the content of narrative reports should not entail any additional costs for supervisory authorities. However, as described above, this option could entail additional costs for some small and medium-sized issuers as compared to the current situation and thus not be cost-efficient and even be contrary to its objective.

1.2.3. *Option 3 - Require ESMA to prepare non binding guidance (templates) on the narrative content of the financial reports for all listed companies*

(1) Effectiveness

Instead of harmonising the content of the narrative reports in the EU legislation for small and medium-sized issuers, ESMA could be required to design non-binding guidance (templates) for such reports for different categories of listed companies. When preparing the guidelines, ESMA should take into account in particular the capacities of the small and medium-sized issuers. Most respondents to the relevant question in the public consultation saw some value in the possible preparation of ready-to-use templates for narrative disclosures, provided they were not mandatory. This option would be therefore effective to achieve the operational objective.

(2) Impact on reducing disclosure costs for small and medium-sized issuers

This option could achieve cost savings for all the categories of issuers which would decide to use such templates. The cost savings should be higher for small and medium-sized issuers which do not have internal capacities to prepare such reports and which normally have to outsource this task, including the legal review for compliance. These companies could use the template which will facilitate the drafting of the reports, and therefore spare the external legal and compliance advice. On the other hand, as the templates would not be binding, the issuers not willing to use them because they would consider that they increase their costs, would not be required to do so.

(3) Impact on visibility for small and medium-sized issuers

The use of templates prepared at the EU level could increase the visibility of small and medium-sized issuers in the EU as the information disclosed would be more comparable and could be more easily analysed by the cross border investors.

(4) Impact on investor protection

Some respondents to the public consultation considered templates for narrative disclosures as likely to result in box-ticking disclosures. However, it seems that well designed non mandatory templates could streamline the narrative reporting in order to make it better suited to the investors' needs. ACCA in its report on narrative reporting underlines that even though 88% of the respondents to its survey "considers shareholders

to be the most important audience, legal and regulatory requirements are considered equally important drivers of narrative reporting"[106]. It is therefore important that the templates find a good balance between regulatory requirements and needs of the investors. The templates should therefore be adapted to the size of the issuers, thus providing investors with tailor-made information and giving a minimum guarantee as to the quality of such information. As underlined by ACCA, the globalisation of business has led to calls for greater consistency in the information provided to stakeholders across jurisdictions[107]. This option should respond to this call as it would improve the comparability of information for cross border investors and thus facilitate their investment decisions.

(5) Efficiency

Developing the templates for the content of narrative reports could entail some costs for ESMA. These costs are on-off costs of preparing the template and are not expected to be significant. This option should reduce costs for issuers as compared to the current situation. It seems therefore to be proportionate and cost-efficient.

1.2.4. Option 4 – Require Member States to prepare non binding templates or guidance at national level on the narrative content of financial reports for all listed companies

(1) Effectiveness

Each Member State will be able to adapt the templates to its internal market, taking into account the local legal requirements. This option would therefore be effective to achieve the objective of simplifying the preparation of reports of narrative nature for small and medium-sized issuers.

(2) Impact on reducing disclosure costs for small and medium-sized issuers

National templates should achieve cost reduction and they will be adapted to local market conditions. The savings achieved should be particularly beneficial for the small and medium-sized issuers as these issuers have more difficulties in preparing disclosures of narrative nature.

(3) Impact on visibility for small and medium-sized issuers

The use of national templates could increase the national visibility of small and medium-sized issuers but will not help solving the issue of lack of cross border visibility for this category of issuers.

(4) Impact on investor protection

This option should not have a negative impact on investor protection. Member States would be in good position to prepare templates or guidelines that are adapted to their legal environment and that ensure the same level of information for users. The templates would be adopted taking into account the size of the issuers and the local particularities.

---

106 ACCA (2010).
107 ACCA (2010).

For example special guidelines are available in France for small and medium-sized listed companies[108]. However, under this option, there will be no more comparability of information than there is a case today and therefore cross border investment decisions will not be facilitated.

(5) Efficiency

Costs linked to the establishment of such templates will be borne by Member States. The total costs across the EU should be higher as compared to Option 5.

1.2.5. Conclusion

Option 3 requiring ESMA to prepare non-binding guidance for narrative reporting is the best option to achieve the operational objective, it could help improving cross border visibility of small and medium-sized issuers without undermining the investor protection. This option is also the most proportionate option to achieve the objective and it respects the principle of subsidiarity.

Table 2: Impact of options to simplify the narrative parts of financial reports for small and medium-sized issuers

Options	Effectiveness	Impact on reducing disclosure costs for small and medium-sized issuers	Impact on visibility of small and medium-sized issuers	Impact on investor protection	Efficiency
Option 1: No new action	=	=	=	=	=
Option 2: Harmonising the maximum narrative content of financial reports at the EU level for small and medium-sized issuers	-	-	++	-	+
Option 3: **Requiring ESMA to prepare non binding guidance (templates) on narrative content of the financial reports for all listed companies**	++	++	++	+	++
Option 4: Requiring Member States to prepare non-binding templates or guidance at national level on the narrative content of financial reports for all listed companies	++	++	+	=	+

Magnitude of impact as compared with the baseline scenario: ++ strongly positive; + positive; – – strongly negative; – negative; = marginal/neutral; ? uncertain; n.a. not applicable

[108] In France there is a supplementary Corporate Governance Codes prepared by Middlenext applicable to small and mid caps.

2. POLICY OPTIONS TO IMPROVE THE REGIME FOR NOTIFICATION OF MAJOR HOLDINGS

2.1. Policy options to eliminate the gaps in requirements for notification concerning major holdings of voting rights

In addition to the criteria presented in Section 6, there is a need to assess the impact of the options on market liquidity and efficiency and on the market for ownership control.

2.1.1. Option 1 - No new action

This option would result in no change to the present situation as described in the second part of the baseline scenario in the impact assessment document, Section 4.1. This option will not achieve the objective.

2.1.2. Option 2 – Broad regime: disclosure regime extended to all instruments of similar economic effect to holdings of shares and entitlements to acquire shares

This option would include a general provision in the Transparency Directive that would require notification of all instruments of similar economic effect to holdings of shares and entitlements to acquire shares. The intention would be to cover all instruments that could be used to create an economic interest in shares listed on regulated markets. It would capture cash-settled derivatives as well as any other similar financial instruments not yet available on the markets to take account of financial innovation. This general principle should be subject to exemptions (see Annex 6 for the possible list of exemptions) in order to avoid providing the market with irrelevant information and spare notification costs for market players which by definition should not exercise any influence on voting policies or acquire a secret stock in the underlying company.

This option is supported by the vast majority of respondents to the public consultation (81% of respondents to the relevant question) which considered that the disclosure of holdings of cash-settled derivatives would be beneficial to the market. A broad approach similar to the one proposed in this option was adopted by the UK in 2009 and more recently by Portugal. Germany is planning to adopt a similar approach. Italy is considering also such an approach (see Annex 7).

(1) Effectiveness in enhancing the transparency regarding corporate ownership

The benefits of such disclosure are underlined by many respondents to the public consultation and by CESR (ESMA) in its proposal to extend major shareholding notifications to instruments of similar economic effect to holdings of shares and entitlements to acquire shares[109]. Benefits similar to those described below were also identified by the British regulator: the Financial Services Authority (FSA) in the Consultation and draft Handbook text concerning "disclosure of contracts for difference"[110].

According to the Commission services analysis and to the results of the public consultation, this option would enhance transparency of holdings of economic interest in shares, therefore reducing the possibility of hidden ownership and creeping control as

[109] CESR, (January 2010).
[110] FSA 07/20 (November 2007).

companies and the market would have a clearer idea of who holds key interests in listed companies. It would help issuers to identify their potential shareholders, leading to more effective communication of issuers with investors, shareholders and the market. This option will also lead to less information asymmetry, reducing the volatility of share price and lowering cost of capital. On the other hand, it will improve market efficiency, reducing the possibility for holders of cash-settled derivatives to benefit from not having to pay a premium on the share price in case of a future take-over.

In addition, it will help address the practice of empty voting[111], provide useful information to the market on free float of the issuer and improve legal certainty as to which instruments need to be notified across the EU. This option will therefore efficiently address the problems described in Section 3.2.2.2. and help preventing cases described in the Annex 8 (e.g. LVMH/Hermes, Porsche/VW, Schaeffler/ Continental).

However, it also has been argued by some respondents to the public consultation that the introduction of a disclosure regime for cash-settled derivatives could jeopardize the efficiency of the current transparency regime. Cash-settled derivatives are in most cases used for their primary purpose of hedging strategy and not in order to acquire hidden ownership. The latter are isolated cases and do not represent the common situation on the market. Requiring systematic disclosure of such derivative positions would have as a result to overwhelm the market with useless information, which will not help to form a correct view of the real economic ownership of the underlying shares.

Also, according to the FSA consultation paper[112], too much disclosure can cause problems for market participants in their understanding of the true position in relation to control of companies and can, therefore, harm transparency. Specifically the disclosure could lead to: (i) confusing the investor community as to who holds underlying interests and the motives behind acquisitions and disposals; (ii) complex situations where the community tries to second guess potential shareholdings creating a false feeling of interest/disinterest in the market; (iii) increasing volatility in the market.

However, in its response to the public consultation, the FSA underlined that "the UK has not witnessed a dramatic increase in announcements and the market has adapted efficiently to the additional obligations placed on them". Also, the potential negative effects can be mitigated by providing for exemptions in cases where the use of cash-settled derivatives is a common market practice. In the UK, for example, the number of announcements was mitigated by the fact that the UK has implemented a Client Serving Intermediary exemption that allowed writers of CFDs to disapply the aggregation requirement in certain specific circumstances.

(2) Impact on market liquidity and efficiency

Requiring notification of cash-settled derivatives could in theory have a negative impact on market liquidity.

---

[111] By better informing the market on the actual holders of economic interest in shares, this option would help identify holders of voting rights which do not hold the corresponding economic interest in the shares ("empty voting") and therefore could use their votes in the detrimental manner to the invested company.

[112] FSA 07/20 (November 2007).

According to AIMA, which represents the hedge fund industry, disclosure of holdings of all types of financial instruments would reveal to the market the strategies of hedge funds, allowing other actors to replicate the trading strategies of leading players[113]. This would reduce the incentive for hedge funds to undertake fundamental research and engage in activism, both of which carry with them considerable costs. Hedge funds will low their participation in companies below the threshold for notification in order to avoid disclosure and thus reduce their trading activity, which may in turn have an adverse impact on market liquidity.

Since it would appear that hedge fund activism benefits existing shareholders and increases market efficiency, new disclosure requirements which would discourage hedge fund activism may have a negative impact on the underlying objective[114]. These possible negative impacts were considered by the UK FSA the Consultation and draft Handbook text concerning "disclosure of contracts for difference" (CfD).

FSA recognised, that "increased disclosure of all significant CfD positions potentially has impacts on the activity of hedge funds and other investors who seek to profit from undertaking research and exploiting arbitrage opportunities. New disclosure requirements could influence investment strategy, causing hedge funds to take holdings below the disclosable thresholds in order that other investors do not observe and copy their investment decisions and strategies. This could reduce hedge fund activity and profitability. More importantly this could reduce the incentives of market participants such as hedge funds to undertake research and arbitrage activities. In turn this could have a negative impact on market efficiency. This is because the research and arbitrage activities of hedge funds generally improve market efficiency. [115]"

FSA considered also that "a drop in demand for CfDs may reduce demand for the underlying shares. This could in theory reduce liquidity in the underlying share and therefore increase the cost of capital"[116]. However, information we have further received from the FSA proves that in the UK there were no voices from market participants about any experienced negative impact on liquidity. Therefore, there is no reason to believe that the regime implemented in the UK had a negative impact in this area. In addition, this option would improve market efficiency by reducing information asymmetry and thus contributing to a formation of a fair price for underlying shares.

(3) Impact on the market for ownership control

Imposing disclosure of holdings of cash-settled derivatives could have an adverse impact on contestability of control of listed companies and could outweigh the benefit of an increased transparency. It has been argued, for instance, that during a takeover bid, the obligation to disclose interests in derivatives at an early stage could detrimentally increase the price of shares in the target company, rendering it unviable, and, if the target company is on notice, it may wish to defend the bid.

The management of listed companies may also use enhanced information on stake-building through derivatives to protect its own interests, rather than those of the company

---

[113] Schouten (2010), Letter from the Alternative Investment Management Association (AIMA) to the FSA (Feb. 12, 2008).
[114] Schouten (2010), Hu and Black (2006).
[115] FSA 07/20 (November 2007), Annex 1 p.9.
[116] Ibid

and its shareholders. For instance, some US companies explicitly include derivatives when calculating the level of beneficial ownership that triggers the "poison pill"[117]. A "poison pill" is a type of defensive tactic used by the management of a company to prevent takeover bidders from negotiating a price for sale of shares directly with shareholders, and instead forcing the bidder to negotiate with the board. This typically involves a scheme whereby shareholders will have the right to buy more shares at a discount, if one shareholder buys a certain percentage of the company's shares. The plan could be triggered, for instance, when any one shareholder buys a certain percentage of the company's shares (or derivative instruments), at which point every shareholder will have the right to buy a new issue of shares at a discount.

Such poison pills are controversial because they hinder an active market for corporate control and allow management to enrich themselves as management may have to be compensated for the price of consenting to a takeover. However, some stakeholders consider, on the opposite, that the practice of poison pills would rather increase due to the current lack of disclosure of cash settled derivatives. According to this view, if the uncertainty over the notification of economic ownership remains at European level, listed companies will be encouraged to extend the control and economic ownership rules in their articles of association to include the use of cash–settled derivatives or seek short-term approval form shareholders to implement poison pills that capture derivative positions as a best available solution to the problem of hidden ownership[118].

Also, according to our information, FSA does not believe that the disclosure of cash settled instruments have had any negative impact on takeovers in the UK.

(4) Investor protection

Increased transparency of corporate ownership will have a strong positive impact on investor protection. It will decrease information asymmetry and contribute to protect investors from market price manipulation by hidden stock-building. Minority shareholders will also benefit in case of a take-over as potential bidders will have to pay the take-over premium for the shares of the underlying company.

(5) Efficiency

The new disclosure regime covering all types of financial instruments equivalent to share ownership might cause an increase of the organizational and compliance costs for holders of these instruments. As explained in Annex 2, the maximum estimated one off costs are from 100 k€ to 600 k€ per holder of cash settled derivatives (but they would concern only investors who hold significant number of these instruments). It is estimated that the most significant holders that would mainly incur the one off costs should be essentially the hedge funds and the investment banks. For the investment banks, the one off costs could be higher as they will need to put in place a more sophisticated internal process. The ongoing costs of the requirement to disclose the holdings of the cash settled derivatives could not be estimated as they would vary depending on the increase per holder of the number of disclosures in practice. It has to be noted that these costs would only apply for holders located in the Member States where there is not yet a requirement to disclose the cash settled derivatives.

---

[117] Schouten (2010), Lemos-Stein (2008).
[118] Corporate Governance Research (2010).

2.1.3. Option 3 - Limitative approach: disclosure not required in case "safe harbor" criteria are met

Such an alternative approach is considered by CESR (ESMA) in its proposal to extend major shareholding notifications to instruments of similar economic effect to holding of shares and entitlements to acquire shares. However, it is not the preferred approach for ESMA. This option would mean that all instruments that potentially give access to the underlying voting rights would require disclosure unless 'safe harbour' requirements are met, such as, for instance:

(a) The agreement with the writer of the financial instrument explicitly precludes the holder from exercising or seeking to exercise the underlying voting rights;

(b) The agreement excludes any arrangements or understandings in relation to the potential sale of the underlying shares;

(c) An explicit statement is made by the holder that there is no intention to use the financial instrument to seek access to the voting rights.

A similar approach was analysed by the UK FSA in the Consultation and draft Handbook text concerning "disclosure of contracts for difference"[119].

(1) Effectiveness in enhancing the transparency regarding corporate ownership

If correctly implemented, this option should be as effective as Option 2 described above. However, the effective implementation of this option could be problematic. Even if robust contractual agreements were created regarding explicit influence over voting rights and disposal of shares, it would be possible to circumvent the purposes of the disclosure obligation[120] simply by changing the contract terms of the instrument immediately prior to the contract being closed[121]. Also, such a regime would be partly based on the disclosed initial intention of the holder of the instrument. This means that (i) a holder may change its initial intention and (ii) even if holders might comply strictly with the terms of contractual arrangements, it would not with certainty prevent the building up of stakes on an undisclosed basis.

CESR (EMSA) and ESME consider in their respective analyses that such an approach that creates a 'safe harbour' for certain types of contractual agreements would be unworkable in practice[122]. FSA initially did not reject this approach. However, further to its public consultation, FSA concluded that this approach may be difficult to enforce and it may not deliver the expected benefits[123]. FSA also noted that disclosure requirements that would be more general in scope would be easier to comply with than specific rules which are based on the structure of individual contractual arrangements and the underlying intentions of the parties involved.

(2) Impact on market liquidity and efficiency

---

119 FSA 07/20 (November 2007).

120 Schouten (2009), p. 54.

121 This was, for instance, the experience in the Fiat case described in the Annex 8. See Kirchmaier et al. (2009), p. 14.

122 See CESR (January 2010) and ESME (November 2009).

123 FSA 08/17 (October 2008).

This option should not have any negative impact on market liquidity and efficiency as the scope of disclosures would be very limited.

(3) Impact on the market for ownership control

This option should have the same impacts as Option 2 described above.

(4) Impact on investor protection

The impact on investor protection will be positive as compared to the baseline scenario and should potentially be similar to that described under Option 2. However, given that this option seems to be difficult to implement in practice, the improvement in investor protection might in practice be lower compared to Option 2.

(5) Efficiency

This option will entail additional costs as compared to the baseline scenario. However, this option, if correctly implemented, would allow avoiding unnecessary disclosures and the total number of disclosures would potentially be lower than for Option 2. In consequence, the costs of this option would be lower. However, this safe harbour approach might entail additional legal costs for market participants in order to include the necessary contractual provisions in the agreements on cash-settled derivatives to fall under the safe harbour.

2.1.4. Conclusion

The cost and benefit analysis seems to show that Option 2 would have a strong positive impact on investor protection and investor confidence as compared to the baseline scenario, and will also be efficient and proportionate to address the problems described in section 3.2.2.2. Option 3 would be less costly but its effectiveness seems to be limited. Therefore, Option 2 will be the preferred option to achieve the operational objective. The question whether holdings of derivatives should be aggregated with holdings of shares will be treated in section below.

Other technical issues, such as exceptions to the requirement to disclose holdings of financial instruments, could be left to ESMA, which would be in the best position to develop draft technical standards for all Member States. Also, in its proposal to extend major shareholding notifications to instruments of similar economic effect to holding of shares and entitlements to acquire shares[124], CESR (ESMA) suggests that a non exhaustive list of instruments that are in scope may serve as guidance to the market. Such a list might include convertibles (bonds exchangeable for shares), writing of put options (European and American, in and out of the money), futures and forward contracts, contracts for difference, equity swaps, warrants, baskets and shares indices. ESMA could be required to draft such guidance. Annex 6 explains further issues for which ESMA should develop draft technical standards that would be further adopted by the European Commission.

Table 3: Impacts of options to eliminate the gaps in requirements for notification concerning major holdings of voting rights

[124] CESR (January 2010).

Options	Effectiveness	Impact on market liquidity and efficiency	Impact on the market for ownership control	Impact on investor protection	Efficiency
Option 1: No new action	=	=	=	=	=
Option 2: **Broad regime: disclosure regime extended to all instruments of similar economic effect to holding shares and entitlements to acquire shares**	++	=/+	=	++	+
Option 3: Limitative approach: disclosure not required in case "safe harbor" criteria are met	+	=	=	+	++

Magnitude of impact as compared with the baseline scenario: ++ strongly positive; + positive; – – strongly negative; – negative; = marginal/neutral; ? uncertain; n.a. not applicable

2.2. Policy options to harmonise the rules for disclosure of major holdings of voting rights

In addition to the criteria presented in Section 6, there is a need to assess the impact of the options on the transparency regarding corporate ownership of issuers of shares and on costs for cross-border investors.

2.2.1. Option 1 - No new action

This option would result in no change to the present situation as described in the second part of the baseline scenario in the impact assessment document, Section 4.1. This option will not achieve the objective.

2.2.2. Option 2 – Harmonise the regimes for disclosure of major holdings of voting rights by requiring aggregation of holdings of shares with those of financial instruments giving access to shares.

This option introduces the requirement to aggregate holdings of shares with holdings of financial instruments (including cash settled derivatives) in order to calculate the threshold for notification of major holdings and provides for the method of such aggregation. In its advice to the Commission, CESR (ESMA) proposed to create a notification system with four different baskets (holdings of voting rights; holdings of financial instruments under Article 13; holdings of cash settled derivatives and total holdings). The obligation to disclose the major holdings should be triggered when the threshold for any of the four baskets is reached or crossed. Several replies to the public consultation supported such a notification system proposed by CESR (ESMA). Another possibility would be to create a notification system with three different baskets (holdings of voting rights, holdings of financial instruments under Article 13 and total holdings). The two methods should achieve the same result; the choice between these two methods is of a pure technical nature and it does not imply policy choices: the two methods are further explained in Annex 6.

(1) Effectiveness

This option is effective to harmonise the method of calculation of thresholds but not the thresholds as such. However, according to the investors, the existence of different thresholds does not pose major problems to investors. In order for this option to be effective, the legislative proposal should also include a prohibition of netting of long and short positions (see Annex 6). For other issues, such as the list of exceptions or timing for disclosure, the Commission would empower ESMA to develop draft technical standards that would be further adopted by the Commission (See Annex 6).

(2) Impact on the transparency regarding corporate ownership of issuers of shares

Respondents to the public consultation underlined that a uniform regime for disclosure of major holdings would reduce legal uncertainty, enhance transparency, simplify cross-border investments and increase attractiveness of EU capital markets. The principle of aggregation would improve the transparency and reduce the possibility to circumvent disclosure requirements by investors who would otherwise acquire holdings of shares and financial instruments with the aggregate economic position well beyond the threshold for notification without disclosing it to the market.

Almost all respondents to the public consultation were in favour of aggregating holdings of shares with holdings of financial instruments described in Article 13 of the Directive for the purposes of triggering the notification obligation. A minority of respondents to the public consultation did not support an aggregation, which in their view would confuse the market.

(3) Impact on investor protection

This option will have a positive impact on investor protection as it would provide for an uniform and more transparent regime across the EU and inform the market of the real economic position of the investors.

(4) Impact on costs for cross-border investors

Respondents to the public consultation mentioned different examples of divergent rules in different Member States for calculation of major holdings and underlined that these divergences implied difficulties and costs for companies with cross-border activities. In their view, a uniform regime for disclosure of major holdings would reduce administrative expenses for cross-boards investors linked to IT infrastructure and monitoring systems for equity positions of issuers based in different Member States.

Potential savings are directly linked to the scale of cross-border activity. The cost reduction could reach an average of 2 M€/ per operator for one off incremental costs for new cross border investors and 77 k€/year/ per cross border investor on average for ongoing costs. This option will also reduce costs linked to legal uncertainty for cross border investors as it will harmonise the method of calculation of the thresholds.

(5) Efficiency

As compared to the baseline scenario, this option could be a source of costs linked to additional disclosures in Member States where there is currently no aggregation

requirement. However, these costs could not be estimated as they would very depending on the increases of the number of disclosures in practice.

Nevertheless, investors are in favour of more harmonisation and seem to consider these costs as lower compared to the spared administrative burden linked to the introduction of a uniform regime for aggregation.

2.2.3. Option 3 - harmonise the regime of disclosure of major holdings of voting rights by requiring three separates regimes of disclosure: one for holdings of shares, one for financial instruments giving access to shares and one for cash-settled derivatives.

According to this option, notification would be required when one of the three baskets (holdings of shares, holdings of financial instruments giving access to shares and holdings of cash-settled derivatives) would cross the relevant threshold and only this basket should be notified. Holdings in other baskets would not be taken into account.

In its response to the public consultation, CESR (ESMA) indicated that three CESR members do not agree with the need for having to aggregate holdings of shares with holdings of financial instruments and cash-settled derivatives to trigger notification. These members considered that sufficient transparency of holdings can be achieved requiring three separate regimes for disclosure for the three baskets of holdings. These members are of the view that a notification obligation in relation to total holdings would not be desirable because different types of holdings are in their view not comparable. The obligation could also add too much administrative burden for investors and excessive flow of information to the markets.

(1) Effectiveness

Option 3 will be as effective as option 2 in order to achieve a uniform regime and the same measures than these described for option 2 should be adopted in order to insure its effectiveness.

(2) Impact on the transparency regarding corporate ownership of issuers of shares

This option could have a negative effect on transparency regarding ownership of issuers of shares as it could reduce the level of transparency in the Member States where the principle of aggregation of holdings of voting rights with holdings of financial instruments already exists. In fact, the cumulative economic interest in the company would not be taken into account to trigger notification if the holdings in each basket remain just below the threshold. Consequently, the market will not be informed about the aggregate holdings of different instruments which in practice could give a significant influence on the company's strategy to the holder of these instruments.

Moreover, the three CESR (ESMA) members who were against the aggregation, note that for this regime to be effective in informing the market about economic ownership, the initial threshold for notification and the subsequent increments between the thresholds for the three baskets would need to be lower than those currently in place in the Transparency Directive (5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%). Therefore this option would only be effective to increase the transparency if it was decided that these thresholds for disclosure should be harmonised at a lover level that current minimum thresholds (see Option 4).

(3) Impact on investor protection

The level of transparency and therefore of investor protection and confidence could be negative compared to the baseline scenario as it could reduce the level of transparency in the Member States where the principle of aggregation of holdings of voting rights with holdings of financial instruments already exists. If there is no aggregation, an investor holding, for example, 4,5% in voting rights and 4,5% in financial instruments in a company could artificially avoid the disclosure, although this investor would cumulatively hold 9% of economic interest in a company which could give him a significant influence on the company's strategy.

(4) Impact on costs for cross-border investors

The impact is the same as for Option 2.

(5) Efficiency

This option would imply additional costs for investors as compared to the baseline scenario but these additional costs will be lower than for Option 2 as the number of disclosures will be lower. Option 3 will achieve the same costs savings for cross-border investors as Option 2.

2.2.4. Option 4: harmonise the regime of disclosure of major holdings of voting rights by harmonising the thresholds for disclosure.

This option would harmonise the thresholds for notification, forbidding Member States to adopt lower thresholds.

(1) Effectiveness

The question of the harmonisation of thresholds was considered as secondary by many respondents to the public consultation, as compared to the harmonisation of the method to calculate the thresholds for notification. However, harmonising the thresholds would bring a higher level of harmonisation across the EU as compared to the baseline scenario and to the Options 2 and 3.

(2) Impact on the transparency regarding corporate ownership of issuers of shares

As compared to the baseline scenario, this option could have a negative impact on the level of transparency of corporate ownership. It has been argued by many respondents to the public consultation that harmonising thresholds would not allow taking account of the specificities of national regulated markets or national company laws and could therefore have negative effects on transparency. In fact, in some Member States with dispersed corporate ownership, such as UK, the first threshold for notification and the subsequent increments need to be relatively low to provide the market with sufficient transparency as regards potential significant influence in companies. The current minimum threshold for notification in UK is 3%. For other Member States with concentrated corporate ownership, such as Spain, a low threshold will not provide the market with meaningful information as a shareholder can potentially exercise significant influence in a company only when it holds a relatively high percentage of voting rights. Consequently, if a uniform threshold is imposed in all the Member States, this threshold could be too high for some Member States and too low for others.

(3) Impact on investor protection

As compared to the baseline scenario, this option would not take account of the local situation and could thus have a negative impact on investor protection in Member States, where the thresholds are currently very low.

(4) Impact on costs for cross-border investors

Impact should be similar to Options 2 and 3.

(5) Efficiency

In the view of many stakeholders, existence of different thresholds does not pose major problems to investors, the major source of costs being the way these thresholds are calculated. Moreover, thresholds for notification seem to be difficult to harmonise because of the differences in shareholding population in Member States. Therefore, taking into account the costs and benefits, this option seems to be inefficient and it would not respect the principle of proportionality.

2.2.5. Conclusion

Option 2 is the best option in terms of impacts on transparency and on investor protection. Indeed, this option would improve transparency and reduce the possibility to circumvent disclosure requirements. This option could be a source of costs linked to additional disclosures in some Member States where there is currently no aggregation requirement. The one off costs are comprised in the estimation provided for option 2 in Section 2.1 (these costs could not be separated from the one off costs calculated for this option). The ongoing costs could not be estimated as they would depend on the number of additional disclosures that would take place in practice. However, investors are in favour of a harmonised regime for disclosure of major holdings as they consider it would bring a cost reduction. This option will also reduce legal uncertainty for cross border investors as it will harmonise the method of calculation of the thresholds.

Table 4: Impact of options to eliminate divergences in notification requirements for major holdings

Options	Effectiveness	Impact on the transparency regarding corporate ownership of issuers of shares	Impact on investor protection	Impact on cost for cross- border investors	Efficiency
Option 1: No new action	=	=	=	=	=
Option 2: **Harmonising the regimes of disclosure of major holdings of voting rights by requiring aggregation of holdings of shares with those of financial instruments giving access to shares**	+	++	++	++	+
Option 3: Harmonising the regime of disclosure of major holdings of voting rights by requiring three separate regimes of disclosure: one for holdings of shares, one for financial instruments giving access to shares and one for cash settled derivatives.	+	-	-	++	+
Option 4: Harmonising the regime of disclosure of major holdings of voting rights by harmonising the thresholds for disclosure	++	-	-	++	-

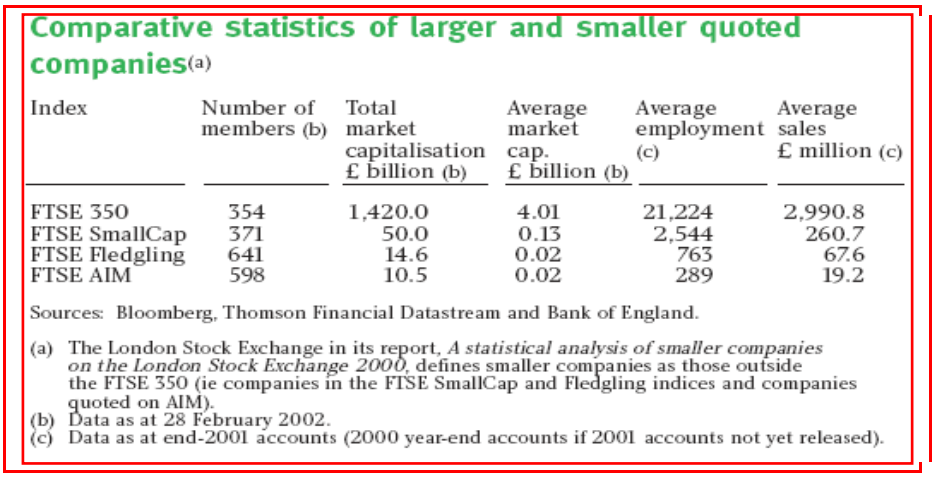
Magnitude of impact as compared with the baseline scenario: ++ strongly positive; + positive; – – strongly negative; – negative; = marginal/neutral; ? uncertain; n.a. not applicable

3. IMPACT ON EMPLOYMENT AND ENVIRONMENT OF THE PREFERRED OPTIONS

Measures concerning small listed companies are expected to have a positive effect on employment as the small listed companies are an important source of employment in the EU and the preferred options should encourage the growth of small listed companies and new listings of small companies. For instance, in a UK 2002 report, it was estimated that small listed companies in the UK (defined as those quoted in the London Stock Exchange but outside the FTSE 350 and those quoted on AIM[125]) accounted for 5% of the total market capitalisation of all quoted companies but 13% of their total sales and, importantly, 18% of total employment[126] (see the table below):

[125] Alternative Investment Market.
[126] Kearns and Young (2002), p.26.

Comparative statistics of large and small caps: UK (2002)



Comparative statistics of larger and smaller quoted companies(a)

Index	Number of members (b)	Total market capitalisation £ billion (b)	Average market cap. £ billion (b)	Average employment (c)	Average sales £ million (c)
FTSE 350	354	1,420.0	4.01	21,224	2,990.8
FTSE SmallCap	371	50.0	0.13	2,544	260.7
FTSE Fledgling	641	14.6	0.02	763	67.6
FTSE AIM	598	10.5	0.02	289	19.2

Sources: Bloomberg, Thomson Financial Datastream and Bank of England.

(a) The London Stock Exchange in its report, *A statistical analysis of smaller companies on the London Stock Exchange 2000*, defines smaller companies as those outside the FTSE 350 (ie companies in the FTSE SmallCap and Fledgling indices and companies quoted on AIM).
(b) Data as at 28 February 2002.
(c) Data as at end-2001 accounts (2000 year-end accounts if 2001 accounts not yet released).

It is not expected that the preferred options are going to have any direct impact on the natural environment. Alleviating the obligation to publish quarterly reports could have an indirect positive impact on the issuance of paper documents and thus on the environment (there will be less printed information).

ANNEX 2

Estimation of costs

1. COSTS OF QUARTERLY REPORTING

1.1. Methodology

Figure 1 represents the conclusions drawn from the study conducted by Europe Economics[127]. Figures 2 and 3 are based on the responses to a questionnaire sent by DG Internal Market and Services to the EuropeanIssuers association (EuropeanIssuers received a response from their members from three Member States: Austria, Germany and UK). We have further received information from Middlenext[128] that the costs of preparation of quarterly information by small and medium-sized issuers could not be separated from other costs and therefore could not be estimated.

1.2. Results

It appears that as far as transparency requirements are concerned, staff costs are the main costs drivers (see Figure 1 below).

Figure 1: Drivers of ongoing costs – Transparency directive

Type of costs	Relative weight
Staff	69%
IT	17%
Audit	12%
Other	2%

Figure 2: Measuring yearly staff involvement in the preparation of quarterly information (per issuer)

	Man Days	Number of staff involved
Small and medium-sized issuers	8 to 30	5 to 15
Large issuers	Considerable	Over 50

[127] Europe Economics (2009) page 110 table 5.18.

[128] A French association representing listed SMEs and midcaps.

Figure 3: Measuring yearly costs per issuer linked to editing, printing, translating, etc[129] .

Small and medium issuers	From 2 k€ to 60 k€
Large issuer	From 35 k€ to € 250 k€

Taking into account that there is about 12 000 listed companies in Europe[130], waiving the obligation to present quarterly information would bring a potential global cost reduction of about 573 M€, considering only the costs of editing, printing and translating the information and not including the potential cost reduction linked to preparation of such information[131], which is difficult to numerically estimate but which, according to Figure 1, should be largely superior to other costs linked to disclosure of quarterly information. According to our information, some companies do not print and do not translate their quarterly reports and therefore for such companies costs reduction would be potentially lower than for others. However, the costs in relation to the staff involved in the preparation of the reports are relatively higher in monetary terms (as shown in Figure 1) than other costs estimated in Figure 3.

These costs linked to staff involvement in preparation of quarterly information could not be precisely estimated in monetary terms. It has to be underlined that the amount of work and the number of staff involved in preparation of quarterly information depends on applicable national rules. In some Member States quarterly information has to contain additional figures and therefore the costs of their preparation are higher (See Annex 5). It also results from responses to the public consultation that preparation of full quarterly reports (with full financial statements) would be much more costly than preparation of the interim management statements. Middlenext informed us that if full quarterly reports were required, each small and medium-sized issuer would need to allocate one or two more persons a year, full time, in order to prepare this information[132].

As an example, one large issuer estimated that its total costs for preparation of quarterly information (including the costs of staff) could be as high as 2 M €/ a year.

2. COSTS FOR HOLDERS OF CASH SETTLED DERIVATIVES IF THE REQUIREMENT TO DISCLOSE CASH SETTLED DERIVATIVES IS INTRODUCED[133]

---

[129] The cost estimates are based on the available data, therefore a fair amount of uncertainty needs to be included in the numbers provided.

[130] Source: European Issuers.

[131] Considering the average of the costs disclosed on figure 3 (i.e. 31 000 and 142 500 €) then weighted by the relative importance of each type of companies (85% of small and medium and 15% of large companies) the average weighted costs amounts to 47 725 €. This amount multiplied by 12 000 equals 573 M€.

[132] The standard cost model was not used to estimate the total costs as concerning existing costs, it was decided to ask the issuers themselves to provide an estimate on costs of quarterly information. As the issuers were not able to provide such full estimates, it was decided to provide information received rather than give theoretical estimates that would result from the application of the standard cost model.

[133] The cost estimates are based on the available data, therefore and due to the qualitative nature of the measures potentially to be implemented, a fair amount of uncertainty needs to be included in the numbers provided.

Costs in relation to	One-off costs per holder	Recurrent costs per annum/per holder	Remarks
Option 2: Broad regime - disclosure regime extended to all instruments of similar economic effect to holding shares and entitlements to acquire shares	100 to 600 k€ (below 0,1 % of average operating costs)[134]	Will depend on the increase of the number of disclosures/per holder in practice	This option would imply for some players potentially significant systems upgrades that are the source of the one-off costs. One-off cost, however, depends on the current disclosure arrangements existing in Members States, for instance whether the processes to disclose cash settled derivatives already exist or whether they need to be created. It is estimated that the most significant holders that would mainly incur the one off costs should be essentially the hedge funds and the investment banks. For the investment banks, the one off costs could be higher as they will need to put in place a more sophisticated internal process. Concerning the ongoing costs, the increase of costs per holder will depend on the number of cash-settled derivatives held by the given operator. For operators not holding cash settled derivatives, the ongoing costs will not increase. According to information received from FSA, the introduction of this regime in the UK caused an average increase of around 6-8% in daily announcements. However, UK has introduced much lower thresholds that what is required by the Directive and therefore this increase is likely to be lower in average in other Member States.
Option 3: Limitative approach: disclosure not required in case "safe harbor" criteria are met	Non significant	Will depend on the increase of the number of disclosures/per holder in practice	Under that approach only a limited number of transactions would have to be disclosed. However, this option may involve ex ante legal analysis to validate the intention associated to every transaction which would be more costly (but these costs cannot be estimated).

The preferred option should also have limited on going costs for companies linked to processing and making additional disclosures to the market.

3. COST SAVINGS ON TRANS-NATIONAL PLAYERS IF MAXIMUM HARMONISATION OF RULES FOR NOTIFICATION OF MAJOR HOLDINGS IS INTRODUCED

The differentiated implementation of the rules on disclosure on major holdings across the European Union, notably through different methods to calculate the thresholds for notification, is source of additional costs for cross-border investors. Lack of harmonisation implies special monitoring, IT developments and sometimes even additional human analysis for players operating across the EU.

[134] The ratio is calculated by comparing estimated "one-off" costs to "normative" operating costs. The "normative" operating costs are the result of an average between amounts associated to "Investment banks" on the one hand and "Banks and Financial conglomerates" on the other hand in the "Study on the cost of Compliance" released by the consultant "Europe Economics" following DG Markt request (p 95) : this average amounts to 1294 M€ ((1558+1030)/2). The "one off" costs are based on FSA estimates (FSA 07/20-Annex 1 p7).

Potential savings are thus directly linked to the scale of trans-national activity. The cost reduction could reach an average of 2 M€/operator for one-off incremental costs for new cross-border investors and 77[135] k€/year/per operator on average in ongoing costs.

The one-off costs for the preferred option (option 2) regarding the necessity to adapt the IT systems should already be comprised in the estimation provided for option 2 in Section 2 above (these costs could not be separated from the one off-costs calculated for this option). The ongoing costs could not be estimated as they would depend on the number of additional disclosures that would take place in practice. However, investors are in favour of a harmonised regime for disclosure of major holdings as they consider it would bring a cost reduction.

[135] In the "Study on the cost of Compliance" released by the consultant "Europe Economics", the median of ongoing costs on transparency issues assessed for transnational asset managers is 0.02%. This ratio applied to the normative operating costs (i.e. 385 M€) provides an amount of about 77 k€.

ANNEX 3

Improvements and clarifications that need to be introduced in the Transparency Directive

1. RULES UNDER THE TRANSPARENCY DIRECTIVE THAT REQUIRE FURTHER CLARIFICATION AS IDENTIFIED BY THE RESPONDENTS TO THE PUBLIC CONSULTATION AND THE COMMISSION' REPORT

1.1. Home Member State rule

– Transparency Directive is unclear with regard to which country is the home Member State for issuers who have to choose their home Member State according to article 2, paragraph 1, sub (i), (ii), but who have not done so. In this respect, CESR (ESMA) suggests to amend the Transparency Directive to include an assumption of Home Member State for these issuers. Transparency Directive should ensure that the reporting of all listed companies is subject to enforcement in a Member State. It is important that the Transparency Directive in this matter in the future does not provide for any possibility to implement the rules in such a way that a listed company can operate without being under supervision of any Member State.

– According to Transparency Directive, the choice of home Member State for **third country issuers** is valid for 3 years. However, this leads to practical problems when such issuer is no longer listed in the regulated market of the Home Member State and only remains listed in one host Member State. CESR (ESMA) suggests that the home Member State rule should be clarified as follows: it should be stated that the three year period for the validity of issuer's choice of the home Member State no longer applies if shares or debt securities with denomination of less than EUR 1.000 of the same issuer are no longer listed in the chosen home Member State but remain admitted to trading on a regulated market in another Member State.

– Communication of choice of home Member State: it should be considered whether Article 2 of the implementing Directive would need to be amended so that EU issuers would also be required to communicate the choice of home Member State to the competent authority of the Member State where the issuer has its registered office (if different).

1.2. New loans

– The application of article 16, paragraph 3 of the Transparency Directive leads to the question of which additional information is required by the issuer of securities admitted to trading on a regulated market when issuing a new loan. In this respect, CESR (ESMA) proposes to abolish the requirement to disclose all new loan issues. This requirement overlaps partially with the Prospectus Directive and Article 6 of the Market Abuse Directive. Reference to new loans is also unclear, as new loans are not defined in the Transparency Directive. For example, it is unclear whether issues of commercial papers or loans not admitted to trading on a regulated market should be disclosed. Some respondents

considered that Article 16.3 should be deleted: the implementation of article 16.3 is unclear and complex notably due to the absence of any materiality clause.

1.3. Exceptions to the notification of major holdings

- A broad and consistent "market maker" definition would be welcome (Article 2).

- Some clarifications would be welcome concerning the scope of the exceptions for shares acquired for the purpose of clearing and settling and by custodians (Article 9(4)). For example, one CESR (ESMA) member stated that in its Member State it had been discussed whether the exemption also applied to positions acquired for a short period through underwriting.

- Clarification to the trading book exemption would be needed (Article 9(6)): It should be clarified, inter alia, whether the 5 % threshold is calculated at group level or the level of an individual company. Moreover, it should be clarified how the different categories of holdings are aggregated when calculating the threshold. CESR (ESMA) proposed the threshold to be calculated at group level where disaggregation exemptions set out in Articles 12(4) and 12(5) do not apply and that holdings of all instruments (Article 9, 10 and 13) are aggregated. Moreover, further clarification to subparagraph (b) should also be considered. The wording of the subparagraph should be more definite in order to more clearly prohibit credit institutions and investment firms applying the exemption from exercising voting rights held in their trading book and from using their shareholder positions to intervene in any way in the management of the issuer.

1.4. Clarification of definitions

- Applicability of Transparency Directive to depository receipts when the underlying shares are not admitted to trading on a regulated market: the applicability of different rules (especially Articles 9–13 and 16–18) to depository receipts and holders of depository receipts or holders of underlying shares should be clarified.

- Terms used in Article 9 (2), "as a result of events changing the breakdown of voting rights", should be clarified. For example, it could be clarified, as the FSA has done in the UK (see DTR5.1.2R(2)), that where there is a notifiable switch (e.g. 1% for UK issuers) from a soft shareholding to an absolute shareholding by the exercise of entitlements to acquire shares, without affecting the overall percentage of the holding, a new disclosure would be required. It could also be clarified that this particular provision does not necessitate a disclosure where a person has disclosed its holding of voting rights, but then it subsequently changes the capacity in which it holds them. For example, where a person has disclosed its indirect holding of shares as a beneficiary (and these shares are held by a non-discretionary nominee), the person would not be required to disclose a change if it then takes those shares out of the nominee account and holds the shares directly itself.

1.5. Other issues

- Article 19(1) (2nd paragraph) should be deleted: this article requires an issuer to communicate any amendment of its instrument of incorporation or statutes to the

competent authority. This requirement may result in some confusion about the role of the competent authority. CESR (ESMA) proposes to abolish this requirement in order to reduce administrative burden for issuers. The Shareholders' Rights Directive already requires issuers having shares admitted to trading on a regulated market to make the proposal and the invitation to general meeting of shareholders publicly available. Moreover, although the Shareholders' Rights Directive does not apply to issuers having only other securities than shares admitted to trading on a regulated market, the Market Abuse Directive requires also these issuers to disclose information relating to the issuer which is likely to have a significant effect on the price of the securities admitted to trading.

– Definition of an issuer: It seems that in some Member States there are issuers other than legal persons with securities admitted to trading on regulated markets. The definition of an issuer should therefore be aligned with the situation.

2. BETTER TRANSPOSITION AND COMPLIANCE OF THE TRANSPARENCY DIRECTIVE

In its Communication of 9 December 2010 "Reinforcing sanctioning regimes in the financial sector"[136] the Commission presented policy actions and orientations on how to promote convergence and reinforcement of national sanctioning regimes in the financial services sector. In fact, the review of those regimes carried out by the Commission, along with the Committees of Supervisors (now transformed into European Supervisory Authorities), has shown a number of divergences and weaknesses which may have a negative impact on the proper application of EU legislation, the effectiveness of financial supervision, and ultimately on competition, stability and integrity of financial markets and consumer protection. Therefore, the Communication suggested setting EU minimum common standards on certain key issues of sanctioning regimes, to be adapted to the specifics of the different sectors and EU legislative acts in the financial services area.

Concerning the Transparency Directive, the study carried out in 2009 by the Committee of European Securities Regulators (hereunder: CESR report)[137] provided information on sanctions laid down in national legislation for violations of that Directive. The study shows that national sanctioning regimes are divergent and not always appropriate in some of the key issues identified in the above mentioned Communication as essential to ensure effectiveness and dissuasiveness of sanctions. The main problems which can derive from this situation have been described for financial services in general in the Impact Assessment for the Communication "Reinforcing sanctioning regimes in the financial sector".

In particular, the following key issues are relevant in field of the Transparency Directive:

---

[136] COM(2010)716 final.

[137] CESR (2009) Report on the mapping of supervisory powers, administrative and criminal sanctioning regimes of Member States in relation to the Transparency Directive (TD). CEBS (2009): "Mapping of supervisory objectives, including early intervention measures and sanctioning powers", March 2009/47, available on <http://www.c-ebs.org/home.aspx>. Information contained in this report has been subsequently updated on the basis of the contributions received from Member States.

a) powers available to competent authorities: certain sanctioning powers are particularly important to respond adequately to key violations of the Transparency Directive. It should be therefore ensured that all competent authorities have at their disposal those powers. In particular, the power of suspension of the voting rights of the issuer who had violated the notification rules on major shareholdings (currently available on in 6 Member States, p. 50 CESR report) can help ensuring the deterrent effect of sanctions and thus better prevent future violations.

b) publication of sanctions: publication of sanctions is important to enhance transparency and to maintain confidence in the financial market[138] and is considered to be one of the most deterrent tool (as shown by the results of the consultation on the Communication "Reinforcing sanctioning regimes in the financial sector"), particularly because of the reputational damage that the author of the violation will incur. While almost all competent authorities are allowed to publish sanctions, this does not ensure that sanctions are published on a systematic basis in all Member States. This could be achieved by the introduction of a general obligation to publish sanctions, unless publication would seriously jeopardise stability in financial markets.

c) criteria taken into account to determine the sanctions to be imposed in a particular case: some criteria are particularly important to adapt the sanction to be imposed, and particularly the level of the administrative fine, to the seriousness and the consequences of the violation and to the personal conditions of the author of the violation, which would help ensuring effectiveness, proportionality and dissuasiveness of the sanctions actually applied.

In particular, all competent authorities should take into account at least the following criteria:
- the seriousness of the violation (taken into account in 21 Member States, table 32, p. 100 of CESR report);
- the degree of intent (taken into account in 18 Member States, table 32, p. 100 of CESR report);
- the financial strength of the author of the violation, (taken into account in 15 Member States, table 32, p. 100 of CESR report);
- the benefits derived from the violation (taken into account in 15 Member States, table 32, p. 100 of CESR report);
- cooperation of the author of the violation (taken into account in 16 Member States, table 32, p. 100 of CESR report);
- previous violations (taken into account in 18 Member States, table 32, p. 100 of CESR report).

d) *level of administrative fines:* the maximum level of the administrative fines which can be applied to violations of the Transparency Directive should be sufficiently high to ensure that the fine has a deterrent effect. The levels of fines provided for in national legislation vary across Member States and may be too small in some Member States. They are at over 1 million euros in 8 Member States while in 4 Member States the maximum level is lower than 100.000. This level may be too small compared to the benefits than could be realised by infringing the rules for example concerning lack of notification of major holdings of voting rights.

---

[138] ESMA (2011) Mapping of the Transparency Directive –Options, Discretions and "Gold-plating".

ANNEX 4

Glossary of terms

A **Cash settled derivative:** Cash-settled equity derivatives refer to equity linked transactions settled by the payment of cash only without any physical delivery of the underlying equity. Such transactions can include options, futures and swaps over a single share, an index or a basket of shares. They are usually based on the difference between a pre-agreed settlement price and the then prevailing market price of the shares. Thus, without physically buying or selling the underlying shares, the contracting parties to a cash-settled equity derivative are able to acquire or dispose of an economic interest in the shares (i.e. acquire exposure to equity price movements).

A **Contract for difference:** is a contract between two parties where the buyer will receive from (or pay to) the seller, the difference between the value of a company's share at expiry and its value at the time of the contract. The buyer could also have the option to buy the shares at the later date although the CfD does not confer a right to buy them. The holder of a CfD on a company's shares has an economic interest in the company, without direct ownership of shares in the company.

Hedging : An investment made in order to reduce the risk of adverse price movements in a security. Normally, a hedge consists of taking an offsetting position in a related security, such as a futures contract.

A **Multilateral Trading Facility (MTF)** is an electronic system which facilitates the exchange of securities between counterparties. The securities may include derivatives and instruments which do not have a main market, as well as traditional securities.

A **Trading Venue** is an official venue where securities are exchanged; it includes MTFs and regulated markets (e.g. typical stock exchanges).

A **Long Position** refers to the buying of a security with an expectation that the security will rise in value.

A **Short Position** refers to the selling of a security with an expectation that the security will fall in value.

A **Net Position** is where a short position has been subtracted from a long position.

Regulated market: regulated market is a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in a way that results in a contract. Examples are traditional stock exchanges such as the Frankfurt and London Stock Exchanges.

Interim management statement: Article 6 of the Transparency Directive requires that 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 provide: 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.

Reports of narrative nature: Those reports are:

- the annual management report (Article 4(5) TD), which refers to Article 46 of the Fourth Company Law Directive or to Article 36 of the Seventh Company Law Directive, and integrates disclosure obligations relating to environmental and social data;
- the corporate governance statement as referred to in Article 46a of the Fourth Company Law Directive and Article 36(2) of the Seventh Company Law Directive, to be included in the annual management report;
- the information requested in Article 10 of the Takeover bids Directive, to be included in the annual management report;
- the interim management report (Article 5(5) TD); and
- the interim management statement (Article 6(1) TD).

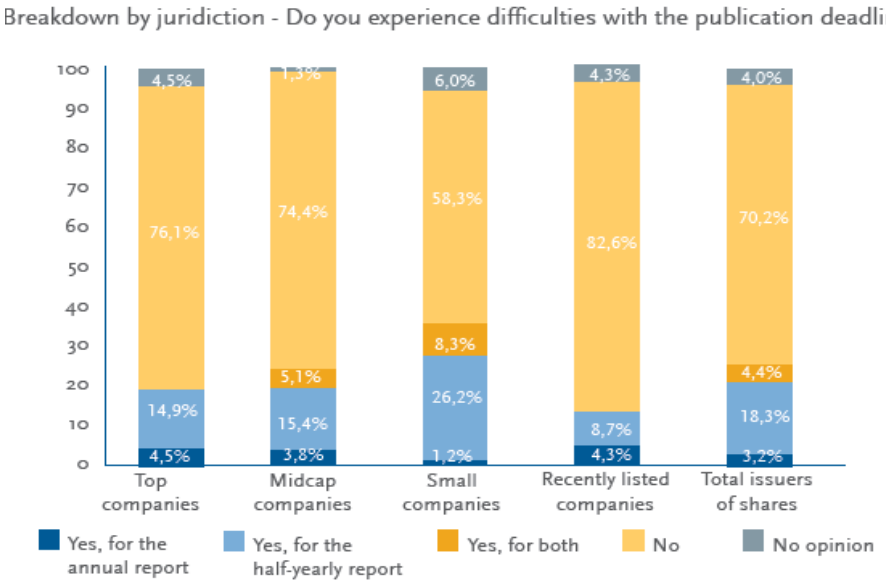
ANNEX 5

Issues around periodic disclosure of financial information[139]

1. HALF YEARLY REPORTS

1.1. Difficulties to respect the deadline of publication

The following table indicates that 41,7% of small and medium listed companies consider that the deadlines for disclosure of financial information should be different for big and for small and medium issuers.

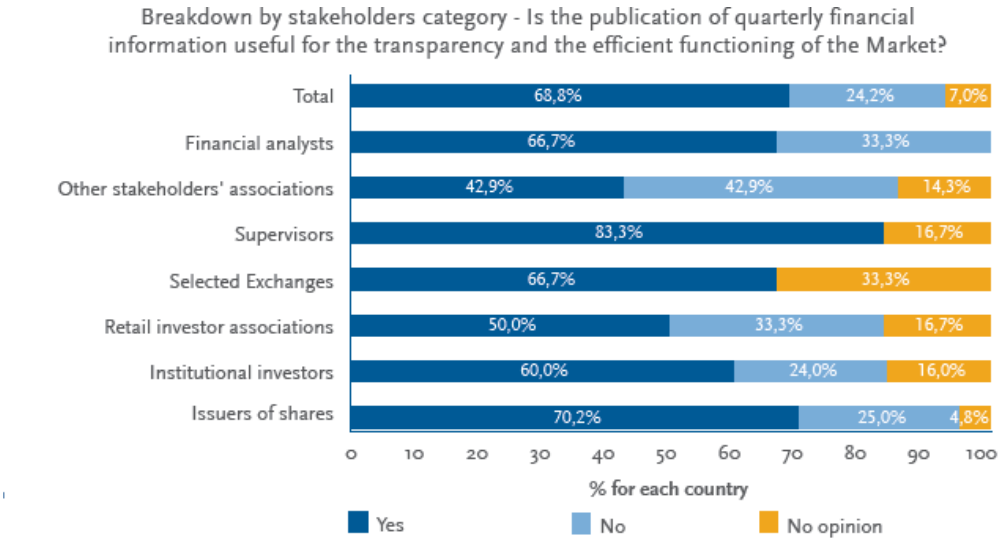


1.2. Requirements to audit half yearly financial statements

AUDIT WORK - LEGAL REQUIREMENTS FOR HALF-YEARLY REPORTS		
Minimum legal / regulatory requirements regarding half-yearly reports	**Countries**	**Comments**
Audit		
Review	Austria, France, Italy, Poland and Spain	In Spain it is mandatory to do either a limited review or an audit. Most of the companies do a limited review.
No work performed	Czech Republic, Germany, Hungary, Ireland, Luxembourg, Romania, Slovakia, Sweden, The Netherlands, UK	

[139] Source: Mazars (2009), *Transparency Directive Assessment Report*, external study conducted for the European Commission: http://ec.europa.eu/internal_market/securities/transparency/index_en.htm

2. QUARTERLY INFORMATION



This positive perception is widely spread across the Member States with the clear exception of the UK (where 66,7% believe that quarterly information is not useful), and, to a smaller extent, in Luxembourg (50%) and France (44%).

3. STRICTER NATIONAL RULES CONCERNING THE CONTENT OF QUARTERLY REPORTS

LEGAL REQUIREMENTS FOR QUARTERLY FINANCIAL INFORMATION		
Minimum legal / regulatory requirements regarding quarterly reports	**Countries**	**Comments**
Full Quarterly reports	Sweden	There is no law that requires entities on a regulated market to issue a full quarterly report if a Quarterly Interim Management Statement is issued instead. However, under the listing rules for the two regulated markets in Sweden, listed entities are required to prepare all their quarterly reports in accordance with the financial reporting framework (i.e. IAS 34).
Selected Quarterly figures	France, Germany, Poland, Romania, Spain	
Quarterly Interim Management Statements	Austria, Czech Republic, Hungary, Italy, Slovakia, UK, Ireland, Luxembourg, The Netherlands	
None of the above		

4. COMPARISON WITH OTHER JURISDICTIONS:

A comparison with the systems existing in the other jurisdictions under review (US, Japan, China, India, Hong Kong and Switzerland) provides the following main results:

- Yearly, half-yearly and quarterly reports are required in all reviewed jurisdictions for issuers of shares, with the exception of Switzerland regarding quarterly reports. Regarding issuers of debt securities, yearly financial reports are required in all reviewed jurisdictions, half-yearly financial reports are required in China, India and Japan and quarterly reports are required in Hong Kong and the US.

- Some jurisdictions provide for different regimes depending on two criteria: the size of the issuer (for instance, in the US, the time to file the annual and quarterly reports is

longer for smaller issuers) and its nationality (for instance, foreign issuers have more time to file annual reports in Japan).

Concerning specific issue of the time period to publish half-yearly financial statements, it should be noted that the US provides for shorter deadlines (40 calendar days for the standard regime), China is applying the same rule as the transparency directive and Hong Kong, Japan and Switzerland grant a longer period (three months). It should also be noted that, in the US, smaller issuers benefit from a slightly longer period to file (45 days instead of 40 days).

ANNEX 6

Issues linked to the notification of major holdings of voting rights.

1. METHOD OF AGGREGATION/CALCULATION OF THRESHOLDS

Although there was support for the aggregation of all financial instruments to trigger the notification requirement, in general respondents to the public consultation would prefer that the notification itself presented a breakdown of voting rights and financial instruments according to their nature.

CESR's (ESMA) proposal was to create a notification system with four different baskets (holdings of voting rights; holdings of financial instruments under Article 13; holdings of cash settled derivatives and total holdings) that would trigger an obligation to disclose the holdings of the four baskets when the threshold for any of the four baskets was reached or crossed.

Another possibility would be to create a notification system with three different baskets (holdings of voting rights, holdings of financial instruments under Article 13 and total holdings). This method would be more compatible with the preferred option consisting to have a large definition of financial instruments in Article 13 of the Directive corresponding to all instruments of similar economic effect to holding shares and entitlements to acquire shares.

2. NETTING OF LONG AND SHORT POSITIONS

An investor can have both long positions and short positions on the same assets: a short position refers to entering into any contract under which the investor profits from a fall in the value of an asset and a long position refers to entering into any contract under which an investor profits from any increase in the price of the asset. CESR (ESMA) considers that netting of long and short positions does not prevent access to voting rights and therefore gives the possibility of hiding stakes. Netting should therefore not be allowed.

These 2 questions can be already solved in the proposed modification of the Transparency directive.

3. QUESTIONS TO BE DEALT WITH THROUGH BINDING TECHNICAL STANDARDS

For other issues, ESMA should be empowered to develop draft binding technical standards. Examples of these issuers include:

- Basket of securities

Question of derivatives using a basket of securities: when the basket is a standard, well-diversified one, there is no issue: no notification should be required. However, if the basket includes only a limited number of securities, specific rules should be applicable.

- Nominal or delta adjusted approach

They are two general approaches to calculate the equivalence of instruments of similar economic effect with potential voting rights:

Under a nominal approach, an instrument is counted as the number of shares it is referenced to. Voting rights are calculated based on the number of shares. For instance, a CfD based on 100,000 shares would result in the holder potentially having access to 100,000 shares. This allows a straightforward calculation to be undertaken by the holder, results in relatively lower costs, and the holder will only need to recalculate if the position is altered or the denominator changes. The current Article 13 instrument disclosure works on a nominal basis.

Under a delta adjusted approach, share equivalence is based on the delta. The delta of an equity derivative represents how the pay off from that instrument changes in relation to a change in the price of the underlying equity. A CfD for example would normally have a delta of 1 as it perfectly mirrors the change in the underlying share price. Options on the other hand have a delta that fluctuates. Furthermore, the delta of a cash-settled option will change as the time to expiry shortens.

Delta can be seen as a useful and relevant measure as it is representative of the number of shares the person writing the instrument would need to hold in order to perfectly hedge its exposure. However, the instrument holder may need to recalculate on a daily basis the delta-adjusted holding as the delta will generally change over time and may result in thresholds being crossed passively.

Example

Company A has 1 Million shares or voting rights.

A CfD for 100,000 shares in Company A has a delta of 1. Therefore the appropriate calculation would be (100,000 x 1) / 1,000,000 which gives a position of 10% of Company A's shares. This would trigger a disclosure obligation on the CfD holder.

A cash-settled call option for a nominal 100,000 shares in Company A has (at transaction date) a delta of 0.2. Therefore the calculation (100,000 x 0.2) / 1,000,000 results in a delta-adjusted position of 2% of the company's shares, and therefore no disclosure is required.

4. EXCEPTIONS FOR DISCLOSURE.

According to CESR (ESMA), a general approach raises the issue of exemptions as it is likely to yield a large number of disclosures. Exemptions would seek to limit that number. ESMA would be empowered to develop draft binding technical standards determining these exceptions.

Below are listed the exceptions proposed by CESR (ESMA)[140]:

[140] See CESR proposal to extend major shareholding notifications to instruments of similar economic effect to holding shares and entitlements to acquire shares. Consultation Paper, January 2010.

- The TD currently allows member states not to require investment firms and credit institutions to count part of the holdings in their trading book for the purposes of the Directive. The voting rights held in the trading book under this exemption are not to exceed five percent and the holder needs to ensure that the voting rights are neither exercised nor used to intervene in the management of the issuer.

- The TD currently exempts the acquisition or disposal of a major holding reaching or crossing the 5% threshold by a market maker acting in its capacity of a market maker. In addition, the shareholder needs to be recognised as a market maker for the purpose of the Directive, and may neither intervene in the management of the issuer concerned nor exert any influence on the issuer to buy such shares or back the share price.

Member states that have already taken action have included or are planning to include additional exemptions. Examples include client serving positions, and transfers for accounting purposes, which are set out below:

- Exemption for client-serving transactions: In order to reduce the amount of disclosures, positions where CfD writers are effectively acting as intermediaries and providing liquidity may be exempt. This would only be available for transactions done in a client-serving capacity (for instance fulfilling a client order, or in order to facilitate filling a client order), and not for proprietary business. Those CfD positions taken out to hedge a client order would also not need to be disclosed. For instance, when writing a short CfD position for a client the writer will effectively take out a long CfD position itself. The principle underlying this exemption is that firms holding a position purely to facilitate a client position, with no interest in the performance of the underlying equity, should not be required to disclose their position.

- Exemptions for accounting purposes: Positions created by intra-group movements may also be exempt from the notification process as they may not be deemed to have similar economic effect to holding shares and entitlements to acquire shares providing such movement occurs purely for tax or accounting purposes. This would only be the case if the original transaction had either been disclosed if required (or included in the calculation for disclosure) or continues to benefit from an exemption notwithstanding this intra-group movement.

ANNEX 7

Different regimes introduced by the Member States for disclosure of cash-settled derivatives

The ***United Kingdom***[141] has introduced a regime that requires the disclosure of (gross) long positions on cash settled derivatives from 1 June 2009 onwards[142]. It requires reporting once the threshold of 3% has been reached, aggregating both the derivative transactions and any actual holdings of the voting shares.

The UK FSA position on cash-settled derivatives

In its consultation paper of 2007[143], the UK regulator (Financial Services Authority, FSA) considered the question of whether the regime as set out in the Transparency Directive was open to abuse and whether specific rules should be introduced to legislate for the potential loopholes. The FSA considered that cash settled contracts for difference (CFD) and similar instruments were not disclosable under the terms of the Transparency Directive (as implemented by UK rules) given that they do not constitute a legal right to acquire the underlying share.

The FSA noted the 2 main problems with this position being:

1) The issuer of the CFD will almost always seek to hedge its position on the derivative by acquiring the underlying share; and

2) Those with a pure economic interest in the shares of a company may still seek to influence its management.

This resulted in the following potential problems for market transparency:

• The situation where a CFD, although intended to be cash settled, is in fact physically settled. By this route the person taking the derivative could instantly take ownership of a substantial percentage of the shares in the company with no disclosures having been made during the building of the stake.

• The majority of issuers of CFDs claim that they do not exercise the votes attaching to the shares they hold for hedging purposes and, specifically, do not follow the instructions of those holding the relevant CFDs. However, there is widespread recognition that, where issuers have no real interest in the affairs of the company whose shares they hold, they can easily be influenced by the holder of the CFD.

• Even if the issuer of the CFD does not vote its hedged shares, this can take a large proportion of the votes out of the voting pool, effectively increasing the significance of other holders.

• The cost in management time of investigating enquiries and demands from those who claim to hold an interest in the company to verify their equity with little information.

In its consultation paper, the FSA also put the arguments for the opposing view, that the rules should remain unchanged. The principal points of this argument being:

• The majority of issuers state that they do not settle CFDs by physical delivery of the shares;

• The majority of issuers state that they do not vote shares which they hold in relation to hedge positions and do not allow themselves to be influenced in this regard by the holders of CFDs;

---

[141] In the United Kingdom, the UK Takeover Code already required the disclosure of economic interest during the offer periods: see Rule 8(3). In Ireland, similar rules were contained in the Irish Takeover Code.

[142] See UK FSA (March 2009).

[143] UK FSA (2007).

• Too much disclosure can cause problems for market participants in their understanding of the true position in relation to control of companies and can, therefore, harm transparency. Specifically the disclosure could lead to:

- confusion of the investor community as to who holds underlying interests and the motives behind acquisitions and disposals;

- complex situations where the community tries to second guess potential shareholdings creating a false feeling of interest/disinterest in the market;

- increasing volatility in the market; and

- the additional costs associated with the extra disclosure burden.

The FSA clearly saw the merit in many of these arguments. However, it was ultimately convinced by the view in the market that, whatever CFD issuers may imply about their practices, taking positions in CFDs is an effective and widespread method for building a stake in a company without the burden of disclosure. This was a clear loophole that the FSA sought to close. This resulted in the FSA revising the applicable rules to include CFDs and similar instruments in the obligation to notify interests.

In ***France***, rules on cash settled derivatives came into force on 1 November 2009. These rules require that once a threshold has been crossed by holdings of shares and options, gross long positions held through financial instruments of similar economic effect to holding shares also need to be reported. There is no separate threshold for financial instruments of similar economic effect to holding shares. A recent case described in Annex 8 below proves that the regime in place was not efficient to avoid hidden ownership.

In ***Portugal***, following a public consultation[144], a Regulation (Regulation 5/2010) on the duty to disclose long positions was issued by the CMVM and entered into force in October 2010[145]. According to the regulation, all instruments need to be aggregated towards the existing thresholds.

In ***Germany***, the Ministry of Finance has published draft legislation. The legislative procedure is still pending with enactment of the respective law to be expected in March 2011 and, after a transition period, entering into force to be expected on 1 January 2012. The draft law establishes a new obligation of investors to make a disclosure if "they are holding financial instruments or other instruments which due to their structure enable their owner to acquire existing voting shares of an issuer domiciled in Germany, provided that they reach, exceed or fall short of a relevant threshold. Relevant thresholds are 5, 10, 15, 20, 25, 30, 50 and 75%. In such an event, the holder must immediately make the necessary notification to the issuer and the German regulator BaFin. The bill lists two examples where instruments "enable" the holder to acquire shares, i.e. (i) when the counterparty to the instruments could hedge or reduce its risk by holding the relevant shares or (ii) when the instruments include a right or an obligation to acquire the shares[146].

In ***the Netherlands***, the Ministry of Finance has published draft legislation for consultation in 2009. The draft law would create the presumption that the holder of an

144 http://www.cmvm.pt/NR/exeres/9ADECEA9-1A6C-47FD-9526-5A9E9664D7F8.htm

145 CMVM Regulation No. 5/2010 Duty to Disclose Long Positions on Shares.

146 See http://blogs.law.harvard.edu/corpgov/2011/03/01/germany-to-ban-stealth-takeover-strategies/

instrument which creates an economic long position but is not settled in shares, controls the underlying shares. Such instruments would have to be aggregated to with shares and entitlements to acquire shares.

In ***Italy***, the Department of Finance is in the course of preparing analogous disclosure requirements for Contracts for Difference (CfD) holders. As it is possible to divorce economic interests from voting rights, the introduction of additional disclosure requirements in relation to CfDs is considered justified.

Outside the EU, ***Switzerland, Hong Kong and Australia*** have also taken action

- The Swiss regulator has extended the scope of notification rules at end of 2007. Disclosures on cash settled derivatives only are seldom, in many cases such disclosures are done in connection with disclosures on other participations (shares) in the respective companies. The disclosures have become more complex by expanding the disclosure requirements to cash settled derivatives, but the disclosures contain more information.

- In Hong Kong, all types of equity instruments of similar economic effect to the holdings of shares are in scope of the significant holdings regime. A person holding, writing or issuing instruments of similar economic effect is taken to be interested in the underlying shares. These interests must be aggregated with physical holdings on a gross basis.

- The Australian Treasury has started a consultation to determine whether equity instruments of similar economic effect should be included in the definition of substantial holding, and, if so, on what basis they should be included. It considers that while equity instruments of similar economic effect give economic interests but not voting rights, they may give a degree of effective control over the referenced shares.

ANNEX 8

Recent cases in the European Union linked to the use of cash-settled derivatives

Hermes/LVMH

In October 2010, Louis Vuitton Moët Hennessey ("LVMH") surprised the market by announcing, without having given any previous notice to the market that it had built up a 17.1% stake at a purported 50% discount in Hermès International by using cash-settled equity swaps.

LMVH built (progressively) its (hidden) stake by entering into several cash-settled equity swaps in 2008. In September 2010 the parties altered the terms of the equity swaps so that instead of cash, the swaps would be equity-settled. This action enabled LVMH to increase its holdings and as cash-settled derivatives are excluded from the French disclosure requirements as long as thresholds of shares or options are not crossed, the disclosure for these cash settled positions was not required.

However, the manner in which the shareholding was acquired led the AMF (the French regulator: Autorité des Marchés Finaciers) launching a review to determine whether LVMH violated the disclosure rules whilst building up its stake in Hermès. The investigation is due to end in July 2011.

Continental versus Schaeffler[147]

July/August 2008: Schaeffler built an economic interest of 36% in Continental by entering equity swaps with some banks before it declared a public offering on the outstanding capital of Continental. Schaeffler was exempted from the lunch of a mandatory bid, since it made a voluntary public offering and wanted to pay a fair price. However, this fair price was lower than would have been the case if the control position was built by normal share acquisitions instead of by equity swaps. The German regulator BaFin ruled that the build-up of an economic interest by cash settled financial instruments does not need to be notified under current German law. It should be noted that none of the banks involved held more than 3% of the shares to hedge the equity swaps so as to avoid having to notify themselves under the rules on holding of shares.

Porsche versus Volkswagen

October 2008: Porsche announces that it has built a direct share interest of 42,5% in its competitor Volkswagen. Porsche discloses an additional economic interest of 31,5% by cash settled options. There were discussions if the "free float' in shares of Volkswagen was effectively reduced to 5,8% since the land of Low Saxony held an interest of 20,1% in Volkswagen company. Market parties had not taken into account the existence of such a large economic interest with only one party. They had speculated on a share price fall and were short for about 13% of outstanding shares. The closing of these positions led to a price explosion of the Volkswagen shares. In order to improve liquidity, Porsche settled 5% of its position into cash and thereby apparently profited from the market disorder caused by itself.

SGL Carbon / Susanne Klatten / SKion GmbH

March 2009: according to an ad hoc announcement pursuant to § 15 WpHG dated 16 March 2009, SGL Carbon notified that the "Board of Management of SGL Carbon SE was informed that SKion, the investment company of Mrs. Susanne Klatten, has acquired an equity stake of 7.92% in SGL Carbon SE. According to their notification, SKion is interested in further purchases of additional SGL Carbon SE shares; will however remain below the threshold of 25% of voting rights. SKion has built positions within this percentage scope through derivative capital market instruments." Different business journals (e.g. Handelsblatt, Manager Magazin) reported that SKion had followed the example of Porsche by entering into cash settled equity swaps. On 8 April 2008, SKion notified SGL Carbon that the voting interest in SGL Carbon AG has exceeded the thresholds of 10% and 15%. At this time the stake of SKion amounted to 16.48%. All voting rights of SKion are to be attributed to Susanne Klatten.

Fiat[148]

April 2005: EXOR, a company controlled by the Agnelli family (controlling, through IFIL, FIAT at the time with around 30% of the voting rights, through a pyramid structure) enters into an equity swap agreement for around 7% of the shares, which remains undisclosed until executed. While the originally equity swap agreement would be settled in cash, the agreement was eventually modified in August 2005 to allow physical settlement in shares. Physical delivery of the shares to the Agnelli family took place on

147 See generally Zetzsche (2009).

148 See also Kirchmaier et al. (2009), p.12.

the date in which a group of banks were executing a convertible loan agreement not being repaid in cash by FIAT and therefore diluting the Agnelli's original stake to 23%. The equity swap allowed the Agnelli family to keep their shareholdings in FIAT constant at 30% and with it the attached control rights intact without having to launch a takeover bid for the remaining of the capital. For reporting obligations, Italian law takes into account the way financial derivatives may be settled: only in cash or possibly in underlying physical instruments.

ANNEX 9

Thresholds and rules of aggregation for notification of major holdings in the Member States

1. DIFFERENT THRESHOLDS IN THE MEMBER STATES

The following table shows the extent to which several Member States have adopted lower initial thresholds (and additional thresholds) in addition to the minimum thresholds required by the Directive[149].

THRESHOLDS FOR NOTIFICATION OF MAJOR HOLDINGS APPLICABLE IN EU MEMBER STATES (THE ADDITIONAL THRESHOLDS ARE HIGHLIGHTED) ARTICLE 9(1) OF THE DIRECTIVE																			
Threshold MS	Lower	5	10	15	20	25	30 (1/3)	35	40	45	50	55	60	65	70	75 (2/3)	80	85	90	95
AT		X	X	X	X	X	X	X	X	X	X					X			X	
BE		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
BG*		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CY		X	X	X	X	X	X				X					X				
CZ**	3%	X	X	X	X	X	X		X		X					X				
DE***	3%	X	X	X	X	X	X				X					2/3				X
DK		X	X	X	X	X	1/3				X					2/3			X	
EE		X	X	X	X	X	1/3				X					2/3				
EL****		X	X	X	X	X	1/3				X					2/3				
ES*****	3%	X	X	X	X	X	X	X	X	X	X		X		X	X	X		X	
FI		X	X	X	X	X	X				X					2/3				
FR		X	X	X	X	X	1/3				X					2/3			X	X
HU		X	X	X	X	X	X				X					X				
IE	3%	+1% above the initial threshold																		
IT	2%	X	X	X	X	X	X	X	X	X	X			2/3		X			X	X
LT		X	X	X	X	X	X				X					X				X
LU		X	X	X	X	X	1/3				X					2/3				
LV		X	X	X	X	X					X					X				
MT		X	X	X	X	X	X				X					X			X	
NL		X	X	X	X	X	X		X		X		X			X				X
PL******		X	X		X	X	1/3				X					X				

[149] Mazars (2009).

THRESHOLDS FOR NOTIFICATION OF MAJOR HOLDINGS APPLICABLE IN EU MEMBER STATES (THE ADDITIONAL THRESHOLDS ARE HIGHLIGHTED) ARTICLE 9(1) OF THE DIRECTIVE																				
Threshold MS	Lower	5	10	15	20	25	30 (1/3)	35	40	45	50	55	60	65	70	75 (2/3)	80	85	90	95
PT	2%	X	X	X	X	X	1/3				X					X			X	
RO		X	X	X	X	X	1/3				X					X			X	
SE		X	X	X	X	X	X				X					2/3			X	
SI		X	X	X	X	X	1/3				X					X				
SK		X	X	X	X	X	X				X					X				
UK	3%	+1% above the initial threshold																		

2. DIFFERENT RULES IN THE MEMBER STATES FOR AGGREGATION OF HOLDINGS OF VOTING RIGHTS WITH THESE OF THE FINANCIAL INSTRUMENTS

A minority of Member States (AT, BG, CY, ES, LU, IT and PL) considers that Article 13 enacts a notification obligation which is independent of that of Article 9: in other terms, the notification obligation is triggered independently. On the contrary, in majority of Member States (BE, DE, DK, EE, EL, FI, FR, HU, IE, LT, MT, NL, PT, SE, SI, SK and UK), as well as in Norway and Iceland, investors must aggregate their holdings of voting rights with their holdings of financial instruments (within the sense of Article 13) for the purposes of evaluating whether the relevant threshold referred to in Article 9 is reached or crossed.

ANNEX 10

FEEDBACK STATEMENT: SUMMARY OF RESPONSES TO THE CONSULTATION BY DG INTERNAL MARKET AND SERVICES ON THE MODERNISATION OF THE TRANSPARENCY DIRECTIVE (2004/109/EC)

Brussels, 17 December 2010

FEEDBACK STATEMENT

SUMMARY OF RESPONSES TO THE CONSULTATION BY DG INTERNAL MARKET AND SERVICES

ON

THE MODERNISATION OF THE TRANSPARENCY DIRECTIVE (2004/109/EC)

1. GENERAL REMARKS ON CONSULTATION PROCEDURE AND FEEDBACK

On 28 May 2010, the European Commission (DG Internal Market and Services) launched a public consultation on the modernisation of Directive 2004/109/EC (Transparency Directive)[150].

The Commission also adopted in May 2010 a Report on the operation of the Directive and a related staff working document on emerging issues[151]. This report (i) describes the impact of the Transparency Directive and how it has been complied with and (ii) presents the main issues emerging from its application.

Five years after the entry into force of the Transparency Directive, its rules are considered to be useful for the proper and efficient functioning of the financial markets and for making informed investment decisions. Despite this positive general perception of the Directive, there is evidence that some inefficiency still remains that hampers investment decisions and diminishes investor confidence.

In this context, the public consultation launched by the Commission aimed at gathering quantitative and qualitative evidence on impacts, costs and benefits resulting from the requirements of the Transparency Directive as well as views on possible amendments to these requirements.

- The issues which the Commission invited views and evidence on included:
- Attractiveness of regulated markets for smaller listed companies;
- Ways to improve the transparency regime of major holdings of voting rights;
- Possible ineffective application of the Transparency Directive due to diverging national measures and/or unclear obligations in the Directive.

The deadline for responses to this consultation was 23rd August 2010. The following contributions have been received: 94 from organisations, 17 from public authorities (including a European body and a private organisation entrusted with a public function) and none from individual citizens.

---

150 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, *OJ L 390, 31.12.2004, p. 38–57*

151 Report form the European Commission to the Council the European parliament, the European Social and Economic Committee and the Committee of the 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, SEC(2010)611.

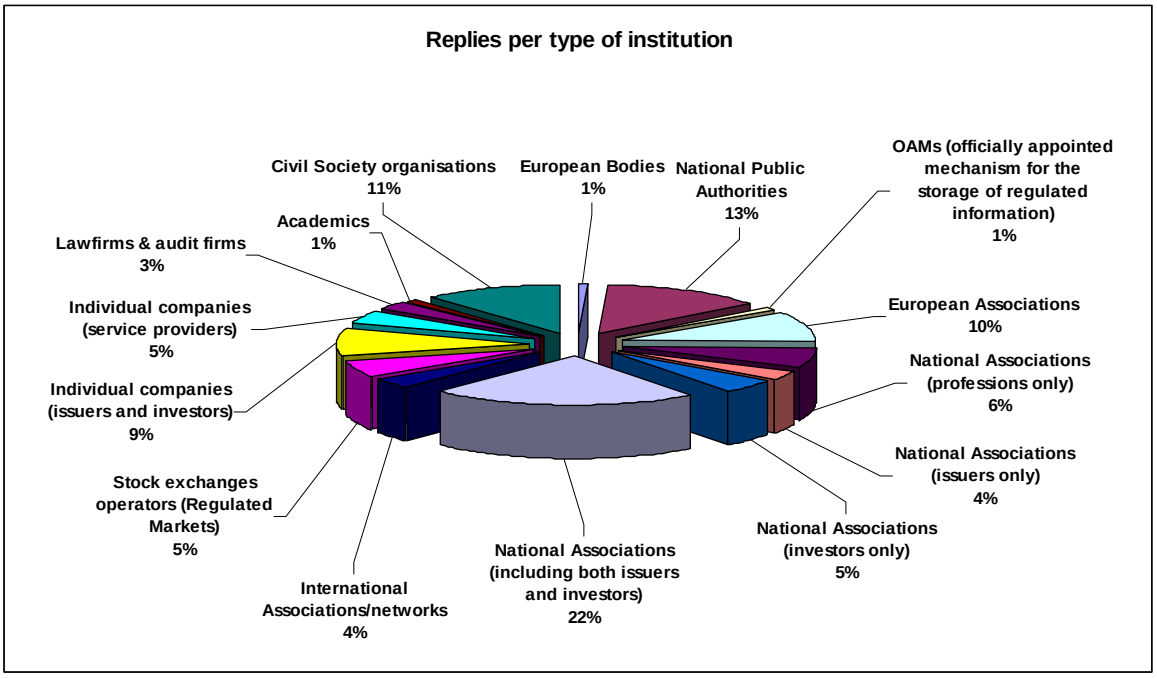
2. OVERVIEW OF RESPONSES TO THE CONSULTATION

The consultation was launched on 28 May 2010 and closed on 23 August 2010[152]. Responses were invited from all interested parties. 111 answers were received from a wide range of professional representatives and public authorities.

Figure 1 shows the status of organisational respondents, classified into several categories.

Figure 1 – Replies received, by type of institution

Type of institution	*Replies*	*Type of institution*	*Replies*	*Type of institution*	*Replies*
European Bodies	1	European Associations	11	Stock exchanges operators (Regulated Markets)	6
National Public Authorities	15	National Associations (professions only)	7	Individual companies (issuers and investors)	10
OAMs (officially appointed mechanism for the storage of regulated information)	1	National Associations (issuers only)	4	Individual companies (service providers)	5
		National Associations (investors only)	5	Law firms & audit firms	3
		National Associations (including both issuers and investors)	25	Academics	1
		International Associations/networks	4	Civil Society organisations	13
Total					111

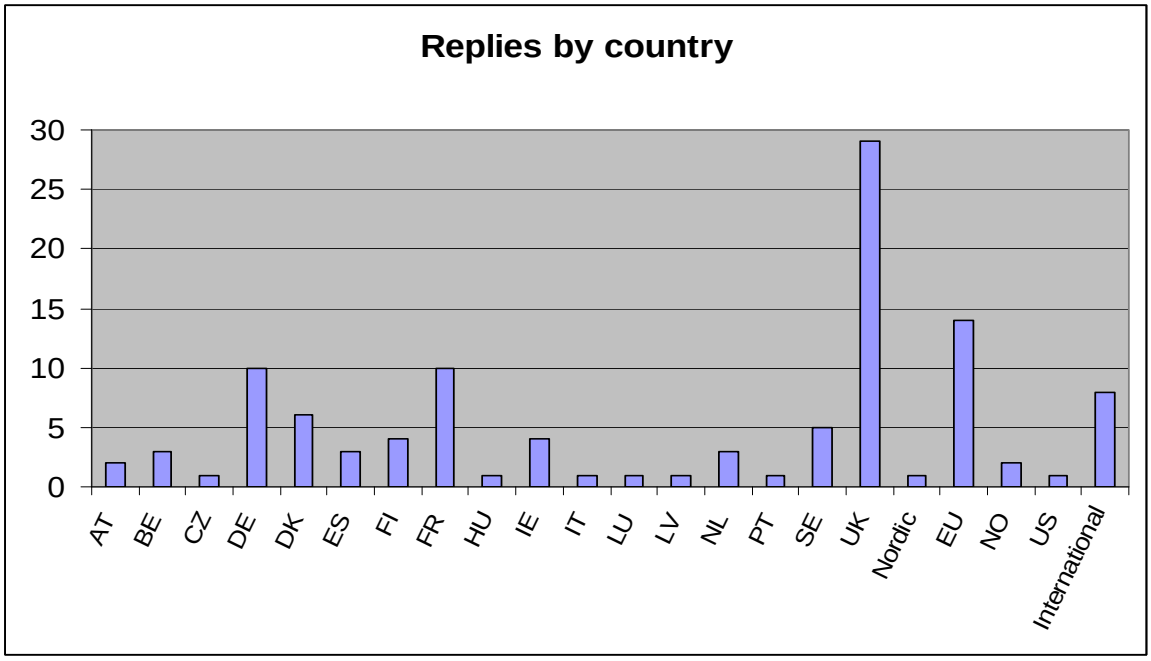


[152] Replies received after that date have also been considered.

Figure 2 lists the 111 answers according to their nationality: 100 responses were received from EU-domiciled organisations or European associations representing members from different Member States, 3 answers were received from non-EU domiciled organisations (US, Norway) and 8 answers from international associations.

Figure 2 – Replies received, by geographical origin

Country	Number of responses	Country	Number of responses
AT	2	LV	1
BE	3	NL	3
CZ	1	PT	1
DE	10	SE	5
DK	6	UK	29
ES	3		
FI	4	Nordic	1
FR	10	EU	14
HU	1	NO	2
IE	4	US	1
IT	1		
LU	1	International	8
	Total 111		



A list of all the organisations and public authorities, who have accepted that their answers to the consultation be published, is attached in Annex 1[153].

[153] One respondent requested a confidential treatment.

3. ANALYSIS OF RESPONSES

3.1. Methodological issues

The feedback statement provides a broad summary of responses to each of the specific questions raised in the consultation paper. It is a factual document which presents the results of the consultation and does not announce any policy options.

During the analysis of the responses, opinions have been categorized into 'yes/no' categories of answers where possible. The majority of respondents have also provided qualitative commentaries to supplement or nuance their 'yes/no' answers. The explanations have been grouped under a number of sub-headings to enable a more detailed analysis of respondents' views.

Some interpretation of the replies received has been necessary. A number of respondents did not provide replies to the questions but general statements on issues covered by the questions. Those contributions have been interpreted in order to allocate the views expressed to the relevant questions. When replying to certain questions, some answers were unclear as to the allocation of a "yes" or "no" and required interpretation. Replies to some questions were more relevant or also relevant for other questions. As a result, those views have also been taken into account in the analysis of these other questions. Respondents raised similar or identical issues in the replies to more than one question. Where possible, the analysis of these views has been grouped under only one question in order to facilitate understanding. This is particularly relevant for the following issues: several respondents raised the subject of the identification of shareholders which, for the purposes of this feedback statement, will be treated under question 18 (and not under questions 15 or 24); many respondents raised the need to clarify the rules on stock lending which, for the purposes of this feedback statement, will be treated in the Annex 2.

It is noted, however, that this interpretation may not reflect fully or effectively the opinion of the respondents.

It also should be noted that, for the preparation of the statistics reflected in this paper, all responses have been given equal weight. In addition, some respondents who provided individual contributions indicated that they also contributed to, or supported a submission by a professional association of which they were members.

A number of respondents have answered only a limited number of questions which they considered to be of particular relevance and did not provide a response to other questions.

3.2. Detailed analysis

I. Attractiveness of Regulated Markets for small listed companies (questions 1 to 10)

General issue. Is it desirable to enact a differentiated regime for small listed companies in the rules applying to regulated markets?

The consultation paper did not contain a specific question on the merits of enacting a differentiated regime for small listed companies in the rules applying to regulated markets. However, nearly half of the respondents provided an opinion on this issue. One third supported the possibility to enact a differentiated, more proportionate, regime for

small listed companies regarding the rules applying to regulated markets so that these markets remain attractive for small listed companies. It was argued that the administrative burdens and associated costs for small listed companies could be reduced without affecting the level of transparency or the quality of the information disclosed. The US was mentioned as an example. Some respondents supported the differentiated regime provided that investor protection and soundness of the markets were not adversely affected.

On the other hand, two thirds of the opinions provided opposed this idea on the basis that the same disclosure requirements should apply to all issuers on regulated markets irrespective of their size. They were of the opinion that regulated markets were a guarantee for certain quality standards, which must not be undermined with the creation of sub-markets or segments according to the size of issuers.

Several replies mentioned that exchange-regulated markets (also known as junior, alternative, growth or second-tier markets) were more suitable for smaller companies and that regulatory solutions to increase the attractiveness of this type of market would be preferable. Smaller companies should have the choice of listing first on these smaller markets and then migrating to major markets as they grew.

It was also outlined that EU legislation should recognise that there are and should be different types of capital markets in the EU, with different regulatory intensity: (i) exchange regulated markets with a light-touch regime; (ii) regulated markets with common standards for all issuers; and (iii) premium segments, within regulated markets, voluntarily joined by issuers, which may include regulatory add-ons defined by the stock exchanges.

All respondents who expressed an opinion on this general issue called on the Commission to conduct a holistic review of the burdens for small listed companies and of the appropriate and beneficial solutions in terms of the regulatory approach for primary markets (both regulated markets and exchange-regulated markets). One respondent also indicated that the development of a more vibrant venture capital and private equity sector in Europe could, in many cases, represent a more viable source of funding than public equity markets for smaller companies.

Question 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 on or to exit regulated markets (e.g. do they act as an entry barrier)?

Respondents' views diverged on this issue.

A number of respondents considered that the transparency requirements, while implying a certain burden, were not a critical consideration in a company's decision to get listed on a regulated market or a barrier to entry. In their view, the benefits of the requirements provided by the Transparency Directive outweighed the related costs. By requiring firms to provide more complete, clear and harmonized financial information, comparability between issuers was facilitated and investor awareness and confidence increased. It also encouraged better organization of issuers, which was particularly relevant in the case of small listed companies. In addition, several respondents believed that the most significant costs were caused by legislative requirements other than the Transparency Directive.

On the other hand, some respondents were convinced that the cost of ongoing disclosure requirements imposed by the Transparency Directive created an incentive for smaller companies to avoid listing on regulated markets unless this could be justified by significant benefits in terms of access to external sources of funding, which were not always achieved.

Many replies pointed out that an increasing number of issuers had recently left or considered leaving regulated markets in order to decrease their compliance costs. However, while the costs of the transparency obligations were often cited by small listed companies themselves as the main reason for delisting, other respondents underlined that a number of factors contributed to the delisting phenomenon: small free float affecting the trading and the liquidity of the equity issued by smaller companies, insufficient performance, buy-out transactions, mergers etc.

Finally, some respondents had difficulties to evaluate the real impact of the requirements of the Transparency Directive since they could not be seen in isolation from other obligations to be complied with by issuers in order to be listed on regulated markets.

Question 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.)?

Most of the respondents provided qualitative answers. Some outlined that the main cost was the time that board and senior management spent in complying with transparency related requirements rather than in directing the business (opportunity cost). Others suggested that the preparation of the accounts (IFRS) and the related auditing costs resulted in a heavy burden for small listed companies because they often had limited in-house financial expertise and it was more difficult for them to comply with the short publication deadlines of the Transparency Directive.

In addition, legal compliance costs, translation (into English) costs and publication costs were also mentioned as important as well as other requirements (corporate governance rules, regular reporting obligations, advertising, financial marketing, disclosure of management transactions and shareholdings) which required listed companies to incur costs linked to the hiring of specialists including lawyers, accountants and investor relation teams, often in amounts well beyond those associated with public information reporting.

Some respondents also underlined that important costs arose from national rules, such as the obligation to prepare quarterly financial reports or to publish regulated information in certain media.

For the majority of respondents, the main problem appeared to be the level of costs as compared to the turnover of the small issuers.

In addition, some respondents considered that the benefits of transparency outweighed the costs and that the requirements were not disproportionate.

It was mentioned that some of the costs would have been incurred anyway even if the company wanted to access capital without being listed on a regulated market (e.g. via private equity investment).

Question 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? [see also questions 7 and 8]

Views of respondents were split. About half of those responding believed that the margin of manoeuvre for reducing the requirements without lowering transparency standards was limited and, consequently, changes to the Transparency Directive could not significantly reduce costs for small listed companies.

The remainder of respondents believed that some cost reductions could be achieved without necessarily affecting the level of transparency necessary to protect investors. The following ideas were advanced: streamline disclosures; more flexible deadlines for publication of financial reports; no obligation to produce quarterly financial information either definitively or during the first 3 years of listing; allow issuers to decide on the optimal interval of regular reporting (e.g. two or three times a year); use a common standard reporting format and common language (XBRL); use non-binding uniform templates for reports (including the narrative sections); make regular annual financial reports closer to prospectuses in format and content; avoid gold plating (e.g. in relation to the audit of half-yearly financial reports).

Question 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?

Respondents that provided an answer to this question in general agreed that there was a visibility problem for small listed companies' equity. This lack of visibility generally resulted in lower investment levels, which remained very much national, lower trading, lower attention of analysts, in particular across borders, as well as lower attention from media.

Concerning the low investment and trading levels, investment in small companies was viewed as much riskier than in large ones due to the lower liquidity and therefore greater volatility in the share price. Also, information asymmetries resulted in higher due diligence costs - which in some cases may exceed return on investment - for investors willing to invest in smaller companies. One respondent in particular explained that investors did not have all the necessary information to enable accurate assessment of risks and make optimal investment decisions, as it was harder for investors to obtain reliable information on smaller businesses.

For some respondents, however, low investment and trading activity could also be related to factors other than visibility. For instance, for large funds, investment in even strongly outperforming small listed companies was unlikely to make much of an impact on the fund's overall performance. In order to gain material exposure to small companies, their holdings would have to be relatively large. However, it could be difficult for fund managers to take significant positions in small listed companies due to the impact that this would have on the share price. This also carried not only the risks that can be inherent in a small company (earlier stage in a growth cycle, for example) but also illiquidity risks (not being able to sell the holding easily). All of this had to be factored into the investment decision.

One respondent indicated, however, that there were institutional investors specialised in investing in small listed companies.

Concerning the lower attention of equity analysts, respondents were of the opinion that lack of turnover in small listed companies stocks made it difficult to generate brokerage commissions. As a result, relatively few brokerage research and trading resources were dedicated to smaller listed companies. This resulted in a vicious cycle and raised the question of the viability of the small caps equity research model.

Several replies linked the question of visibility to how information is disseminated and raised the issue of the bottleneck of the half-yearly financial reports published at the end of August.

Other respondents believed that current provisions of the Transparency Directive on dissemination/storage of regulated information were unsatisfactory, since they intensified or, at least, failed to address the problem of the low interest shown by EU investors in smaller listed companies. In their view, the Transparency Directive should facilitate, to the maximum extent possible, an easy, low cost and non-discriminatory access to regulated information to all investors. Currently, small issuers were reluctant to spend more money to ensure wider dissemination of information considering the low cross-border attention they received.

Finally, some respondents called for a holistic review of the visibility problem, outside the Transparency Directive. Several respondents suggested that tax incentives should be applied to address the persistent market failures associated with equity investment in smaller listed issuers. By adjusting the risk reward of investment in smaller listed issuers, funds could be attracted to primary and secondary markets, supporting market liquidity and lowering the cost of capital.

Question 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?

Few replies were received to this question. For some respondents, the benefits to be gained through adequate disclosure were higher for small listed companies than for larger companies. Reducing information may deter some investors and was a particular problem for smaller companies, which may not have a well recognised track record or brand.

For other respondents, there were additional cases reflecting low benefits for small listed companies.

For example, most of the competitors of small listed companies were not listed on regulated markets. Providing too detailed information can have negative consequences and present competitive disadvantages for small listed companies.

Question 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? *i) for issuers of shares, those companies with*

a market capitalisation below a certain threshold such as €100 Million[154], €250 Million[155] or other (please specify the threshold); ii) for issuers of shares, those companies with a market capitalisation below a certain percentage (e.g. 60%) of the average capitalisation of a company in the regulated market where the company is admitted to trading (please specify the percentage); iii) for issuers of shares, those companies with a market capitalisation below a certain percentage (e.g. 60%) of the average capitalisation of a company in the regulated market(s) of the home Member State of the company (please specify the percentage); iv) for issuers of debt securities only, those companies having outstanding debt securities below a certain threshold (please specify the threshold); v) for issuers of debt securities only, those companies having a turnover below a certain threshold (please specify the threshold); vi) other.

There was no consensus among respondents to this question.

Slightly more than one third who answered supported a definition of small listed company based on the market capitalisation. This criterion was considered to be simple and straightforward, although some kind of transitional arrangements for companies crossing the thresholds as a result of changes in capitalisation would need to be established. Concerning the threshold itself, views were split. The following capitalisation thresholds were mentioned: the Prospectus Directive[156] threshold; €100M; €150 M; €250M; €400M; €750 M; €1 billion; the thresholds used by stock exchanges for the different market segments.

About one fifth of the replies would prefer to rely on a relative threshold, either by reference to the average (or median) capitalisation in the home Member State of the issuer or on the regulated market where the company is or intends to be listed. For example, using a 35% threshold of the **average** capitalisation in Paris would allow to capture in practice 75% of the issuers, which would otherwise represent only 4,4% of the **total** capitalisation in Paris. Several of these respondents suggested, however, leaving the question of the threshold to be decided at national level.

Few respondents addressed the question of the issuers of debt. One expressed preference for using a balance sheet threshold and another respondent for a mixture of the two criteria proposed in the question. Other replies expressed a preference for not touching the question of issuers of debt.

More than two fifths of respondents, however, opposed a definition of small listed company and provided arguments against the different solutions proposed in the question. They tool the view that the proposed definitions would be impractical because of the volatility and the variations in the capitalisation of companies, which in turn resulted in legal uncertainty, investment confusion, increased costs for issuers related to

---

[154] See the definition of "*company with reduced market capitalisation*" in the context of the on-going review of the Prospectus Directive (for instance, in the Council's compromise text of February 4, 2010 http://register.consilium.europa.eu/pdf/en/09/st17/st17451-re01.en09.pdf).

[155] See the External Study (section 1 of the executive summary) which refers to a threshold of between 250 Million and 1000 Millions euros.

[156] 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

monitoring the relevant thresholds as well as enforcement burden. It was also argued that these thresholds would not capture the company risk profile and would be difficult to apply to all markets, which could result in regulatory arbitrage.

Finally, some respondents suggested that if there were a definition of a small listed company which resulted in a different transparency regime, such listed companies should be allowed to "opt-out" from the differentiated regime and to continue applying normal standards. Another respondent cautioned against the possible proliferation of different definitions of a small listed company in different EU directives.

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

Question 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?

A large majority of respondents that provided an answer to this question were not in favour of a maximum harmonisation approach if a differentiated regime for small listed companies were added to the Transparency Directive. These respondents considered desirable that Member States or regulated markets operators would be able to set more stringent or additional obligations to small listed companies, in particular because of the need to adapt the market to the local conditions. In their view, imposing maximum harmonisation could result either in lowering the existing high level standards in certain regulated markets or imposing a significant new burden in those countries that were currently only applying the minimum requirements of the Transparency Directive. Some of these respondents however considered that only regulated markets operators, and not Member States, should enjoy the capacity to impose stricter requirements.

Only a small minority of respondents favoured a maximum harmonisation approach because, in their view, the current regulatory burden was partly caused by national gold plating.

Question 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? Please provide evidence supporting your answers (e.g. how much the cost would be reduced depending on the extension of the deadline)?

Respondents to this question provided qualitative rather than quantitative views on costs, with a small minority not providing any opinion on costs at all.

About half of the respondents did not believe that an extension of the deadline for publication of financial reports would result in any significant cost reduction. Some of these respondents, however, appreciated the flexibility that could result from an extension of the deadline for the publication of half-yearly reports from two to three months, so as to better organise the necessary work, relieve administrative complexities, improve the quality of the output and secure the services of auditors.

Some other respondents believed, on the contrary, that extending the deadline of publication of financial reports, in particular, half-yearly, would result in a reduction in

costs. The following types of costs which could be reduced were mentioned: the burden on boards and senior management (opportunity cost); accounting costs (e.g. less need to hire external staff/consultants in certain periods for accounting needs because workload of internal staff would be better spread throughout the year); auditing costs (e.g. easier for auditors to cope with the work); extra hours (both of in-house staff and of external auditors).

In addition to the cost issue, some respondents expressed negative views on the possibility to extend the deadline for publication of financial information. Late publication of financial reports could lead to outdated information which was less valuable to the market and would increase the risk of market abuse. It was also argued that a better way for issuers to better allocate internal resources was to adjust their accounting year.

Some other respondents considered that such extension of the deadline should benefit all listed companies, not just small ones.

Question 7.3 – Do the various rules requiring the disclosure by listed companies of reports of narrative nature[157] bring significant costs/operation complexity for small listed companies (e.g. legal, account preparation, auditing, other type of costs)?

Only a small number of respondents provided an answer to this question.

Around half considered that the various rules requiring the disclosure by listed companies of narrative reports brought significant costs/operation complexity to small listed companies. The opportunity cost related to the time of boards and senior management was again particularly highlighted, since there was little scope to delegate the task to more junior staff. One reply mentioned that the bulk of the cost consisted of understanding what each requirement meant, how much text was required, what should be the content and what degree of detail was required. Narrative reports needed also to be checked, proof-read and compared to other narrative reports, which generated a significant amount of work for companies. Additionally, one respondent mentioned that auditors and lawyers were increasingly involved in the preparation of narrative reports due to the growing complexity, which contributed to increasing the related costs. The following disclosure requirements were identified as complex for small listed companies: preparation of interim management statements, compliance with the corporate governance requirements, corporate social responsibility disclosures.

---

[157] Those narrative reports (see Annex to this questionnaire for the legislative references) are:

-the annual management report (Article 4(5) TD), which refers to Article 46 of the Fourth Company Law Directive or to Article 36 of the Seventh Company Law Directive, and integrates disclosure obligations relating to environmental and social data;
-the corporate governance statement as referred to in Article 46a of the Fourth Company Law Directive and Article 36(2) of the Seventh Company Law Directive, to be included in the annual management report;
-the information requested in Article 10 of the Takeover bids Directive, to be included in the annual management report;
-the disclosure on remuneration of directors (provided it is not integrated in the corporate governance statement);
-the interim management report (Article 5(5) TD); and
-the interim management statement (Article 6(1) TD);

The other half of the respondents was not convinced nor had evidence of any significant costs/operation complexity for small listing companies arising from the various rules requiring the disclosure by listed companies of narrative reports that would warrant a reduction in the reporting requirements. Some respondents said that removing disclosure requirements would not be prudent from a transparency and investor protection perspective and/or that the benefits of transparency outweigh the costs. Others pointed out that investors do not expect the same volume of disclosure from small companies as from the larger, often more complex, companies. Some replies also suggested leaving this issue to national rules.

Question 7.4 – Would you see benefits from integrating in the Transparency Directive the disclosure obligations mentioned in question (7.3[158]) which are currently in different directives?

A slight majority of respondents to this question would see some benefits in integrating in the Transparency Directive the disclosure obligations concerning narrative reports that are currently dispersed in different directives. Some of the respondents pointed to the fact that one set of rules would be more user-friendly for issuers and could make clear that the responsibility for monitoring the disclosures would remain with a single competent authority. However, it was also argued that the perceived improvements might be limited and that everything would depend on how Member States would implement the obligations.

The remaining the respondents could not see any particular benefit in integrating all narrative disclosure obligations in the Transparency Directive. For some, it would not be appropriate to include corporate-governance related disclosures in the Transparency Directive, except for the corporate governance statement which is part of the annual financial report. For others, integration of all narrative disclosures in the Transparency Directive would have a negligible impact. Such "relocation" could confuse market participants rather than being helpful: overall, the “location” of an obligation was irrelevant as it was the content that causes compliance costs and not where the respective rule is codified.

Finally, one respondent mentioned that a consultation on the narrative reporting framework had been recently launched in the United Kingdom.

Question 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?

Few respondents provided views on costs. A few of them considered that some cost reduction could be achieved. In particular internal administrative costs could be reduced because of the possibility to introduce more automation in the process. But most of the respondents could not see scope for cost reductions arising from maximum harmonisation of narrative reports for small listed companies. On the contrary, one respondent underlined that maximum harmonisation across Europe on the content of

[158] The consultation paper wrongly referred to question 8.3 instead of 7.3. Some respondents expressed they were unable to reply to the question because of the wrong cross-reference. Others interpreted the cross-reference as referring to question 7.3, which as the intention of the consultation paper.

narrative reports would increase financial reporting obligations and hence compliance costs for a large portion of small listed companies which were listed on those regulated markets which did not currently impose their own additional reporting obligations beyond the minimum EU requirements.

Most of the respondents that provided views on the merits of such maximum harmonisation opposed the idea. It was highlighted that the quality of the narrative reporting was crucial for investors. If the threshold for the content were set too low in the hope of saving costs, this may have negative implications for investors, with subsequent long run negative effects on the share price and the cost of capital for the company. In this context, some respondents called for allowing markets to maintain their premium listings.

Question 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? *i) non-mandatory ready-to-use templates regarding these narrative disclosures (which could be prepared for instance by CESR/ESMA); ii) more detailed rules in European law, either in the Transparency Directive or in delegated acts adopted by the Commission; iii) a combination of both.*

Few respondents provided an opinion on this question.

Most saw some value in the possible preparation of ready-to-use templates for narrative disclosures, provided they were not mandatory.

Only one respondent supported more detailed rules in EU law (either in the Transparency Directive or in implementing acts adopted by the Commission). Two respondents supported a combination of both options. Two replies suggested other options such as guidance work of the IASB.

Other respondents, however, were opposed to maximum harmonisation in this area. For instance, some considered templates for narrative disclosures to be particularly worrying and likely to result in box-ticking and "boilerplate" disclosures. This would be less informative to investors and contrary to the objective of disclosing comprehensive information. It was also argued that favouring form over content was not the best way to improve regulation. One respondent explained that more detailed rules in EU legislation could result in more regulation, less flexibility and higher costs of compliance.

Question 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?

Few respondents provided a reply to this question.

Several respondents supported the view that the rules on disclosure of environmental and social data should not be integrated in the Transparency Directive or that such rules should not be changed. Others underlined that this type of disclosure was often sector specific and difficult to harmonise.

Some respondents, however, supported the idea of maximum harmonisation or at least non-mandatory ready-to-use templates, in particular for numeric data. Other replies favoured more guidance.

One respondent underlined that sector-specific key performance indicators needed to be developed in order to ensure that issuers disclose comparable data on a broad range of potential risks.

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

Question 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?

The majority of respondents that provided a reply to this question believed that a differentiated regime for small listed companies would result in a significant diminution of transparency provided to the market and a perceived gap in investor protection. They notably highlighted that reducing the frequency and the amount of information to the market could result in lower interest from investors and a general reduction of confidence, which *in fine* would be detrimental to small listed companies. Lighter transparency requirements could create a second-tier market which could be abandoned by investors seeking higher standards of quality. A minority of respondents believed nevertheless that already today various market segments with different reporting requirements existed without necessarily affecting the overall level of transparency to investors. Different levels of obligations could be beneficial provided this is clear to investors, as has been done already in the US. It would allow streamlining disclosures and reducing the flood of information which is currently difficult to manage for analysts and investors. In any case, any price sensitive information had to be disclosed under the Market Abuse Directive, thus avoiding disclosure gaps. Also, lightening the obligations did not prevent small listed companies from providing more information if investors/stakeholders so requested.

Other respondents referred to the need to look at the methods for dissemination of information: some supported posting information on websites (which allegedly could result in savings of €5000/10000 per issuer), while one respondent suggested to use regulatory information services to disseminate information.

Question 8.2 – If the obligation to disclose quarterly financial information[159] was waived for small listed companies, would this result in an unreasonable diminution of transparency?

The majority of respondents that provided a reply to this question believed that waiving the obligation to disclose quarterly financial reports or interim management statements (hereinafter quarterly financial information) would result in an unreasonable diminution of transparency. The main arguments were that: (i) quarterly financial information was useful and valuable to the market and provided visibility to small listed companies; (ii) it was not too difficult to comply with the obligation to prepare an interim management statement which was a proportionate requirement; (iii) reducing the amount of information to the market could result in less appetite from investors to invest in those companies and also increased the risk of market abuse; (iv), transparency rules in regulated markets should not be determined by size of companies. Some respondents,

[159] Either quarterly financial reports or interim management statements as referred to in Article 6 TD.

however, could support some flexibility regarding less volatile sectors and/or newly listed small companies (e.g. temporary waiver).

A minority of respondents considered that the publication of quarterly financial information could be waived for small listed companies. The publication of this kind of information was rare in some EU markets before the implementation of the Transparency Directive in 2007 without there being a perception that securities markets suffered from a lack of transparency. Moreover, some respondents were of the view that benefits resulting from disclosure of quarterly financial information were negligible for small listed companies and that such disclosure contributed to short-termism in company decision making. In addition, quarterly financial reports or interim management statements would not disclose any sensitive information to the market in terms of price movements, since any material information should have been announced to the market in any event according to on-going disclosure requirements provided by the Market Abuse Directive. Some respondents expressed preference for giving freedom to companies to decide whether to publish quarterly financial information: if investors demanded this information, companies would publish it, if they did not, there was no point in obliging the issuer to produce it.

Some respondents specifically stated that quarterly financial reports should not be imposed (e.g. they contribute to short termism) and that issuers should be allowed to continue publishing interim management statements instead. In this regard, one respondent outlined that issuers should maintain freedom and flexibility as to the content of interim management statements and that there was no need to clarify the requirements of Article 6 of the Transparency Directive.

If the requirement to disclose quarterly financial information were waived in EU law, some respondents were of the view that regulated market operators should be allowed to require issuers to disclose such information, at least for the premium segments.

Question 9 – Addressing the lower visibility of smaller listed companies

Question 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?

The majority of respondents to this question considered that measures at EU level (including possible changes to the Transparency Directive) could not really help solve the problem of lower visibility of smaller listed companies or would do so only marginally. The primary obstacle to greater visibility of smaller listed companies was the structure and incentives of the institutional asset management industry. According to one respondent, small listed companies often operated within a single country which, coupled with the language barriers that exist between EU countries, often resulted in difficulties to create investor appetite across Europe. Another respondent argued that in small countries, companies, even if small in absolute terms, are sufficiently attractive on the local market so that their capital issuances are over-subscribed.

On the other hand, a minority of respondents considered that measures at EU level (and at national level) could improve visibility of small listed companies. Among those, one respondent suggested a role for EU agencies in addressing the issue of lower visibility of these companies, as part of a broader strategy for small listed companies in the EU. Another respondent expressed support for measures proposed in the Demarigny report, in

particular regarding the use of special IFRS for SMEs as an accounting standard for small listed companies.

One reply highlighted that any EU measure, however, should be without prejudice to other market driven initiatives, which should be also targeted, preferably as a primary approach. For instance, issuers should use all possibilities offered by the current framework to enhance their visibility, such as choosing a financial year different from the calendar year.

Finally, one respondent expressed a negative opinion about the possible creation of a pan-European trading platform for small listed companies.

Question 9.2 – What type of measures at EU level could help solving the visibility problem of small listed companies? *i) The Transparency Directive should contain* differentiated *rules for small listed companies regarding timing and/or methods for the disclosure and dissemination of information; ii) there are rules in other EU directives (e.g. prudential requirements) and/or national law (e.g. tax law) which discourage financial analysts and intermediaries' interests in small listed companies which should be modified; iii) financial analysts and intermediaries should get incentives to interest themselves in small listed companies; iv) other.*

Several respondents provided a specific reply to this question. However, there was some overlap with the general comments that many respondents provided on the merit of having a differentiated regime for small listed companies. The summary of the replies to question 9.2 therefore focus on whether some measures could help solving the visibility problem of small listed companies and not on the merit of adopting them.

Concerning possible differentiated rules, many respondents supported extending time-limits for publication of half-yearly reports to either 11 weeks or three months, instead of the current two-month time-limit. Some respondents would support such extension provided it was applied to all issuers. However other views suggested that instead of extending the deadline for publication, issuers should adjust their financial yearend to avoid disclosing their half-yearly reports all at the same time. It was argued that disclosure of financial information which was evenly distributed throughout the year would encourage users of financial information to pay more attention to small companies, particularly if smaller companies were able to disclose regulated information at times when larger companies were not also disclosing information. This would also help to balance the workload of users of the information, the burden on information systems and prevent the currently recurring disruptions of the market. Another suggestion concerned the reduction of the frequency of financial reporting to 2 times (every 6 months) or 3 times (every 4 months) a year.

Respondents did not specifically address the issue of the impact of the prudential rules and tax laws on investment levels. However, some respondents agreed that it was of decisive importance to improve market conditions for investors focusing on small listed companies. A respondent was of the view that EU efforts should be directed at identifying the factors that caused institutional and retail investors not to invest capital in smaller listed issuers and to assess whether a regulatory response at EU level would be appropriate or desirable to address this factors.

Some ideas were proposed. One respondent supported initiatives that would foster a network of investors who understood the needs of small listed companies. Support was

also expressed for the creation of dedicated investment funds or new types of investment funds allowed to invest more in smaller issuers listed on exchange regulated markets. The need to provide tax incentives in order to encourage investors to allocate their investment to small listed companies was also mentioned: e.g. providing incentives to existing funds to invest a minimum amount in small listed companies would increase investment.

Dissenting views, however, were expressed that it would not be easy to transform the perspective of institutional investors with respect to investments in small listed companies. The development of a more vibrant venture capital and private equity sector in the EU was considered, a more viable source of external funding than public equity markets for smaller companies.

Some respondents were in favour of measures to incentivise brokers to conduct minimum research into small listed companies although the question of who should pay for such incentives was also raised. However, other respondents were opposed to this idea and questioned the existence of any market failure. It was explained that if there were demand for more detailed information on a specific small listed company, it was likely that a financial analyst would provide the required analysis. It was also argued that incentives to analysts would lead to market distortions. Furthermore, a stronger focus of analysts and intermediaries on small listed companies based only on incentives would be detrimental to investors, as intermediaries would act on inappropriate considerations and therefore misallocate funds.

Additionally, some respondents provided other suggestions. Some requested the Commission to undertake a more holistic review on this issue. One respondent explained, in particular, that small listed companies were a different asset class as compared to deeply liquid and frequently traded stocks. This should be taken into account when developing a policy to promote investment in these companies. This respondent supported a role for the EU agencies in setting a pan-European strategy with a clear vision for the smaller listed company segment, taking into consideration the key areas of enterprise, finance and macroeconomic policy, and argued that there was a need to create a "community" for the small listed companies sector as an asset class. Another respondent explained that small listed companies should engage more with the investor community and their agents.

Other respondents supported an EU legal framework for exchange- regulated markets. In their view, formalised support across Member States for markets dedicated to smaller companies would increase the profile of such businesses and help them attract investors.

Some respondents raised the question of the need to simplify the information dissemination model. Some of them suggested that publishing regulated information in English could provide broader opportunities for investments in smaller issuers, and one suggested allowing small listed companies to publish information in English only. One respondent thought that publishing regulated information on a website provided enough visibility for small issuers, although this view was not necessarily shared by other respondents who proposed a wider use of specialised service providers to disseminate information. Other respondents were of the opinion that the dissemination model of the Transparency Directive did not work well and that other solutions needed to be found: for instance, the dissemination system in Portugal was cited as an example by a respondent.

Finally, some respondents reiterated their view that the type of measures suggested in question 9.2 would not have a positive impact. For instance, one respondent claimed that these proposals would not resolve the current structural bias towards larger firms and that the current situation reflected in general the true value of small listed companies. Where those companies were undervalued, they would be more interesting to analysts and investors, therefore the natural balance would be restored. Another respondent questioned the EU competence in this matter, taking into account limited cross-border activity of many small listed companies.

Question 9.3 – Do you think that the development of an EU database[160] 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?

Respondents were split on this issue.

Almost half of respondents generally believed that the development of an EU database for storage of regulated information on all issuers of securities in the EU could facilitate research and result in greater attention to small listed companies from financial analysts, financial intermediaries and investors. However, (i) this should not be a stand alone initiative, but a part of a wider strategy for small listed companies; (ii) such database would need wide marketing, and be well organised to facilitate research; (iii) no additional cost on issuers should be imposed; (iv) the Commission should not be in charge of developing it; (v) push (media) systems would need to be maintained to reach investors; (vi) it should be accompanied by a convergence of substantive disclosure requirements and by a common format; (vii) it should be accessible free of charge or at very low price.

Another half of respondents conveyed the opposite message. They supported the existing situation with national databases or more disclosure of information on issuers' websites on the grounds that: (i) there was a significant risk that a pan-European project would be excessively costly and would duplicate or undermine the work being undertaken at national level; (ii) costs/drawbacks linked to the quality of information provided would largely outweigh hypothetical benefits; (iii) the US Edgar system which is similar to a pan-European database lacked flexibility; (iv) the development of research and analysis should be left to the market; (v) investors in small listed companies tended to be largely domestic and a central EU database may not help to increase investment into this category of listed companies; (vi) issuers should have the choice regarding ways to disseminate regulated information.

Some respondents thought nevertheless that, while a central storage database on all listed issuers of securities in the EU would not be of substantial benefit to smaller listed companies, such a central database or a single access point could be of benefit to the investor and analyst community.

One respondent suggested that it may be worth examining in a separate consultation if the US SEC model could be adapted for use in the EU.

---

[160] It could be a single EU database (such as an improved version of the ECB centralised securities database) or a network of national databases (i.e. the national officially appointed mechanisms referred to in Article 22 TD) allowing for multi-country searches.

Two respondents supported the use of XBRL to facilitate the analysis of financial information while a larger number of replies expressed opposition to its mandatory use and thought that more experience with this system is needed.

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

A respondent suggested that the language regime should be more flexible. Article 20 of the Transparency Directive should be adjusted so as to allow small listed companies to disclose regulated information only in English. This would reduce translation cost. Also, the current lack of information in English could be an obstacle for investment decisions. This would also help the development of an EU network of national storage mechanisms.

Another respondent suggested that there may be opportunities for a private provider or for a trade association to establish a facility funded jointly by small listed companies and users of financial information to showcase issuers by sector or by other metrics.

II. Information about holdings of voting rights (questions 11 to 18)

Question 11 – Disclosure of holdings of cash-settled derivatives. Would the disclosure of holdings of cash-settled derivatives be beneficial to the market? Please provide evidence supporting your answer (e.g. situations in which lack of disclosure of cash-settled derivatives produced negative results). Please report about your experience, if any, with the disclosure of cash-settled derivatives in the United Kingdom[161] and/or in other jurisdictions where cash-settled derivatives are disclosed (such as in Switzerland).

The vast majority of respondents to this question considered that the disclosure of holdings of cash-settled derivatives would be beneficial to the market with a view to avoid hidden ownership. While cash-settled derivatives are used in the vast majority of cases for their normal purpose which is to gain economic exposure to the issuer and not to gain access to voting rights, the current lack of disclosure in relation to cash-settled derivatives is causing market difficulties: the Takeover Bids Directive[162]does not apply or applies too late to these instruments, so that a fair market price of the underlying shares is not guaranteed. Some respondents expressed support for a disclosure regime not simply because it would reveal economic exposure to shares – though this was fundamental- but also because it would make the market more transparent generally. However, most respondents considered that the given the high volume of derivatives trading in today's market, there was a need for a threshold at which the ownership of economic interest would become relevant not only for the impact on voting rights (and therefore on control) but also for the price formation in a particular security.

Respondents generally favoured a well targeted and proportionate disclosure system, avoiding the provision of useless or irrelevant information and reducing the number of notifications. There were calls to clarify what should be disclosed (e.g. credit default swaps, or cash-settled OTC products) and also to allow for exceptions (e.g. pure economic exposure; derivatives giving exposure to an index, banks/brokers serving client

[161] A disclosure regime on holdings of cash-settled derivatives was introduced in 2009 in the UK.

[162] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, *OJ L 142, 30.4.2004, p. 12–23*

transactions, market makers, trading books, etc). There was debate as to whether the thresholds should be calculated on a delta-adjusted basis[163] or on a nominal basis and whether the netting of short and long positions in these instruments should be allowed. Some of the respondents supported a harmonized disclosure system across the EU. Generally, many replies suggested learning from the UK experience.

A small group of respondents, however, was not in favour of a disclosure regime for this type of instrument. Another small group of respondents did not take a firm position. These two groups expressed concerns about possible administrative burden of a regulatory response to a problem which was perceived as limited: the vast majority of cash-settled derivative instruments are bought for trading or hedging purposes and only in exceptional cases these instruments have been used to secretly build a stake in a company. In their view, these cases were driven by a very small number of take-over situations. One respondent in particular considered that a generalised disclosure regime for cash-settled derivatives would be ineffective and misleading. It was not possible, in fact, to distinguish among transactions entered into in order to acquire and/or hide positions in the underlying assets from those transactions which were entered into for purely speculative or hedging purposes. The introduction of a disclosure regime for such kinds of derivatives could jeopardize the efficiency of the entire transparency system and reduce volumes and liquidity of cash-settled derivatives. In addition, such a disclosure regime would cause a significant increase of the organisational and compliance costs for intermediaries.

Some of the respondents suggested addressing the issue of cash-settled derivatives through an anti-fraud provision (e.g. cash-settled derivatives should not be used to avoid applicable notification requirements), through the "acting on behalf" and "acting in concert" rules of the Transparency Directive or through other pieces of legislation, such as the Acquisitions Directive[164], the Takeover Bids Directive[165] or the Market Abuse Directive[166]. Some of these respondents, however, were not opposed to disclosure of cash-settled derivatives provided it had a limited impact on investors with pure economic exposure and/or was fully harmonised to avoid complexity and regulatory arbitrage.

In answering this question, some respondents highlighted the positive experience with the UK disclosure system of cash-settled derivatives. For them, disclosures had enhanced transparency of ownership and enabled investors and issuers to determine the voting structure of an issuer's capital and potentially important capital movements. In particular, the UK had not witnessed a dramatic increase in announcements and the market had

---

[163] If, for example, a call-option is significantly out-of-the-money, to add the nominal value of the shares that can be acquired under the option to the calculation of a disclosure threshold would apparently be futile for some respondents.

[164] Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, *OJ L 247, 21.9.2007, p. 1–16*

[165] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, *OJ L 142, 30.4.2004, p. 12–23*

[166] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), *OJ L 96, 12.4.2003, p. 16–25*

adapted efficiently to the additional obligations placed on them. One respondent, however, considered that the UK disclosure system was costly with few identifiable beneficial results.

Concerning the experience in Switzerland, it was felt that the resulting disclosures were materially less meaningful than in the UK because they were not on a delta-adjusted basis. Also, the reporting of cash-settled derivatives in Switzerland was very broad as it included in the "acquisition basket" the writing of put options.

Question 12.1 – If the Transparency Directive was to require holders of cash-settled derivatives to disclose their positions, should holdings of cash-settled derivatives be aggregated to holdings of voting rights[167] and/or of financial instruments giving unconditional access to voting rights[168] for the purposes of calculating whether the threshold triggering the disclosure obligation is reached or crossed?

The very large majority of the respondents to this question supported the aggregation of cash-settled derivatives with holdings of voting rights[169] and of financial instruments already subject to the disclosure under Article 13. Many respondents expressed support for a system similar to that in the UK. Others would prefer different thresholds to apply to cash-settled derivatives. Although there was support for the aggregation of all financial instruments to trigger the notification requirement, in general respondents would prefer that the notification itself presented a breakdown of voting rights and financial instruments according to their nature.

Some respondents specifically supported the disclosure regime extensively described in CESR's reply or similar systems. CESR's proposal was to create a notification system with four different baskets (holdings of voting rights; holdings of financial instruments under Article 13; holdings of cash settled derivatives and total holdings) that would trigger an obligation to disclose the holdings of the four baskets when the threshold for any of the four baskets was reached or crossed.

A minority of respondents did not support such an aggregation, which in their view would confuse the market. They preferred a specific and harmonised notification system for cash-settled derivatives such as the one proposed by the ESME advice.

Question 12.2 – If the Transparency Directive was to require holders of cash-settled derivatives to disclose their positions, 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) TD 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) TD (e.g. at least 10% or higher); (iii) other).

If cash-settled derivatives were to be subject to a separate disclosure regime independent from the notification of holdings of voting rights and financial instruments under Article

[167] See Articles 9 and 10 TD.

[168] See Article 13 TD.

[169] See Articles 9 and 10 TD.

13, some replies suggested setting a sufficiently high notification threshold (e.g. 10%) to guaranteed meaningful disclosure and eliminate irrelevant information. This would also take account of the fact that cash-settled derivatives only indirectly influenced the company.

However, some respondents supported the 5% threshold or other lower national thresholds (e.g. 3%) as initial thresholds for disclosure. For these respondents, even 3% could represent a significant investment in a listed company and therefore a significant influence within a general meeting. As attendance rates at general meetings often did not exceed 50% of the total holdings, the potential influence in general meetings might even be higher than the initial holding. However, it was unclear if these respondents were referring to an aggregated disclosure or to a separate notification system for cash-settled derivatives, which was the purpose of this question.

Question 13 – Transparency of holdings of voting rights after the record date in advance of the general meeting of shareholders (the question of empty voting). 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?

A majority of the respondents to this question believed that a specific disclosure mechanism for holders of voting rights who do not hold shares after the record date for the shareholders general meeting would be neither useful nor effective to prevent empty voting practices. Such a disclosure requirement was seen as onerous, easy to circumvent and difficult to enforce as well as providing an implicit endorsement of empty voting practices. Also, it could result in a *de facto* share blocking, which would be counterproductive.

Many respondents explained that the perceived problem (separation of voting rights and economic exposure) was the norm and wanted consequence of the record date and abandonment of the share blocking system in EU law. In their view, it would be preferable to have shorter intervals (two/three days) between the record date and the general meeting, as is the practice in UK and FR, to deal with the problem. Concerning securities lending, several respondents explained that market practice (e.g. Securities Lending Association guidance) did not support borrowing of shares in order to vote and that in any event lenders could always recall shares. However, it was also argued that requiring lenders systematically to recall shares before the record date would not be useful, as this would result in volatility. One respondent explained that the recent Commission proposal on disclosure of short selling positions would also be helpful.

Around a quarter of respondents supported a specific disclosure mechanism for holders of voting rights who do not hold shares after the record date for the shareholders meeting. There was some support among these respondents for the proposal of the European Corporate Governance Forum on February 2010[170] and for an upcoming disclosure obligation in France which would require disclosure to the issuer and to the supervisor of stock lending agreements concerning at least 1% of the voting rights between the record date and the general meeting.

[170] EUCGF Statement - 20 February 2010: http://ec.europa.eu/internal_market/company/docs/ecgforum/ecgf_empty_voting_en.pdf

Other respondents did not take a firm position. Some considered that more work was needed to properly assess this issue and the need for specific measures. Others believed that this issue should not be dealt with in the Transparency Directive. Reference was also made to the need to maintain contractual freedom.

Many respondents, whether in favour or against the specific disclosure obligation linked to the record date, argued the need to improve transparency around stock lending practices in general. Views on stock lending practices are further detailed in Annex 2.

There was no support for a ban on empty voting.

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

A relatively small number of replies were received to this question. If such an obligation were to be imposed, the majority of respondents would support the use of the same thresholds as for the normal notification obligations: i.e. starting at 5% or the lower national threshold, where it exists.

Many respondents called for further empirical study of empty voting practices.

Question 14.2 – 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, 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.

A relatively small number of replies were received to this question. If such an obligation were to be imposed, respondents were divided as to the time-limit for the notification: some were in favour of immediate disclosure, others were in favour of a disclosure no later than 1 day, and some respondents suggested keeping the existing time-limits in the Transparency Directive.

One respondent suggested that this information should be disclosed on the date of the general meeting or immediately before.

Question 15 – Intentions with holdings or voting policies disclosure. 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.

Views were relatively split on this question. A slight majority of respondents were not convinced that requiring investors to disclose their future intentions or to disclose their actual voting policies should be the way forward. they argued that such requirements would lead to: (i) the unnecessary dissemination of information in the market; (ii) add little value to market participants; and (iii) increase compliance costs.

Concerning the disclosure of intentions, arguments were further detailed under question 16. Concerning the disclosure of voting policies, in practice respondents felt that it would not result in improved transparency, was not a matter of public interest and should therefore be left to institutional investors and their clients to agree upon. It was also

argued that the role of institutional investors was evolving in a very satisfactory manner through self-regulation and that it was unnecessary to address the issue at EU level. For other respondents, this was a corporate governance issue that should not be addressed in the Transparency Directive.

Some respondents suggested establishing a system for the identification of shareholders: if issuers knew their shareholders they could enter into dialogue and engagement with them more easily. Others supported the UK Stewardship code for institutional investors which encourage institutional shareholders to proactively engage with companies.

Other respondents supported the need for regulatory intervention. However, they did not agree on the solution. Among these respondents, a slight majority was in favour of requesting investors to disclose their actual voting policies rather than requesting investors to disclose their future intentions with holdings. Only few respondents were in favour of combining both options.

Those in favour of disclosing voting policies considered that such disclosure (as well as the disclosure of engagement policies and actual voting records) would render fund managers accountable for their approach to corporate ownership. It was also explained that transaction costs for issuers would be reduced with regard to the preparation of the general meeting but also with regard to the ongoing investor dialogue. Some respondents explained that Article 21 of Directive 2010/43 (UCITS IV) required UCITS management companies to determine a strategy on when and how voting rights attached to instruments held in managed portfolios are exercised. A summary description of the strategy must be made available to investors and details of actions taken must be made available to unit holders upon request. One respondent replied that investment managers often disclose their voting policies: this was a matter of corporate governance and fiduciary duties, and less related to creating transparency around voting rights. This respondent requested that violation of any disclosure obligations should not impact the exercise of voting rights as this would create material legal uncertainty for issuers. Other respondents also echoed the view that disclosure of voting policies was more a matter of corporate governance. Some also supported the establishment of a system for the identification of shareholders.

Question 16.1 – If investors were required to disclose to the market which their intentions are with regard to their investment, would such disclosure be useful?

A large majority of respondents to this question were not convinced by the merits of such a disclosure. Different reasons were advanced: (i) such disclosure would provide little added value as statements of intention were not helpful and could be misleading; (ii) experience in the US, France and Germany shows that such disclosures are meaningless; (iii) too much transparency renders the market too volatile or indeterminable; (iv) it would be difficult to enforce as intentions change rapidly; (v) it raises concerns from the market abuse perspective because intentions change; (vi) it may be dissuasive for shareholders wishing to engage in future takeover activity and could facilitate anti-takeover defences; (vii) it may trigger the application of takeover legislation in certain cases; (viii) it would render the EU market unattractive; (ix) intentions are a private matter for the investors and such disclosure could harm them; and (x) administrative burden and compliance costs would be high.

A minority of respondents, on the contrary, were favourable to the introduction of a disclosure obligation on intentions since they saw it as beneficial at least in relation to significant holdings: it would allow other investors (and issuers) to better understand the

background of a major shift in influence and to adjust their investment decisions, voting behaviour and investor relations strategy accordingly and to decide whether to engage with investors. One respondent suggested that it would be worth considering whether to apply the respective disclosure requirements also to large positions in other financial instruments (including certain qualifying derivatives). Some respondents indicated that the right balance between privacy/confidentiality and the market efficiency needed to be found: it should not be too burdensome for investors while at the same time providing reliable insights on the intentions of major shareholders. In addition, a coordinated regime with the takeover rules would need to be established. References were made to the positive experience with the French system but calls were also made for a harmonised EU regime as the diversity of systems currently in place was difficult and costly to manage and lacked clarity for all parties concerned.

Several respondents considered that the real problem was the lack of shareholder identification (see question 18).

Question 16.2 – If investors were required to disclose to the market which their intentions are with regard to their investment, which should be the minimum threshold triggering such disclosure? *i) the thresholds provided in Article 9(1) TD should be applied (5%, 10% etc); ii) the lower/initial threshold should be significant and higher than the 5% foreseen in Article 9(1) TD (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.*

The majority of the respondents to this question supported option ii) for an initial threshold higher than 5% for disclosure of intentions. Most proposed 10% as an initial threshold, with few respondents opting for at least 20%. One respondent proposed a mixed system with 10% for active investors seeking control and 20% for passive investors.

Some respondents proposed applying the thresholds provided for in Article 9(1) of the Transparency Directive or the national thresholds (the initial threshold being set at 3% in some Member States). One respondent suggested an initial threshold of 3%.

One respondent opted for option iii) combined with a threshold of 20%. Two respondents proposed alternative solutions: e.g. the threshold should mirror a blocking minority stake at the annual general meeting; the threshold should follow the US system.

Two respondents indicated that the takeover bids regime should not be undermined and that any obligation should only be set at 30%, which in any case triggered the mandatory bid.

Question 16.3 – If investors were required to disclose to the market which their intentions are with regard to their investment, 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.*

Respondents were relatively divided on this issue.

Some favoured option i) with a simple disclosure obligation. They did not express support for requiring investors to provide a detailed narrative of investment intentions. It was argued that a more extensive obligation to disclose intentions would represent an intrusion to the freedom and ownership rights of investors and would raise the question of how the accuracy of the disclosure can be reviewed and which penalties would be linked to any false disclosure. Some respondents supported the US system (declaring whether the investor is a passive investor or not).

A similar number of respondents supported a narrative disclosure with more substantial information on intentions rather than a box-ticking form. Some combined option ii) with options iii) and option iv).

One respondent was not in favour of box ticking only, supported option iii) but was careful as regards option ii); the disclosure requirement should not go too far in the direction of the information provided in connection with a takeover bid. Another respondent explained that not all classes of investors should be required to disclose the same amount, or type, of information.

Two respondents did not choose any of the options, but expressed diverging positions: one in favour of disclosure of intentions, one against. Some respondents expressed support for the French regime.

Question 17 – Aggregation of holdings and voting rights. Should holdings of shares and voting rights[171] be aggregated with holdings of financial instruments giving unconditional access to voting rights[172] for the purposes of calculating the relevant thresholds that trigger the notification obligation?

Almost all respondents to this question were in favour of aggregating holdings of shares and voting rights with holdings of financial instruments described in Article 13 of the Directive for the purposes of triggering the notification obligation. It was argued however that there was a need to coordinate with takeover bids rules and that a transitional period would be needed. Several respondents considered necessary that the notification identify the different categories of holdings. Several replies also supported a notification system similar to the one described in CESR reply (see also replies to question 12.1).

Two respondents expressed no preference but requested an EU harmonised system. The need for harmonisation was also expressed by several respondents. For further details, see also question 19.

Question 18 – Other cases of insufficient transparency regarding corporate ownership. Are there other cases of potentially insufficient transparency regarding corporate ownership?

[171] Articles 9 and 10 TD.

[172] Article 13 TD.

Several respondents supported a system for identification of shareholders by issuers through the central securities depositories (CSDs), similar to those in place in France or in the UK. They believed however that shareholder identification data via CSDs on a cross-border basis faced many obstacles and that there was no information available on beneficial owner behind the nominees. Some respondents made reference to the current work within Target 2 Securities, which was considered to be an appropriate vehicle for identification of shareholders. In their view, without a harmonized EU-wide set of rules with respect to the disclosure by nominees of their participants (and ultimately the beneficial owner) there would be no common technical solution across the EU. Some of the respondents challenged the assessment made in Annex 11 of the Commission staff working document that accompanied the Commission report.

However, there was a dissenting view which specifically requested not to enact a system for the identification of shareholders.

Respondents also identified other issues that would need to be addressed: gaps regarding disclosure of stock lending and repurchase contracts as well as the rules on acting in concert. One reply suggested that the Transparency Directive needed to be adapted to capture and anticipate future innovation in financial markets so that transparency was maintained.

CESR suggested the need to revisit Article 12(1) of the Directive since Member States were already requiring more information than was listed in that Article. One respondent explained that XBRL taxonomy could easily be developed to cover major holdings disclosures.

Only few respondents considered that there were no cases of potentially insufficient transparency regarding corporate ownership.

III. Ineffective application of the Directive because of diverging national measures and/or unclear obligations in the Directive (questions 19 to 23)

Question 19 – Uniform EU Regime or maximum harmonisation: major holdings of voting rights. 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?

A small majority of respondents to this question supported an EU Regulation for the notification of major holdings of voting rights. In their view, a uniform regime would: avoid national differences; reduce administrative expenses linked to IT infrastructure and monitoring systems for equity positions of issuers based in different Member States; reduce uncertainty; enhance transparency; simplify cross-border investments; and increase attractiveness of EU capital markets. Such a regulation would be an important step towards the EU single rule book.

Two respondents supported a uniform "process" for the submission of major holdings notifications: it should be electronic, use a standard form and be submitted to one central EU authority, from which issuers/markets would then receive the information for the purposes of dissemination.

For some respondents, the uniform notification regime should encompass: scope, exemptions, definitions, calculation methods (including aggregation), disclosure content, implementation methods, time-limits and sanctions.

The question of the thresholds was however secondary for more than one respondent. Some replies suggested leaving a degree of flexibility to the Member State in setting thresholds in order to take account of the specificities of national regulated markets, national company laws or companies' articles of association.

Some however, expressed concerns about a possible levelling down of notification requirements to the lowest common denominator in a Regulation. One respondent advocated working towards a common regime that would reflect the best aspects of the most developed ones. Others directly supported the UK system.

A number of respondents were not in favour of a Regulation for notification of major holdings, although almost of all them recognised the need for further harmonisation in the Transparency Directive. As explained in replies to questions 12 and 17, there was some support for a harmonised regime based on CESR's proposal. However, several respondents believed that full harmonisation was not feasible nor appropriate. In their view, thresholds could not be harmonised, because of the different national company law regimes. Minimum harmonisation allows national regulators to tailor disclosure requirements to national circumstances and individual countries should not be prevented from establishing an environment for transparency that goes beyond the regime of other Member States. Also, Member States should be free to react to market innovations in due time, to improve and adjust models to their own market, as there are big differences within the EU as regards the size of capital markets, market capitalisation of listed companies and level of fragmentation of ownership.

A contribution from an academic respondent developed the question of maximum vs. minimum harmonisation. This respondent was not in favour of a uniform regime. First, imposing a uniform rule assumed that there was a single disclosure threshold which would be efficient for all securities markets across the EU. This may be so, but it was not obvious. Second, assuming there was a single efficient disclosure rule across the EU, the EU legislative process had to be able to identify it. Again, this was not obvious. Finally, a uniform rule removed from Member States the freedom to innovate, experiment and react quickly to evolving circumstances. For understandable and unavoidable reasons the EU legislative process is slower than national legislative mechanisms. Thus, there was a risk that, even if the EU could identify a uniform efficient rule, it would not be able to keep that rule up to date as circumstances changed. Consequently, the efficiency of EU legislation in this area would depend on the retention by Member States of the freedom to set more stringent rules where this was appropriate.

Another respondent believed that new legislation would create new areas of uncertainty or would be unable to deal with the new situations that might arise in EU capital markets. This respondent suggested that identifying the issues and providing guidance (e.g. through CESR) would be preferable.

Finally, some respondents generally supported more harmonisation but were not fully clear as to whether they are in favour of a uniform regime or not.

Question 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[173]?

A small majority of respondents to this question considered that, if a fully uniform EU regime were not enacted, Member States should not be prevented from adopting more stringent requirements than those of the Transparency Directive regarding the notification of major holdings of voting rights. Several respondents would like to maintain the transparency levels - in particular lower thresholds or stricter time-limits for disclosure,- in their countries[174] and feared a possible reduction of transparency that a harmonised regime may entail.

Several UK and Irish respondents were in favour of maintaining the UK regime regarding identification of shareholders and Irish and UK regimes on takeovers. Concerning takeovers, some respondents explained that if the Transparency Directive were to become a maximum harmonisation directive, it should recognise the distinction between that regime and the takeover bids regime and that it should specifically state that the maximum harmonisation measures were without prejudice to the Takeover Bids Directive and to the power of supervisory authorities in Member States to regulate takeovers under national law. Otherwise, there would be a risk of legal uncertainty. In addition, the Takeover Bids Directive was a minimum harmonisation directive recognising the need for flexibility in supervising takeovers.

An important minority, however, supported maximum harmonisation within the Transparency Directive, thus preventing Member States from imposing more stringent requirements. One respondent claimed that issuers should be prevented from requiring more onerous disclosures via their constitutional documents. Another respondent requested that a database be created containing additional requirements that issuers add in their articles of associations: currently, this information was difficult to find out. Another respondent also requested that stock exchanges be prevented from adopting more stringent requirements.

Some made clear, however, that in their view any maximum harmonisation in the Transparency Directive should not affect the takeover bids regime.

Question 21 – Uniform EU Regime or maximum harmonisation: disclosure by issuers. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) regarding issuers' disclosures[175]?

The opinions on this question were split. A large number of respondents were not in favour of setting up a uniform regime regarding issuers' disclosures. They did not see any problem with current requirements nor a need for further harmonisation. Moreover, they felt that Member States should be allowed to set more stringent requirements when they had identified gaps in companies' disclosures or in their level of transparency.

---

[173] For instance, if the Transparency Directive was to reduce its initial disclosure threshold from 5% to 3%, should the Member States that have set a 2% threshold be required to raise it to 3%?

[174] In particular in the UK, but also in Norway, France or Germany.

[175] Articles 4 to 8 TD.

A significant number of respondents were, however, in favour of a uniform regime on this issue. In their view, a uniform regime, with normalization/standardisation of types of regulated information, would reduce costs for issuers, ensure that investors had a clear understanding of the information that issuers were expected to provide and facilitate a level playing field across EU financial markets. For one respondent, the harmonization of the information available to investors in the market was a key point in the investment process: in order to avoid any potential misunderstanding stemming from different formats or channels used by issuers to disclose relevant information, it would be useful to fix, at European level, a disclosure process directly applicable in all Member States without any options/discretions in its implementation.

Another group of respondents favoured a uniform regime regarding country-by-country disclosure of annual accounts and/or specific disclosure requirements for companies active in the extractive industry regarding the publication of payments to governments.

Question 22 – Divergent rules: calculation of holdings. 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?

Respondents mentioned different examples of divergent rules for calculation of holdings and underlined that these divergences implied difficulties and costs for companies with cross-border activities.

The issues mentioned concerned for example stock lending, aggregation requirements, exemptions and differences in the legal entity level to which disclosure duties applied. More detailed presentation of the issues is included in Annex 2.

Question 23 – Unclear rules. Could you provide evidence of cases where unclear rules in the Directive ought to be clarified[176]?

Respondents called for clarifications regarding most of the issues identified in the previous question. In addition, respondents identified other potential areas where clarification of the Transparency Directive would be helpful, for example concerning the definition of "acting in concert". Moreover, respondents underlined the need to ensure consistency between the Transparency Directive and other EU directives such as the Shareholders Rights Directive[177], the Market Abuse Directive or the Prospectus Directive. Most areas where clarification was welcomed by the respondents are described in detail in Annex 2.

IV. Other comments (question 24)

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

Financial reporting and Corporate Governance

[176] See section 2.8 and Annex 6 to the Staff Working Document.

[177] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, *OJ L 184, 14.7.2007, p. 17–24*

A group of respondents requested that the Transparency Directive require the disclosure of annual accounts on a country-by-country basis and/or of payments made to governments by companies active in the extractive industry. They explained that recital 14 of the Directive had not been implemented. These respondents identified the data to be disclosed and how this should be done (audited, comparable, interactive data). They referred to recent US and Hong Kong legislation, to IASB work and to European Parliament calls. Some described the possible benefits to investors from these disclosures.

One respondent suggested a comprehensive business reporting framework that would enable corporate management to express their company's own way of using intellectual assets and other non-financial elements for the purpose of creating value, and by pointing out also how the past and future financial performances connected to non-financial elements. Economic and social governance (ESG) was just a part of critical company non-financial information. The latter would also cover information on technological competences, organizational capabilities, human assets, business networks, risks etc. Non-financial information should focus on "sustainability" and "value creation capacity".

Some respondents mentioned the need to establish a shareholder identification system (see also replies to questions 15 and 18), although not necessarily in the Transparency Directive.

Other respondents mentioned that corporate governance disclosures should not be incorporated in the Transparency Directive or harmonized. This was a matter for company law. The same was true regarding the transparency provisions in the Takeover Bids Directive.

Some respondents also mentioned that the Transparency Directive should not be the vehicle for ESG disclosure and that non-financial disclosures should not be harmonized.

Dissemination and storage of regulated information

Some respondents explained that they were not in favour of an EU OAM. It would be preferable to inter-connect national storage systems. Recital 8 of the Directive should be preserved in order to maintain an appropriate level of transparency in listed companies but also to ensure that all investors, whether individual or professional have an equal access to information without discrimination.

Some respondents supported the use of XBRL for disclosures, in order to increase visibility and comparability and thereby encourage cross-border investment but also as a tool to deal with the language problem. Other respondents however opposed this proposal.

One respondent claimed that there were problems in the way the dissemination rules were applied in some countries. For instance, regarding Article 12(7) in Sweden, the regulator had appointed a service provider which owned the information. For this respondent, this would not be in conformity with Article 21. This respondent also complained about the entrustment of stock exchanges with the OAM function (Finland, Norway), which allowed them to present themselves as "entrusted by the government" to handle regulated information in competition with service providers. In other cases, regulators (Spain, Portugal) disseminated the information themselves, but did not offer any integration path for service providers. This had the negative effect of blocking

competitors from entering the local market for distribution of regulatory information and would be in contradiction with recital 25 of the Transparency Directive and recital 16 of the implementing Directive[178]. This respondent requested that action should be taken to restore competition and avoid that OAMs abused their position.

One respondent explained that issuers either wished either to disseminate regulated information themselves (e.g. through their own websites) or to continue to use the services of data disseminators, if the provisions of the Transparency Directive remained unchanged. Issuers did not necessarily believe that regulators should play an active role in disseminating regulated information disclosed by issuers.

CESR also raised a number of issues that need to be addressed (see Annex 2)

[178] 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

ANNEX 1 – LIST OF RESPONDENTS

Action Solidarité Tiers Monde
ABI
ACCA
AFEP
AFG
AFME
AMAFI
AMF
Association of Foreign Banks in Germany
Association of Investment Companies
Assosim
BBA
BDI
BNP Paribas
Bond
Business Wire Brussels
BVI
Central Chamber of Commerce of Finland
CESR
Christian Aid
CMVM
Concord Europe
Confederation of Finnish Industries EK
Confederation of Netherlands Industry and Employes (VNO-NCW)
Credit Agricole
Czech Republic Ministry of Finance
Danish Institute of State Authorized Public Accountants (FSR)
Danish Insurance Association (DIA)
Danish Shareholders Association (Dansk Aktionærforening)
Danish Shipowners Association
Dansk AMP
Denmark Ministry of Economic and Business Affairs
Deutsche Aktieninstitut (DAI)
Deutsche Bank
Deutsche Börse Group
Dutch Ministry of Finance
EAPB
EBF
ECODA
EFAMA
Emisores Españoles
ENPA
Equinity
ESBG
Eumedion
Euroclear
Eurodad
EuropeanIssuers
Eurosif
FAR (Swedish Institute for the Accountancy Profession)

FEE
Financial and Capital Market Commission of Latvia
Finland Ministry of Finance
France Treasury
GC100 Group
German Insurance Association (GDV)
German Investor Relations Association (DIRK)
Germany Ministry of Finance
GlaxoSmithKline
Global Witness
Governance for Owners
Grant Thornton
Hermes Equity Ownership Services
Hungary Ministry for National Economy
ICAEW
ICGN
ICJCE (Instituto de Censores Jurados de Cuentas de España)
ICMA
ICSA
IMA
Inspiraction
Institute of Directors
International Securities Lending Association
Investors Relations Society
Irish Stock Exchange
Irish Takeover Panel
Law Society of England and Wales
London Stock Exchange Group
Matheson Ormsby Prentice
Maurice Macartney (Beyond Skin Global)
MEDEF
Middlenext
Nasdaq OMX
NBIM (Norges Bank Invesment Management)
Nordic Securities Association
Norway Ministry of Finance
NYSE Euronext
OEKB
Olvi Oyi
ONE
Oxfam International
Professor P. Davies
Publish what you pay
PWC
QCA
Revenue Watch
SIFA (Swedish Investment Fund Association)
Smith & Nephew
Société Générale
Sweden Financial Supervisory Authority
Swedish Bankers' Association
Tax Research / Tax Justice Network
The Hundred Group of Finance Directors
Thomson Reuters

UK HM Treasury & FSA
UK Takeover Panel
WICI
WKO - Austrian Chamber of Auditors
XBRL Europe
ZKA

An additional respondent requested confidential treatment.

ANNEX 2 – DETAILED DESCRIPTION OF ISSUES THAT NEED CLARIFICATION/AMENDMENT ACCORDING TO REPLIES TO QUESTIONS 22, 23 AND 24.

Divergent rules in the Member States concerning calculation of holdings (Question 22)

- Different thresholds trigger disclosure in the Member States: for example thresholds are fixed at 2%, 3% and 5% in different Member States.

- Differences in disclosure reporting deadlines.

- Differences in determining the denominator (total shares/voting rights): the denominator varies in the different national implementations. For example, the denominator consists of the total number voting rights in Germany; total share capital and total number of voting rights in France; total number of voting rights (including treasury shares) and voting rights per class in Greece; total number of voting rights (excluding treasury shares) and voting rights per class in the UK. In Finland, both the percentage of shareholdings as well as voting rights is required to be notified under article 9.

- Differences in determining the notified holdings (numerator) (see also the replies to Q23 below):

  – Financial instruments are considered differently in Member States. Some Member States require aggregation of shares with physically settled derivative instruments; others do not; some require reporting of these products by bucket; others do not. For derivatives, whether they are physically or cash-settled, there are two methods to take them into account: on a nominal or delta-adjusted basis;

  – Differences in the legal entity level to which disclosure duty applies: depending on the Member State, thresholds might need to be monitored and disclosed at group and/or entity level;

  – Differences in intra-group aggregation;

  – Different treatment of stock lending in Member States as explained in Annex 10 to the Commission Staff Working Document;

  – Question the netting between long and short positions;

  – Implementations differ in Member States concerning the treatment of holdings of asset managers;

  – Different definition of market making and of the method of claiming the exemption. There is inconsistent interpretation of definitions across Member States.

- The events triggering a crossing of thresholds may differ from Member State to Member State – for example due to property law differences.

Rules under the Transparency Directive identified by the respondents that require further clarification (Question 23):

- Home Member State rule

  – There is a possible contradiction between the Home Member State rule and the wording of Article 8(2) of Directive 2001/34/EC as it provides for additional obligations and disclosures potentially required by Host Member State. Moreover, CESR notes inconsistencies between Articles 19(1) and 21(3): Article 19(1) requires issuers to file information with the competent authority of the home Member State. Article 21(3) on the other hand requires issuers to disclose information in accordance with host Member State rules if the issuer's securities are admitted to trading only in one host Member State and not in the home Member State.

  – Transparency Directive is unclear with regard to which country is the home Member State for issuers who have to choose their home Member State according to article 2, paragraph 1, sub (i), (ii), but who have not done so. In this respect, CESR suggests to amend the Transparency Directive to include an assumption of Home Member State for these issuers.

  – In addition, some flexibility could be added to the home Member State rule for third country issuers of shares and debt securities with denomination per unit of less than EUR 1.000 for situations where an issuer delists from a regulated market in one Member State and later applies for admission to trading on a regulated market in another Member State.

  – CESR also suggests that the home Member State rule should be clarified as follows: it should be stated that the three year period for the validity of issuer's choice of the home Member State no longer applies if shares or debt securities with denomination of less than EUR 1.000 of the same issuer are admitted to trading on a regulated market.

  – There should be a list established by CESR and available online of non-EEA issuers who have chosen a home Member State.

  – Further clarification would be helpful regarding issuers who are incorporated in one EEA state and have securities admitted to trading only in another EEA state. Currently they would be required to comply with the requirements of their country of incorporation and announce regulated information in that country rather than in the country where, arguably, their investors are likely to reside.

  – A revision of the Transparency Directive should ensure that the reporting of all listed companies are subject to enforcement in a Member State. It is important that the Transparency Directive in this matter in the future does not provide for any possibility to implement the rules in such a way that a listed company can operate without being under supervision of any Member State.

- Accounting rules

  – Applicability of Article 4(3) to third country issuers: Article 4(3) states that where issuers are 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. Clarification is required for cases where the issuer is incorporated in a third country but is listed on a regulated market in the EU.

- New loans

  – The application of article 16, paragraph 3 of the Transparency Directive leads to the question of which additional information is required by the issuer of securities admitted to trading on a regulated market when issuing a new loan. In this respect, CESR proposes to abolish the requirement to disclose all new loan issues. This requirement overlaps partially with the Prospectus Directive and Article 6 of the Market Abuse Directive. Reference to new loans is also unclear, as new loans are not defined in the Transparency Directive. For example, it is unclear whether issues of commercial papers or loans not admitted to trading on a regulated market should be disclosed. Some respondents considered that Article 16.3 should be deleted: the implementation of article 16.3 is unclear and complex notably due to the absence of any materiality clause.

- Need for standard forms to disclose holdings

  – Harmonized disclosure forms and wording would be useful in order to avoid, for example, diverging approaches with respect to the disclosure of percentage of voting rights and/or share capital.

  – Some respondents would favour a common electronic form for notifications in the EU.

- Aggregation methods

  – Clarity is needed on aggregation, specifically for asset managers (of the assets held on behalf of their clients by third party custodians, but controlled by the asset manager) and for groups of companies.

  – Rules on aggregation of shares with derivatives should be clarified. The delta adjusted method for aggregation seems to be preferred as it is representative of the number of shares the person writing the instrument would need to hold in order to perfectly hedge its exposure.

  – It would be necessary to have a clarified and harmonized regime on how baskets of shares and indexes are taken into account.

  – Basket and index instruments, if included in the reporting of major holdings, should only have to be reported if the relevant share has at least a weighting of 1/3 in the basket or index (see also legislation in Switzerland and Hong Kong).

  – The treatment of stock loans and repurchase transactions would need to be clarified.

  – Treatment of re-hypothecation of securities by agents, custodians and lenders as well as treatment of hedging by a market-maker need to be addressed.

- Groups of companies

  – The definition of "controlled undertakings" in Article 10 (e) of the Transparency Directive should be clarified. Currently, Member States apply different control thresholds which may lead to different definitions of groups of companies, and thereby to different aggregation perimeters.

  – CESR guidance regarding corporate group disclosures would be desirable as there is divergence across Member States as to whether (i) it is mandatory for a parent company to make an aggregated disclosure of both its own shareholdings and those of its controlled undertakings, and (ii) if the parent does so, that the controlled undertakings are exempt from making their own individual applicable disclosures. The divergence of approaches may be due, in part, to Article 12(3) of the Transparency Directive appearing to state that parent aggregation is permissive as opposed to mandatory.

  – CESR guidance regarding the approach on netting of holdings of voting rights would be desirable, as the Transparency Directive is silent on this issue, e.g. netting intra-group and at the parent level (where the parent is making a group disclosure).

- Acting in concert

  – There should be a common definition of acting in concert i.e.: for investors to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer. One respondent considered that the question of "acting in concert" which also has an impact on the determination of the company's control and therefore varies across the European jurisdictions, should only be discussed at the European level in the context of a wider European consultation (for instance on the occasion of the review of the implementation of the Takeover Bids Directive). Another respondent considered that it may be useful to clarify the principle of 'lasting common policy' referred to in Article 10(a) of the Transparency Directive. However, this respondent was opposed to the creation of any terminology that relates to the definition of 'acting in concert' currently contained within the Takeovers Bids Directive, or employs the terminology of 'acting in concert'. CESR has discussed in this respect whether the concept of shareholders agreeing to adopt a lasting common policy towards the management of an issuer (Article 10(a)) should be clarified in relation to major shareholding notification obligations. The purpose of this would be to provide clarity as to when the voting rights of shareholders would need to be aggregated as an indirect holding. CESR considers that legal certainty for investors could be improved through amending the text at Level 1 and ensuring consistent application of major shareholding notification obligations at Level 3. However, any clarification to the Transparency Directive should not lead to loopholes being created nor interfere with the takeover rules.

  – There is a need to clarify whether in a situation where the voting rights held by a third party with whom a person or legal entity acts in concert are attributed to that person or entity for the purpose of notification requirements according to Art. 10 (a), the person or legal entity has also an individual notification obligation (regarding its "own" voting rights), and whether the notification

obligation is triggered as well by transfers of voting rights within the group of persons acting in concert.

- Stock lending

  – There is a need for a harmonized regime concerning stock lending. Some respondents suggested that the lender should not be required to report, as they have replaced the holding of the share with the holding of a right to recall the share. As they have the right to recall, and will at some stage do so, any disclosure on their behalf to the market would swamp the market and be potentially misleading. Another respondent was in favour of transparency for both the lender and the borrower (subject to an exemption for very short-term transactions) as this would be the clearest way to ensure that no shares are double counted. A simple system could be possible if the same rule were to apply to all stock lending transactions, irrespective of contractual terms. This would eliminate diverging interpretations in different jurisdictions and according to deferring contractual arrangements which is otherwise problematic. CESR also suggested in this respect further harmonisation of major shareholding notifications relating to securities lending (e.g. right to recall lent securities) and repurchase agreements.

- Exceptions to the notification of major holdings

  – A broad and consistent "market maker" definition would be welcome (Article 2).

  – Some clarifications would be welcome concerning the scope of the exceptions for shares acquired for the purpose of clearing and settling and by custodians (Article 9(4)). For example, one CESR member stated that in its Member State it had been discussed whether the exemption also applied to positions acquired for a short period through underwriting.

  – Regarding the exception foreseen by Article 12(4), a clarification would be welcome concerning the scope of this exception and the question as to whether the exception applies to funds that do not fall within the scope of application of the UCITS-Directive (85/611/EC). Some respondents (including CESR) suggested that the UCITS exemption contained in Article 12(4) should extend to non UCITS management firms. Moreover, CESR suggested that it should be made clear that in case the second subparagraph of Article 12(4) is applied, all holdings managed by the management company should be attributed to the holdings of the parent company (and not only the holdings of the fund where the parent company has invested in).

  – Clarification to the trading book exemption would be needed (Article 9(6)): It should be clarified, inter alia, whether the 5 % threshold is calculated at group level or the level of an individual company. Moreover, it should be clarified how the different categories of holdings are aggregated when calculating the threshold. CESR proposed the threshold to be calculated at group level where disaggregation exemptions set out in Articles 12(4) and 12(5) do not apply and that holdings of all instruments (Article 9, 10 and 13) are aggregated. Moreover, further clarification to subparagraph (b) should also be considered. The wording of the subparagraph should be more definite in order to more clearly prohibit credit institutions and investment firms applying the exemption from exercising

voting rights held in their trading book and from using their shareholder positions to intervene in any way in the management of the issuer.

- It should be analysed whether the scope of the trading book (Article 9(6)) exemption could include life insurance companies on an even footing. The analysis should target equivalent regulation of such insurance companies vis-a-vis credit institutions and investment firms.

- In Article 8 (1) (b) concerning exemptions: an interpretation of the word "exclusively" is needed.

- Modification of Article 8(1) would be welcome to ensure that issuers guaranteed by a State/province/municipality of OECD countries are exempted from presenting annual accounts. These issuers benefit already from a simplified prospectus regime. Regarding 8(1)(b), the alignment between the Prospectus Directive (as amended) and the Transparency Directive is also required.

- Notification duty

  - A harmonized approach is needed to align duties. For example: disclosure to whom? (which regulator); by which deadline (T+3) and by which methods (including form and language).

  - There is a need to clarify whether a notification duty is triggered by a trade as such (most jurisdictions) or only by the settlement of the trade (Germany). Having different events (i.e. trade or settlement) triggering the notification requires investors to maintain two separate monitoring systems, one supplying trade dates and the other supplying settlement dates.

  - Thresholds triggered by corporate actions: It is often difficult for investors to monitor notification obligations that are triggered by corporate actions (e.g. capital increases). A central database indicating the relevant total number of voting rights and on which the investors can rely when determining their notification obligation would be helpful. Any such database should be in a format that allows the import of data by investors.

  - It would be useful to clarify the question whether the underlying holders need be disclosed by portfolio managers.

- Clarification of definitions

  - It would be useful to clarify the concept of "make public" in articles 4, 5 and 6.

  - It should be made explicit that the annual reports to be disclosed within the four month deadline cannot be those approved by the general meeting.

  - Applicability of Transparency Directive to depository receipts when the underlying shares are not admitted to trading on a regulated market: the applicability of different rules (especially Articles 9–13 and 16–18) to depository receipts and holders of depository receipts or holders of underlying shares should be clarified.

- It should be clarified that the requirement of Article 12(3) of the implementing Directive (Directive 2007/14/EC) providing for regulated information to be communicated to the media in "unedited full text", permits this information to be produced in PDF.

- Terms used in Article 9 (2), "as a result of events changing the breakdown of voting rights", should be clarified. For example, it could be clarified, as the FSA has done in the UK (see DTR5.1.2R(2)), that where there is a notifiable switch (e.g. 1% for UK issuers) from a soft shareholding to an absolute shareholding by the exercise of entitlements to acquire shares, without affecting the overall percentage of the holding, a new disclosure would be required. It could also be clarified that this particular provision does not necessitate a disclosure where a person has disclosed its holding of voting rights, but then it subsequently changes the capacity in which it holds them. For example, where a person has disclosed its indirect holding of shares as a beneficiary (and these shares are held by a non-discretionary nominee), the person would not be required to disclose a change if it then takes those shares out of the nominee account and holds the shares directly itself.

- In Article 18(2), there is a need to clarify the interpretation of the "financial institution".

- Other issues

  - The Transparency Directive requires companies listed on regulated markets to make public their audited financial statements within 4 months of financial year end. However, if there was a disruption in the supply of audit services, for instance, along the lines of Andersen Accounting, some listed companies could be unable to contract an auditor in time to lodge audited accounts within this timeframe. Therefore, the Commission should consider whether a clause might be added to the directive to allow companies additional time to publish the audited accounts should there be a major disruption to the audit market.

  - It would be useful to clarify the relationship between Article 8 of the Prospectus Directive, which gives the competent authority the ability to authorise the omission of certain information from a prospectus, and the Transparency Directive provisions under Articles 4 and 5.

  - Solutions should be provided regarding the way dividend information is given by issuers to the market. ESMA should require issuers to follow some basic rules regarding disclosure of dividend information. This reply identifies such rules.

  - Some respondents favoured lowering the initial threshold for disclosure of major holdings at 3%. But one respondent was explicitly not in favour of lowering such initial disclosure threshold to 3%. If this were done, there should be an exemption for regulated investment managers that do not invest for control.

  - One respondent explained that if the current system of more stringent and additional rules prevailed, it would be essential to give at least a facilitated access to centralized (and regularly updated) information to any shareholder on the mechanisms existing in the 27 Member States in order to facilitate the life of the investors. Currently, it is really a burden for shareholders investing all over

Europe to find in each Member State, in addition to the total number of the issuer voting rights, the threshold to declare, the way of notifying it, the deadline for notification, the addressee and the consequences of a lack of notification. The complexity and the difficulty to find information on the above matters can be considered as an obstacle to invest in Europe while it seems important to preserve the attractiveness of the Single Market. Furthermore, some countries, like France, allow companies to insert in their articles of incorporation specific thresholds which the investors will have to find out also.

- Article 17 of the Transparency Directive should be reviewed in the light of Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies.

- Article 19(1) (2nd paragraph) should be deleted: this article requires an issuer to communicate any amendment of its instrument of incorporation or statutes to the competent authority. This requirement may result in some confusion about the role of the competent authority. CESR proposes to abolish this requirement in order to reduce administrative burden for issuers. The Shareholders' Rights Directive already requires issuers having shares admitted to trading on a regulated market to make the proposal and the invitation to general meeting of shareholders publicly available. Moreover, although the Shareholders' Rights Directive does not apply to issuers having only other securities than shares admitted to trading on a regulated market, the Market Abuse Directive requires also these issuers to disclose information relating to the issuer which is likely to have a significant effect on the price of the securities admitted to trading.

- There is a need to harmonise the rules regarding "equivalence" for third country issuers in the Transparency Directive (Article 23) and the corresponding rules in the Commission Directive 2007/14.

- Reference is made to the replies made to CESR consultation in 2007.

- In addition to the issues mentioned by the various respondents (including CESR), CESR raised the following specific issues:

  - Definition of regulated information: CESR notes that currently some information required to be disclosed by listed companies, especially in relation to corporate governance and shareholders' meetings, is classified as regulated information in some Member States whereas it is not regulated information in others. In order to achieve further harmonisation it should be considered whether there disclosures should be classified as regulated information throughout the EU.

  - Definition of an issuer: It seems that in some Member States there are issuers other than legal persons with securities admitted to trading on regulated markets. The definition of an issuer should therefore be aligned with the situation.

  - Communication of choice of home Member State: It should be considered whether Article 2 of the implementing Directive would need to be amended so that EU issuers would also be required to communicate the choice of home Member State to the competent authority of the Member State where the issuer has its registered office (if different).

– Possibility for binding standards on supervision of financial information: Article 24(4)(h) lays out the general power of competent authorities to examine whether information referred to in the Transparency Directive is drawn up in accordance with the relevant reporting framework and to take appropriate measures in case of discovered infringements. The rule is the foundation for supervision of application of IFRS standards in financial statements. CESR has issued two standards relating to supervision of financial information. In order to ensure consistent supervision of financial information throughout the EU it should be considered whether the proposed European Securities Markets Authority could propose binding technical standards on this issue.

– Relationship between the Transparency Directive and the Market Abuse Directive: There seem to be some inconsistencies between these two Directives (and their implementing measures) especially in terms of disclosure mechanisms. CESR therefore considers that these inconsistencies should be further analysed and abolished in connection with the review of the Directives.

ANNEX 11

REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: 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. (27.05.2010. COM (2010)243FINAL)

REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

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

1. INTRODUCTION

1. This report reviews the operation of Directive 2004/109/EC179 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (hereinafter the "Transparency Directive"), in accordance with Article 33 of that Directive.

2. The Transparency Directive requires issuers of securities in regulated markets within the EU to ensure appropriate transparency for investors through the disclosure of regulated information and its dissemination to the public throughout the EU. Such information consists of financial reports, information on major holdings of voting rights and information disclosed pursuant to Article 6 of the Directive 2003/6/EC on insider dealing and market manipulation (market abuse)[180].

3. The objectives pursued by the Transparency Directive are important to financial markets and recognised by international standard setting bodies, such as IOSCO or the OECD. The current financial crisis demonstrates that the disclosure of accurate, comprehensive and timely information about securities issuers is essential in order to allow an informed assessment of their business performance and assets and consequently to build sustained investor confidence in capital markets.

4. This report describes the impact of the Transparency Directive and how it has been complied with (section 2); identifies the main issues emerging from the application of the Transparency Directive (section 3) and draws a number of conclusions (section 4). This report is completed by a Commission staff working paper which provides further detail on the issues described as well as on how information has been collected.

---

[179] 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, OJ L 390 of 31.12.2004, p.38. See: www.ec.europa.eu/internal_market/securities/transparency/index_en.htm

[180] OJ L 96, 12.4.2003, p.16.

2. IMPACT OF AND COMPLIANCE WITH THE TRANSPARENCY DIRECTIVE

5. The External Study on the application of the Transparency Directive conducted on behalf of the Commission[181] (hereinafter "the External Study") reflects that a strong majority of the stakeholders who participated in the survey consider the Transparency Directive to be useful for the proper and efficient functioning of the market. Stakeholders generally consider that regulated information disclosed by issuers reaches investors, except perhaps for the case of information disclosed by smaller listed companies.

6. In terms of economic impacts of the Transparency Directive on financial markets, research conducted so far is not conclusive. It seems rather that the Transparency Directive is neutral: while perceived as a simplifying factor for primary market issuance, there is a lack of empirical evidence to back up this perception.

7. A review of issuers' practices shows that issuers generally comply with financial reporting obligations and that this is also the perception of stakeholders. Financial information disclosed is considered useful and sufficient for investment purposes. Also, the simplification of language requirements for disclosure of financial information introduced in 2004 has been particularly welcome.

8. The cost of compliance with the obligations of the Transparency Directive[182] does not appear, *prima facie*, particularly high[183]. This is also the perception of issuers, although small and medium sized listed companies are more concerned about the cost of compliance. The introduction of the "Home Member State rule"[184] as well as the simplification of the language regime for financial disclosures in 2004 should, in principle, have contributed to reducing issuers' costs. However, there are increased costs for cross-border investors resulting from the insufficiently harmonised requirements of the Transparency Directive.

---

[181] Mazars (December 2009), *Study on the application of selected obligations 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*. Available at: http://ec.europa.eu/internal_market/company/ecgforum/index_en.htm

[182] It should be noted that the bulk of the requirements on the content (e.g. accounting standards) of annual and half-yearly financial reports are not contained in the Transparency Directive.

[183] See Europe Economics (2008), *Study on the cost of compliance with selected FSAP measures*. Available at: www.ec.europa.eu/internal_market/finances/actionplan/index_en.htm

[184] According to the "Home Member State Rule" (cf. Article 3(1)), issuers are only subject to the obligations set out by their Home Member State (normally the one of incorporation) but not to those of the Host Member State. This "Home Member State Rule" should avoid the dual (or multiple) application of rules to issuers.

3. THE REVIEW OF THE OPERATION OF THE DIRECTIVE: EMERGING ISSUES

9. A number of issues emerge from the review of the operation of the Transparency Directive (see the Commission staff working document accompanying this report for further detail).

10. First and foremost, the debate is raised as to whether the transparency rules should be specifically adapted to smaller listed companies with a view to maintaining and also increasing the attractiveness of regulated markets for this category of issuers[185]. While the scope for simplification of the Transparency Directive rules for smaller listed companies, and therefore achieving savings, is limited, there are specific simplification measures which could be envisaged, without undermining investor protection, such as for instance: (i) providing for more flexible deadlines to the disclosure of financial reports; (ii) alleviating the obligation to publish quarterly financial information; (iii) harmonising the maximum content of reports; or (iv) facilitating cross border visibility of smaller listed companies towards potential investors and/or information intermediaries such as financial analysts[186], therefore increasing their attractiveness.

11. Secondly, although the requirement to produce quarterly financial information introduced in 2004 by the Transparency Directive could contribute to a certain short-term vision of the issuers' performance by investors[187], it is generally well perceived by market participants. Also, alleviating the obligation to disclose quarterly information would most likely only benefit smaller listed companies, since the large companies would presumably continue to publish quarterly information. On the contrary, there is market demand for more detailed rules regarding the content of interim management statements so as to facilitate issuers' compliance and to allow for predictability of the information to be disclosed.

---

[185] It should be underlined that there are alternative markets to the 'regulated markets' (within the meaning of the Transparency Directive) where issuers may have their securities traded. Those alternative markets qualify as multilateral trading facilities (MTFs) within the sense of Directive 2004/39/EC. The Transparency Directive rules do not apply to those alternative markets and according to the External Study, there is no stakeholder support for extending the application of this directive to those non-regulated markets. The Commission does not intend at this stage to propose extending the scope of the Transparency Directive to MTFs. A more detailed explanation is proposed in the Commission staff working document attached to the present report.

[186] See for instance, F. Demarigny, *An EU-Listing Small Business Act*, March 2010, available at: www.eurocapitalmarkets.org. According to this report, "*on average, 93% of trading volumes on regulated markets are concentrated on 7% of the total number of companies listed in the EU*".

[187] Such short-term effect is at odds with recent Commission initiatives encouraging financial institutions and issuers to establish incentives for a longer-term vision. The European Commission has, for instance, recommended that remuneration of directors in issuers and financial institutions takes into account the long term behaviour of companies: see European Commission Recommendation 2009/384/EC of 30.4.2009 *on remuneration policies in the financial services sector* (OJ L 120, 15.5.2009, p. 22) and Commission Recommendation 2009/385/EC of 30.4.2009 *complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies* (OJ L 120, 15.5.2009, p. 28).

12. Thirdly, the minimum harmonisation character of the Transparency Directive allows Member States to adopt more stringent requirements[188]. Thus the transposition of the Transparency Directive is relatively uneven as a result of different national regimes. More stringent national requirements, in particular regarding the notification of major holdings of voting rights, are perceived as problematic by stakeholders. This results in real and costly implementation problems. This raises the question as to whether the current regime (i.e. minimum harmonisation) is appropriate to achieve an effective level of harmonisation of transparency requirements in the EU.

13. Fourthly, it appears that the Transparency Directive's obligations need to be adapted to innovation in financial markets and increased transparency requirements should be introduced with regard to certain types of instruments. In particular, insufficient disclosure of stock lending practices seem to have increased the risk of "empty voting" and lack of disclosure regarding cash-settled derivatives has led to increased problem of "hidden ownership". Concerning the disclosure of information for corporate governance purposes, associations representing issuers in the EU are favourable to the introduction of mechanisms allowing issuers to identify the ultimate investor so as to be able to engage into real shareholders-issuers dialogue. Additionally, even when shareholders with major holdings of voting rights are well known, calls are being made to enhance the disclosure requirements for significant holdings. In some Member States, large investors are already requested to disclose their intentions as regards their holdings and how they financed their acquisition. The question of whether large (in particular institutional) investors should disclose their voting policies in listed companies is related to this issue too.

14. Fifthly, in addition to the disclosure of financial reports required by the Transparency Directive, EU law also requires (or, as appropriate, recommends) listed companies to make some periodic non-financial (but corporate governance-related) disclosures, generally in connection with the annual financial report, such as the so-called Corporate Governance Statement[189]. The issue has been raised as to whether the disclosure of non-financial information should be integrated into the Transparency Directive regime in order to simplify the existing requirements.

15. A related issue concerns disclosure of Environmental, Social and Governance (ESG)[190] data made by listed companies. Some stakeholders (non-governmental

---

[188] The Commission staff examined the question of more stringent national requirements in 2008 and produced a specific document with detailed information on this matter, which should be regarded as a complement to this report. See Commission staff working document, *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*, SEC(2008)3033, 10.12.2008.

[189] Article 46a of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies, as amended by Directive 2006/46/EC (OJ L 224, 16.8.2006, p.1).

[190] There is neither a precise definition of ESG for regulatory purposes, nor a clear delineation of its scope. It appears nevertheless that ESG disclosures would fit within the larger debate on Corporate Social Responsibility (CSR). CSR has been defined by the Commission as "*a concept whereby companies integrate social and environmental concerns in their business operations and in their*

organisations, some investor organisations) are regularly requesting to improve and strengthen European legislation regarding ESG disclosure. In their view, the Transparency Directive could be an appropriate vehicle to integrate such disclosures alongside financial reporting obligations of listed companies, and to address some of the perceived short-comings of current ESG disclosure rules and practice.

16. Sixthly, the progress towards the establishment of a pan-European system of storage of regulated information, with a view to facilitate investors' access to information, is slow[191] and the impact of the Directive in this area has been insufficient: interested parties need to go through 27 different national databases and the electronic network interconnecting them is only at an initial stage with rather modest results so far. This raises the question as to whether the Directive storage mechanisms, as currently designed, are able to fulfil the role of "gate" to historical financial information on listed companies at pan-European level.

17. Finally, while there are no major compliance problems, the review of the operation of the Transparency Directive shows that some technical adjustments to the text of the Directive would be beneficial in the interest of improved clarity.

4. CONCLUSIONS

18. This review of the operation of the Transparency Directive shows that there are areas where the regime created by this Directive could be improved, notably in relation to the simplification of the rules applicable to smaller listed companies with a view to making capital markets more attractive to them. The cross-border visibility of smaller listed companies towards potential investors and analysts also needs to be improved with a view to ultimately achieve higher levels of trading on the securities of these smaller issuers. There are possible measures in the framework of the Transparency Directive which could contribute to this goal: e.g. providing for more flexible deadlines to the disclosure of financial reports by small issuers would enhance their visibility since they would no longer inform about their performance at the same time as large issuers; harmonising the maximum content and presentation of reports would facilitate reading and comparability by investors and analysts. In this context, the review of the operation of the Transparency Directive also shows that it would be desirable, in order to increase the visibility and attractiveness of smaller listed companies, to further facilitate access by potential investors and information intermediaries at a pan-European level to financial information disclosed by

---

interaction with their stakeholders on a voluntary basis." See *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility*, COM(2006) 136 final, 22.3.2006.

[191] See the Commission Recommendation 2007/657/EC of 11 October 2007 on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/Ec of the European Parliament and of the Council, OJ L 267, 12.10.2007, p.16.

small issuers and stored in the officially appointed mechanisms for the storage of regulated information.

19. Additionally, the review of the operation of the Transparency Directive shows the need for greater convergence of the rules on the disclosure of major holdings of voting rights and of financial instruments giving access to voting rights (including cash-settled derivatives) as well as the opportunity to simplify the reporting requirements for issuers in the broader corporate governance context. In this connection, this report also identified the concerns of some stakeholders regarding the disclosure of environmental and social information.