



## **The new Transparency Directive. November 2013.**

The EU Council has approved on the 17th October the proposal, agreed by the European Parliament (EP) and the European Commission (EC) in May and approved by Parliament on the 12th June, for the amendment of Directive 2004/109/EC on the harmonization of requirements transparency in relation to information about issuers whose securities are admitted to trading on a regulated market, of Directive 2003/73/EC on the prospectus to be published when securities are offered to the public or admitted to trading, and of Directive 2007/14/EC on the implementation of certain provisions of Directive 2004/109/EC. The Directive was published in the EU Official Bulletin on November 13. Changes to the new Transparency Directive have two main objectives: 1) improve the efficacy of transparency regime regarding economic ownership of publicly listed companies by enlarging the obligations of notification of major holdings and cover certain financial instruments different from shares that could be used to acquire an economic interest in listed companies; and 2) simplify, by abolishing the requirement to publish quarterly financial information, issuer's information obligations in order to make regulated markets more attractive for overall small and medium issuers and improve their access to capital in the EU.

### **1. Enlargement of the cases in which notifications related to major holdings are compulsory.**

Transparency regime is broadened to include, within the notification obligation related to major holding, other financial instruments different from those already included in the transparency regime but which are referenced to shares admitted to trading on a regulated market and with economic effect similar to the financial instruments already covered (that is, that, on maturity, give the holder either the unconditional right to acquired or the discretion as to his right to acquire the shares already issued to which voting rights are attached), whether or not they confer a right to a physical settlement.

To determine if the proportion of voting rights reaches, exceeds or falls below the major holdings thresholds, it is necessary to aggregate the number of voting rights related to shares and the number of voting rights related to financial instruments. The number of voting rights shall be calculated by reference to the full notional amount of shares underlying the financial instrument except where the financial instrument provides exclusively for a cash settlement in which case the number of voting rights shall be calculated on a "delta-adjusted" basis (variation in the price of financial instrument by varying the underlying), by multiplying the motional amount of underlying shares by the delta of the instrument. ESMA shall develop draft regulatory technical standards to specify the methods of determination of delta for the purposes of calculating voting rights relating to financial instruments which provide exclusively for a cash settlement.

ESMA also shall establish and periodically update an indicative list of financial instruments that are subject to notifications requirements taking into account technical developments on financial markets. If a holder of financial instruments exercises its entitlement to acquire shares and the total holdings of voting rights attaching to physical shares exceed the notification threshold, a new notification should be required to disclose the change in the nature of the holdings.

### **2. Deletion of quarterly financial reports.**

According to the European Commission (EC), in its communication on economic growth (13/April/2013), the

deletion of the quarterly financial reports will help, whilst guaranteeing the same level of investor protection, to reduce issuers administrative burden, to make the obligations applicable to listed small and medium-sized issuers more proportionate, and to encourage long term investments and strategies. The home Member States may require issuers to publish additional periodic financial information on a more frequent basis than the annual and half-yearly financial reports when the following conditions are met: i) does not constitute a disproportionate financial burden, in particular for the small and medium-sized concerned; and ii) its content is proportionate to what contributes to that making of investment decisions by the investors in the Member State concerned. Before establishing this obligation, Member States shall assess both whether such additional requirements may lead to an excessive focus on issuers short-term results and performance and whether they may impact negatively on the ability of small and medium-sized issuers to have access to the regulated markets. This is without prejudice to the ability of Member States to require the publication of additional periodic financial information by issuers who are financial institutions.

Related to half-yearly financial reports, the period in which issuers can publish their half-yearly financial reports is extended from two to three months, so that small and medium-sized issuers' reports receive more attention from the market participants, and thereby those issuers become more visible.

### **3. New obligation for large extractive and logging companies to report payments to governments.**

The transparency Directive introduces, for large extractive and logging of primary forest companies that are admitted to trading on EU regulated markets, the obligation to prepare on an annual basis a report on payments made to governments of the countries in which their industries operate (country by country reporting). This disclosure should provide investors with information to hold governments of resource-rich countries to account for their receipts from the exploitation of natural resources. The annual report will be prepared in accordance with the Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain type of undertakings.

### **4. Establishment of a single point for electronic access to regulated information in the EU.**

In order to facilitate cross-border investment and improve the current network of officially appointed national mechanisms for the central storage of regulated information, a web portal serving and European electronic access point to ensure access of the public to regulated market shall be established by 1/1/2018. Member States shall ensure access to their central storage mechanism via the access point. ESMA shall develop and operate the European electronic access point.

The system of interconnection of Officially Appointed Mechanisms (OAMs) shall be composed of interconnected business registers and the single access point.

### **5. Better access, analysis and comparability of financial reports.**

All annual financial reports shall be prepared, with effect from 1/01/2020, in a single electronic reporting format provided that a cost benefit analysis has been undertaken by the ESMA. ESMA shall develop draft regulatory technical standards to specify the electronic reporting format with due reference to current and future technological options such as the use of the eXtensible Business Reporting Language (XBRL) mentioned in the paragraph 26 of the transparency Directive. Before the adoption of the drafts, ESMA shall carry out an adequate assessment of possible electronic reporting formats and conduct appropriate field tests. A harmonized electronic format for the reporting would make reporting easier and facilitate accessibility, analysis and comparability of annual financial reports.

### **6. Public sanctions.**

Member States will be required to provide that appropriated administrative sanctions and measures could be

applied if violations of the transparency Directive are identified based on common minimum standards about: types of sanctions, level of fines, criteria to be taking into account by competent authorities when applying sanctions and the publication of sanctions. Member States may provide that the suspension of voting rights is to apply only to the most serious breaches, and also may provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in this Directive.

The transparency Directive establishes the compulsory publication of every decision on sanctions and measures imposed in case of breach of its dispositions. The publication could be considered an important tool to inform market participants. However, if the publication would seriously jeopardise the stability of the financial system or an on-going official investigation, or cause disproportionate and serious damages to the institutions or persons involved, the competent authority may delay the publication or publish it on an anonymous basis.

If you want the whole text of the new transparency Directive, please, do click on: <http://register.consilium.europa.eu/pdf/en/13/pe00/pe00037.en13.pdf>