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Response of Deutscher Investor Relations Verband e.V. (German Investor Relations Association) to the EU Commission's Public Consultation on the Revision of the Transparency Directive

Dear Ladies or Sirs,

The German Investor Relations Association ("**DIRK**") appreciates the opportunity to comment on the EU Commission's public consultation on the revision of the Transparency Directive 2004/109/EC ("**TD**").

DIRK is a professional association for investor relations in Germany. We represent the interests of more than 350 listed companies. The range of companies organised within DIRK comprises all DAX values, the majority of publicly traded companies included in the MDAX, SDAX and TecDAX as well as smaller companies and companies contemplating an initial public offering or those issuing debt capital instruments.

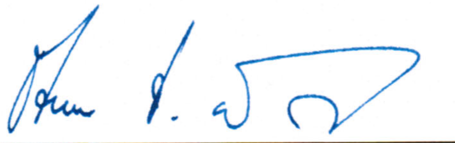
DIRK and its members welcome the EU Commission's plans to review and adjust the TD in order to improve securities markets transparency across Europe. While in DIRK's view there are currently less concerns about the operation of the TD with regard to small and medium sized enterprises ("**SMEs**") (I.), the current plans to extend the disclosure requirements for major shareholdings to derivative instruments (II.) are strongly welcomed.

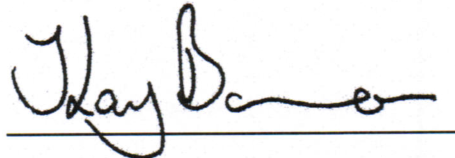
As a professional association focussing on investor relations issues we have confined our answers to those questions directly affecting the interests of our members.

In case you should have any comments or queries to the attached please do not hesitate to contact the undersigned.

Yours sincerely,

DIRK – Deutscher Investor Relations Verband e.V.





Otmar F. Winzig

- President -

Kay Bommer

- General Manager -

Appendix

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 in or to exit regulated markets (e.g. do they act as an entry barrier)? Please provide evidence supporting your answer.*

The Transparency Directive Assessment Report[1] provides strong evidence that the decisions by SMEs to enter into regulated markets are to some extent negatively impacted by the onerous disclosure requirements imposed by the TD. This is in line with the feedback we have received from some of our members. At the same time, in Germany and other European member states an increasing number of issuers have recently left or considered whether to leave the regulated market in order to decrease their compliance costs resulting from the implementation of the TD. It should also be noted that this phenomenon does not only occur with respect to SMEs but also to issuers with a small free float and a limited incentive to attract new investors due to their existing ownership structure.

On the other hand the success of exchange regulated markets "below" the regulated market (e.g. the Alternative Investment Market (AIM) of the London Stock Exchange and Deutsche Börse's Entry Standard, together with M:access (Munich Stock Exchange), Alternext (NYSE Euronext), EuroMFT (Luxembourg)) shows that only a separate (unregulated) regime imposing limited disclosure requirements is able to attract a significant number of both issuers and investors. Such exchange regulated markets already allow issuers to opt for the appropriate level of regulatory intensity providing them at the same time with the visibility they require. In addition, Deutsche Börse has recently established a separate premium market segment ("Prime Standard") which is offered to issuers who are willing to comply with additional disclosure standards even going beyond those introduced by the TD for regulated markets. However, due to the recent increases of the disclosure standards within the regulated markets the practical differences between the standards of regulated markets and the Prime Standard have become negligible.

[1] MAZARS, Transparency Directive Assessment Report, 04/2010, p. 43-44.

In DIRK's view the following conclusions can be drawn from this evidence:

- There is very little practical room for further increases of disclosure requirements within regulated markets.
- Existing disclosure requirements should be reviewed in order to assess any potentials for deregulation. Such review may, among other things, consider deregulating disclosure requirements for dept issuers which are not at the same time issuing shares,
- There is no case for different disclosure standards within the regulated market for SMEs on the one hand and larger issuers on the other hand. Such differentiation would create a dual class society within the regulated market and make such issuers less attractive for investors due to their limited transparency.
- Exchange regulated markets as well as premium segments within regulated markets should remain untouched by EU regulation. Such markets already provide for sufficient flexibility in order to meet the needs for SMEs as well as those issuers willing to comply with standards even higher than those already established for 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.)? Please support your answer with quantitative data.*

No answer.

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? Please provide evidence in support of your answer (see also Q 7 and Q 8 if you are able to provide more detailed replies).*

No answer.

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? Please provide evidence supporting your answer.*

The above examples in our view reflect the main indicators linked to the visibility problem.

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?*

No answer.

Possible options to address in the Transparency Directive the problems related to 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? Please justify your replies*

- *i) For issuers of shares, those companies with a market capitalisation below a certain threshold such as €100 Million, €250 Million 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.*

No answer.

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

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

In DIRK's view member states should not be allowed to impose stricter standards than those set out in the revised TD. European lawmakers should, thus, opt for maximum harmonization. However, the right of the stock exchanges to establish higher standards should remain untouched (please also see Q 1 above).

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)?

DIRK generally welcomes the proposal to give issuers the right to opt for extended deadlines for the publication of financial reports. However, such a right should apply to all issuers and not only to SMEs.

In any event the issuers' right to extend the respective deadlines will need to require the approval of the shareholders meeting. In addition, issuers will need to pre-commit to certain reporting dates so that investors know when to expect the publication of the respective reports.

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

No answer.

7.4. Would you see benefits from integrating in the Transparency Directive the disclosure obligations mentioned in question (8.3) which are currently in different directives? Please explain you reply (e.g. rules would be more clear, the Home Member States rules would clearly apply, etc).

Yes.

The use of consolidated European directives, such as the banking directive 2003/6/EC and the capital markets directive 2001/34/EC, have proven to be manageable and more accessible tools for regulation. The European lawmakers should therefore feel encouraged to follow this approach for the purposes of the TD.

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? Please provide evidence supporting your answers.

No answer.

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? Please provide reasons on your reply.

-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

No answer.

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?

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

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

No answer.

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

No answer.

***Question 9:* Addressing the lower visibility of smaller listed companies**

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

-(i) Yes (see next question)

-(ii) No, it is an structural problem or a market feature (e.g. size matters etc.) which EU measures will not be able to solve (please explain).

No answer.

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 (please explain);

-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 (please explain)

-iii) Financial analysts and intermediaries should get incentives to interest themselves in small listed companies (please explain);

-iv) other (please explain).

No answer.

9.3. Do you think that the development of an EU database9 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? Please explain.

No answer.

Other views regarding small listed companies.

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

No answer.

II.

Question 11: *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 and/or other jurisdictions where cash-settled derivatives are disclosed (such as Switzerland).*

DIRK strongly supports the idea of extending the scope of the major shareholders notification regime by introducing a duty to disclose economic interests in shares held through derivative instruments such as cash-settled derivatives. In order to prevent the circumvention of the contemplated disclosure requirements it is recommended to adopt a broad definition covering a wide range of existing financial instruments and practices. At the same time a set of exemptions/safe harbour rules will be required to reduce unnecessary disclosures and avoid the disclosure of misleading information. In that respect the intended rules will need to strike the balance between providing a sufficiently narrow definition as to the scope of application of the notification requirements and at the same time avoiding any undesired circumvention of the new regime. The respective exemptions should be directed towards the holder or beneficiary of the respective derivative instruments committing not to acquire a corresponding number of underlying shares for certain time periods to be defined.

Although the effects of regulation in this field of disclosure continue to be denied by various interest groups, the proposed notification requirements will most certainly serve to impede possible market failures (e.g. inefficient price information, distorted markets for takeovers) and enhance market confidence. In Germany recent large scale acquisitions (Continental/Schaeffler, Porsche/Volkswagen and SKion/SGL Carbon) have shown that engagement in cash-settled equity derivatives can be used to build up substantial stakes in publicly listed companies on a largely undisclosed basis prior to a contemplated takeover. In addition, the Volkswagen case has shown that the lack of disclosure of holdings in the issuer's financial instruments can facilitate market speculation and may lead to market squeezes with potentially detrimental effects for other investors. Outside the specific takeover context, a couple of practical examples have shown that investors owning large blocks of shares have – by using derivative instruments – placed their shares via block trades, which has led to significant speculations about the identity of the seller, based on the assumption that a major long-term investor had sold its entire stake.

The above examples demonstrate that, while the aforementioned derivative instruments are in effect not a substitute for shares carrying voting rights, there are instances where derivatives are being used in ways designed to circumvent the major shareholding notification requirements.

In terms of regulatory approach, it appears advisable to utilize the Level 2 Lamfalussy process distinguishing between the more general rules to be set out in the revised TD which will then need to be complemented by more detailed Level 2 rules providing the European lawmakers with the required flexibility to react to ongoing market developments (see also Q 19, Q 20 below). In order to facilitate a wider European harmonisation of notification requirements a number of provisions of the TD could be made subject to "maximum harmonisation" (e.g. definition of financial instruments or products, exemptions and safe-harbour provisions and content of notifications).

DIRK also proposes adding a transitional provision along the lines of Article 30 (2) TD for holdings of qualifying derivatives. This would provide issuers, investors and regulatory authorities with greater transparency about both actual and economic interests in shares starting from the point in time when the new disclosure scheme is introduced. In that respect it would further add to the desired market transparency if such assessment were to be extended to aggregated holdings of voting rights, financial instruments and qualifying derivatives.

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

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

DIRK strongly recommends to aggregate positions in derivative instruments for disclosure purposes with existing positions in shares and other qualifying financial instruments to be disclosed in accordance with the TD. Both in Germany and elsewhere, legislators have already introduced such aggregation rules with respect to the aggregation of shares carrying voting rights and financial instruments (in Germany, however, so far excluding cash-settled derivatives). Based on a general aggregation rule it would seem pragmatic to apply relevant disclosure thresholds that are equivalent to those currently provided by Article 9 (1) TD. In addition to such minimum harmonisation rules, member states should continue to have the opportunity to opt for tougher disclosure thresholds such as those currently used by various European jurisdictions. In this respect we do not see a case for "maximum harmonisation".

Assuming that European lawmakers accommodate the proposal of aggregating the respective positions, it is in our view vital in order not to foil the effects of aggregation, that the positions are not accumulated into one big position, because considerable differences do in fact exist between shares carrying voting rights, financial instruments giving unconditional access to such shares and cash-settled derivatives. Notifications under the revised rules should therefore state explicitly to which extent shares are held directly or whether cash-settled derivatives or other financial instruments are held.

12.2. And if such disclosure of cash-settled derivatives should be done independently of voting rights and of other financial instruments, which threshold should be applied? E.g. (i) the thresholds provided in Article 9(1) 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).

DIRK recommends that the threshold triggering a notification requirement for qualifying derivative instruments should be 5 %. As most of these derivative instruments are used by investors to increase liquidity or decrease market risk, smaller positions may not necessarily add any meaningful information to the market. Therefore, the reporting of larger positions will put the focus on possible control situations and would also serve to avoid the disclosure of misleading information. In any event it would be advisable to introduce a review clause providing for an examination of the adequacy of the relevant disclosure thresholds from time to time.

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

Yes.

Through empty voting (i.e. voting without the economic exposure attached to the shares) an investor can influence the general meeting to the possible detriment of the company in order to further his own interests without or at minimal financial exposure. Various techniques allow such voting through buying and selling, borrowing and lending and modern hedging techniques can permit investors to separate control and economic exposure. As noted in the Commission's Working Document[2], past experience has clearly demonstrated that this is not only a theoretical phenomenon. DIRK is of the opinion that the introduction of a disclosure mechanism (instead of a general prohibition of empty voting) is a useful and effective tool to reduce such abusive and unwanted voting practices.

With a view towards reforming the scope of the required disclosures, the existence and use of various techniques of empty voting need to be taken into account and call for a comprehensive definition of empty voting. Details should be set out by Level 2 legislation in order to provide for the flexibility to adapt to new market developments.

By introducing a disclosure regime for empty voting we recommend, in contrast to the proposal of the External Study considered in the Commission's Working Document[3], to refrain from imposing continuous updates between the record date and the general meeting. Instead we would take the view that, for the time being, a disclosure on or immediately before the date of the general meeting should be sufficient. In our opinion the continuous publication of status updates may prove to be misleading and give rise to speculations, in particular, with regard to the outcome of a vote in the general meeting. Also investor compliance would be costly and time-consuming compared to the benefits of such disclosure. Moreover, in certain jurisdictions such as Germany stock lending, which forms an important part of empty voting practices, is already – to some extent – subject to the notification requirements introduced to implement the transparency directive.

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2 Commission Staff Working Document, dated: 27. May 2010, p. 83 (10.10.).

3 ibid 1, p. 86 (10.21.)

Therefore, we recommend to limit the notification requirements for empty voting to the net economic exposure on the day of the general meeting, as this is the point in time when the information actually materializes. We assume that our proposal would make empty voting practices sufficiently transparent and offer the opportunity to observe them for possible future regulations but at the same time would not be very burdensome for investors.

Although DIRK generally does not favour the limitation or prohibition of empty voting the inclusion of a general rule that borrowed shares do not give the right to vote should be considered, although this would only have an effect on empty voting in a borrowing scenario. A situation where such a rule could be beneficial is one where companies lend their treasury shares to third parties, which will – in most jurisdictions – lead to a reinstatement of the voting rights attached to the shares. Here we see a high risk of misuse of the otherwise non-existing voting rights of treasury shares. To that extent we support the idea of the European Corporate Governance Forum for a mandatory provision in a lending contract that the borrower will not vote upon such shares.[4]

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

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

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

Generally, small amounts of additional voting power in the general meeting can already have a significant influence on the meeting´s results and with regard to our proposal of a singular disclosure (Q 13) we are of the opinion that a low threshold could be favourable. However, we recommend that this issue should be further verified by empirical studies of empty voting practices. Also, it would be advisable to include this aspect in a review clause (Q 12.2) and to make it subject to the Level 2 process.

As proposed above, the respective notifications should only be required on or immediately before the date of the general meeting (requiring only those shareholders to disclose who have notified their attendance).

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[4] Statement of the European Corporate Governance Forum on Empty Voting and Transparency of Shareholder Positions, dated: 20. February 2010, p. 2 (No. 7).

Question 15: *Which is the best way to make the investment process more transparent (please justify your answer):*

-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

DIRK generally supports enhanced disclosure of significant holdings directed to the purposes of the specific investment. Germany and other European jurisdictions have already introduced similar disclosure requirements for shareholders of more than 10 %. The content of such disclosures is generally directed towards the objectives and the financial resources used for the acquisition of shares. Under § 27a German Securities Trading Act the information to be disclosed includes, *inter alia*, the willingness of the investor to purchase additional voting rights, the intention to exert influence on the composition of the management and supervisory board and the intention to change the capital structure of the company. Until now, the disclosure requirements only relate to shares bearing voting rights and do not extend to financial instruments (including derivatives). The articles of association of the issuer may provide that the disclosure requirements will not apply (opt-out).

In our view, the notification of future intentions will enhance transparency of securities markets and can help to interpret large positions in shares and other financial instruments. In that respect it is worth considering whether to apply the respective disclosure requirements also to large positions in other financial instruments (including certain qualifying derivatives). European lawmakers should be encouraged to consider aggregating different positions in shares and financial instruments (again, including qualifying derivatives) for the purpose of calculating whether the applicable disclosure thresholds have been reached. DIRK considers a disclosure threshold of 10 % for aggregated positions in shares and financial instruments to be appropriate. In addition, the respective investor should be obligated to disclose any material changes in its intentions.

Below such threshold, considerations might be given whether to legally establish a right of the issuer to investigate the future intentions and other relevant information by issuing specific information requests to investors that have not yet been obligated to make the relevant disclosures. Such an investigation right should step in starting with a threshold of not less than 5% of the aggregated position in shares and financial instruments held by the investor concerned.

As regards the content of the respective disclosures it is suggested to set out specific guidelines in the TD or the respective Level 2 legislation in order to provide for wider harmonisation and comparability of the notifications within the EU.

DIRK doubts that the substance of a disclosure regime will be practically workable unless sufficient sanctions for non-compliance are imposed. However, due to the limited mandate of the European legislator in this respect, this will effectively remain within the responsibility of the member states. In any event, the enforcement of such disclosure requirements should be delegated to the domestic financial supervisory authorities.

DIRK also appreciates the initiation of a disclosure obligation for existing voting policies.

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

16.1. Would such disclosure be useful?

-i) This would be useful for issuers and other investors (e.g. more transparency) – please provide examples/justify your reply;

-ii) This would be negative to issuers and other investors (e.g. facilitate antitakeover defences) – please justify your reply.

Please refer to Q 15 above.

16.2. Which should be the minimum threshold triggering such disclosure? Please justify your reply.

-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.

Please refer to Q 15 above.

16.3. Should such disclosure consist in (please justify your reply):

-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);

No.

-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.);

Yes, as this will help to interpret the notification.

-iii) Information on source and amount of funds used to acquire the securities;

Yes.

-iv) Arrangements to which the investor is a party relating to issuer's securities;

Yes.

-v) other.

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

Please refer to Q 15 above.

Question 18: *Are there other cases of potentially insufficient transparency regarding corporate ownership? Please justify your reply.*

DIRK supports the proposal made in the Transparency Directive Assessment Report[5] which highlights the need for a uniform European approach towards achieving enhanced disclosure of stock lending transactions exceeding the thresholds currently set out in the TD. Under the current TD the lender is not necessarily obliged to disclose its restitutory claim against the borrower.

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[5] MAZARS, Transparency Directive Assessment Report, 04/2010, p. 96, 126

In addition, the market will not be informed about the fact that the borrower is holding the shares not as the economic and legal owner but only as a legal owner based on the stock lending agreement. Therefore, the respective disclosure requirements would need to ensure that the transaction is disclosed by both lender and borrower. The German legislator has recently addressed this issue in its latest proposal to amend § 25 (1) German Securities Trading Act.

Question 19: *Would it be desirable to set up an uniform EU regime (e.g. by a directly applicable EU Regulation) for the notification of major holdings of voting rights? Please justify your reply by describing any legal obstacles (e.g. related to civil or company law) to such uniform EU regime.*

Although DIRK generally supports the objective of enhanced European harmonization for the notification of major holdings, we are sceptical that full harmonization can be achieved within the near future by way of a directly applicable EU Regulation. This is partly due to the fact that as yet harmonization with respect to the sanctions that apply in the event of violations of the notification requirements is not part of the EU legislators scope of action. Going forward, the most appropriate way to facilitate enhanced harmonization is to address selected legal issues of the current disclosure regime by way of Level 2 legislation which would at the same time allow the European legislator to react in a more flexible way to current market developments.

III.

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.*

As indicated under Q 11 above, one has to decide on a case by case basis whether maximum harmonization appears to be appropriate. In general terms, member states should remain able to adopt more stringent rules going beyond the requirements of the TD, particularly with regard to subsidiarity considerations.

Question 21: *Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) regarding issuers' disclosures? Please justify your reply by describing legal/other obstacles to such uniform EU regime.*

Although a uniform EU regime regarding issuers' disclosures would be desirable in order to ensure comparability of disclosures – due to practical reasons – realization of this will not be workable as long as there are differing notification requirements for investors.

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

Different aggregation methods mainly result from variances in the interpretation and implementation of the TD. This applies in particular to the attribution of voting rights based on Article 10 (a) and (g).

Question 23: *Could you provide evidence of cases where unclear rules in the Directive ought to be clarified? Please explain.*

Please refer to Q 22.

IV.

Question 24: *Do you have any other comments regarding the Transparency Directive?*

No answer.

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