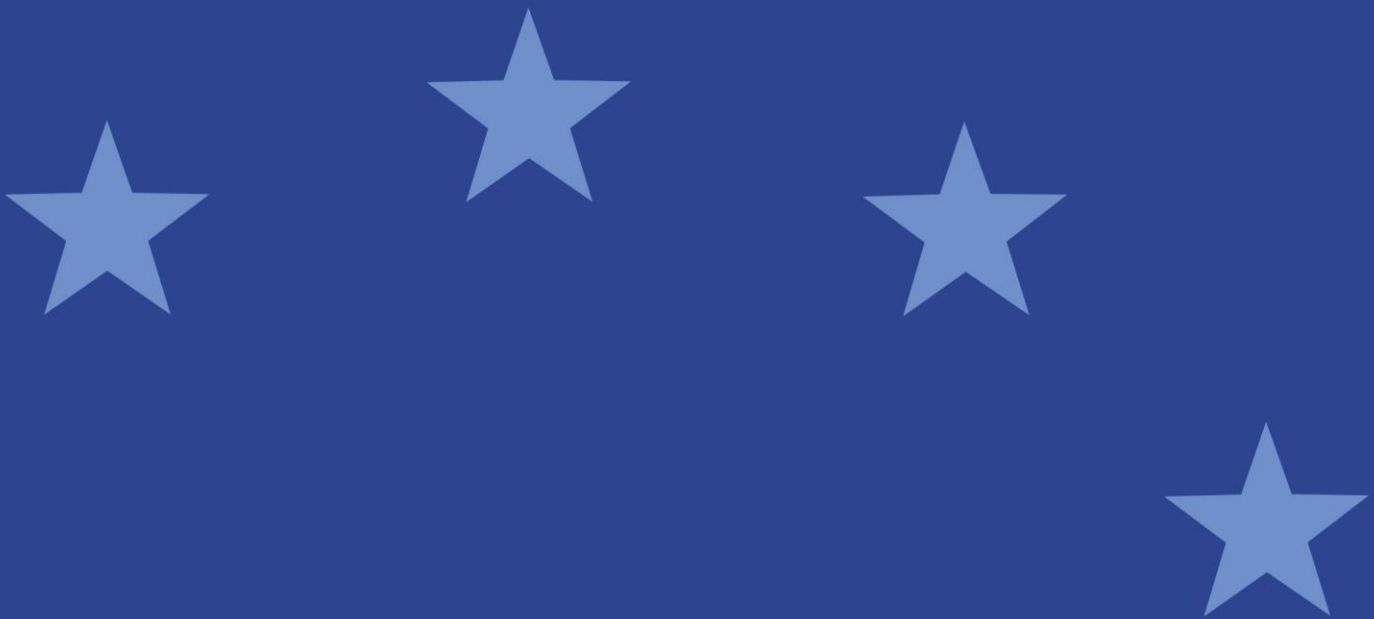




European Securities and  
Markets Authority

# Questions and answers

**Transparency Directive (2004/109/EC)**





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## I. Background

1. The Transparency Directive (TD)<sup>1</sup> created a common basis for periodic information, major shareholding notifications and dissemination and storage of regulated information. The TD was amended by Directive 2013/50/EU<sup>2</sup> (hereafter TDA) which was published in the Official Journal of the European Union on 6 November 2013 and entered into force on 27 November 2013. Under the TD, each issuer has only one home Member State whose rules will be applied irrespective in which Member State the issuer's securities are admitted to trading on a regulated market. Pursuant to Article 3 of the TD, the home Member State is allowed to impose more stringent requirements than those laid out in the TD.
2. TD framework is made up of the following European Directives and Recommendation:
  - a. Directive 2004/109/EC, which was adopted in December 2004 and amended by Directive 2013/50/EU. It is a 'framework' Level 1 Directive which has been supplemented by technical implementing measures (see the Level 2 legislation in b. below).
  - b. Implementing Directive 2007/14/EC<sup>3</sup> (L2D).
  - c. Commission Recommendation 2007/657/EC<sup>4</sup>.
3. ESMA plays an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, ESMA develops Q&As as when appropriate to elaborate on the provisions of certain EU legislation or ESMA guidelines.
4. The last version of the "Q&As on Transparency Directive (2004/109/EC)" was published in October 2015. This document is expected to be updated and developed as and when appropriate.

## II. Purpose

5. The purpose of this document is to promote common supervisory approaches and practices in the application of TD and its implementing measures (together referred to as TD) as well

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<sup>1</sup> 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 390/38.

<sup>2</sup> Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.

<sup>3</sup> 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, OJ L 69/27.

<sup>4</sup> 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 the Council, OJ L 267/16.

as provide guidance regarding certain TD requirements to market participants. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the TD.

6. The content of this document is aimed at competent authorities under TD to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. However, these responses are also meant to help and give issuers and market participants indications as to correct implementation of TD provisions, rather than creating an extra layer of requirements on them.

### **III. Status**

7. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation.<sup>5</sup>
8. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.
9. ESMA will review these questions and answers to identify if, in a certain area, there is a need to convert some of the material into ESMA guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.
10. Please note that only the Court of Justice of the European Union can provide a definitive interpretation of EU law.
11. It should be noted that Article 3 of the TD allows home Member State to impose additional or more stringent requirements. These agreed common positions reflect the practical implementation of the provisions of the TD and the L2D. Additional or more stringent national requirements have been highlighted in footnotes to answers.

### **IV. Questions and answers**

12. This document is intended to be continually edited and updated as and when new questions are received. The date each question was last amended is included after each question for ease of reference.
13. ESMA will welcome feedback from market participants on these or other questions with a view to update, where necessary, the document.

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<sup>5</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.



14. If you wish to submit a question to ESMA on the practical application of any of the TD requirements, please use ESMA's dedicated web tool available at <https://www.esma.europa.eu/questions-and-answers>.

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**Question 1: Determination of the home Member State for 3rd country issuers in case of delisting and admission to trading in another member state; TD Art 2(1)(i) and 21(3) (Deleted)**

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**Question 2: Additional information in annual and half yearly financial reports; TD Art. 4–5**

Date last updated: October 2015

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**Question:** Should issuers be allowed to include additional elements in the annual and half yearly financial reports, other than those required in articles 4 and 5 of the Directive?

**Answer:** Additional information such as that provided on a voluntary basis or in accordance with national requirements in annual and half yearly financial reports is allowed as long as it does not render the information misleading.

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**Question 3: Interim management statements (IMS) – purpose of an IMS; TD Art 6 (Deleted)**

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**Question 4: Interim management statements (IMS) – material events and transactions; TD Art 6 (Deleted)**

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**Question 5: Interim management statements (IMS) – financial data in an IMS; TD Art 6 (Deleted)**

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**Question 6: Interim management statements (IMS) – description financial position and financial performance; TD Art 6 (Deleted)**

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**Question 7: Interim management statements (IMS) – delaying disclosure of inside information; TD Art 6, MAD Art 6 (*Deleted*)**

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**Question 8: Interim management statements (IMS) – disclosure requirements where no material events have taken place; TD Art 6 (*Deleted*)**

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**Question 9: Interim management statements (IMS) – requirement to provide information up to date of publication of the IMS; TD Art 6 (*Deleted*)**

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**Question 10: Class by class disclosure; TD Art. 9(1)**

Date last updated: April 2009

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**Question:** Pursuant to Article 9(1) of the TD “[t]he voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended. **Moreover this information shall also be given in respect of all the shares which are in the same class and to which voting rights are attached.**”

Is the provision concerning “class by class disclosure” an autonomous obligation? In other words, must a notification be made when the person reaches, exceeds or falls below the relevant thresholds in terms of a single class of shares (e.g. ordinary shares) calculated on the basis of all shares of that class issued, or is it only an additional disclosure requirement which arises only in the case in which an obligation of notification is met in terms of all the shares with voting rights held calculated on the basis on all the voting share issued?

**Answer:** The calculation of notification thresholds will be made on the basis of all the shares with voting rights attached. The class by class disclosure is therefore not considered as basis for calculation of thresholds but only as an additional disclosure requirement in cases where the notification obligation has arisen.



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### Question 11: Major shareholding notification – acquisition of a shareholder; TD Art. 9(1)

Date last updated: October 2009

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**Question:** Company A is a major shareholder in an issuer X whose shares are admitted to trading on a regulated market. Company B, which previously does not hold any shares or voting rights in X, acquires control in company A. Should B notify its holdings in issuer X even though the holdings of A in issuer X remain the same?

**Answer:** As B indirectly acquires voting rights of issuer X, it has to notify its holdings in X. As required by Article 12(1) of the TD, the chain of controlled undertakings through which voting rights are effectively held, must be disclosed in the notification.

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### Question 12: Disclosure of major holdings in case of joint investors' account; TD Art. 9 and 10

Date last updated: October 2009

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**Question:** Shall the owners of a joint investors' account (an account for two persons that are considered co-owners of the securities contained in the joint account), in order to calculate their thresholds, aggregate the proportion of voting rights attached to their personal accounts to the proportion of voting rights attached to the shares of the joint account? How do these persons notify their participation to the joint account?

**Answer:** ESMA notes that legal implications of a joint account vary among Member States, since the issue is also linked with national civil law. Therefore, there are different requirements in the Member States, such as:

- a) voting rights held in a joint account have to be aggregated to voting rights held in individual accounts in full and both owners of the joint account are to disclose their holdings in full;
- b) the notification requirement depends on the terms of the account or agreements relating to the use of voting rights; or
- c) holdings in joint account are aggregated to voting rights held in individual account only in proportion to the ownership.

In any case, attention has to be paid to whether the owners of the joint account have adopted, by concerted exercise of voting rights, a lasting common policy towards the management of the issuer in question (Art. 10 (a) of the TD).

Whenever an obligation to notify holdings arises, the person(s) making the notification should distinguish the holdings in the notification.

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**Question 13: Netting of long and short positions; TD Art 13 (*Deleted*)**

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**Question 14: Aggregation of financial instruments (*Deleted*)**

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**Question 15: Designation of an agent for the exercise of financial rights; TD Art. 17 and 18**

Date last updated: February 2011

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**Question a:** Articles 17 and 18 of the TD require issuers to ensure that all the facilities and information necessary to enable shareholders / debt securities holders to exercise their rights are available in the home Member State. Each issuer is also required to designate as its agent a financial institution through which shareholders / debt securities holders may exercise their financial rights.

Must the issuer appoint as its agent a financial institution domiciled in the home Member State? Or is it sufficient to appoint a financial institution domiciled in another Member State?

**Answer a:** It is up to the issuer to ensure that facilities to exercise the (financial) rights of holders of shares / debt securities are available in the home Member State. However, the domicile of the agent does not have to be in the home Member State.

**Question b:** Before the TD was adopted, a similar provisions were included in Articles 65(2)(c) and 78(2)(b) of the Directive 2001/34/EC. However, there was an exemption for issuers providing financial services: “In particular, it [the issuer] must: (...) designate as its agent a financial institution through which holders of debt securities may exercise their financial rights, *unless the undertaking itself provides financial services.*”

Does the TD require issuers who are financial institutions to appoint as an agent a financial institution other than itself?

**Answer b:** No, issuers who are financial institutions may still appoint themselves as an agent.

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## Question 16: The requirement to make regulated information public; TD Art. 21(1)

Date last updated: October 2015

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**Question a:** Is the obligation to make regulated information (as defined in Article 2(1)(k) of the TD) public fulfilled if the issuer only discloses the regulated information to the public in a manner ensuring fast access to such information on a non-discriminatory basis, or must the issuer also disseminate the information throughout the Community?

**Answer a:** The Articles requiring issuers to make public regulated information (e.g. Articles 4, 5, 6, 12(6) ...of the TD) together with Article 21(1) of the TD establish the legal framework for issuers when providing access to regulated information. In accordance with those Articles, when issuers<sup>6</sup> disclose regulated information making it available to the public in a manner ensuring fast access to such information, they are also required to:

- a) disseminate it to the public throughout the Union in compliance with at least the minimum standards set out in Article 12 of Commission Directive 2007/14/EC; and,
- b) make regulated information available to the national official appointment mechanism (OAM) for its central storage.

Additionally, when the issuer, or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the home national competent authority (Article 19 of the TD).

Furthermore, in case of annual reports (Article 4 of the TD), half year reports (Article 5 of the TD) and payments to government reports (Article 6 of the TD), issuers, or the person who has applied for admission to trading on a regulated market without the issuer's consent, are required to ensure that regulated information remains publicly available for at least 10 years.

Disclosure and dissemination of regulated information may be done either by the issuer or by a third-party. While disclosure of regulated information requires making the information available to the public, dissemination of regulated information requires active distribution from the issuers to the media which may take place through different ways such as communication agencies, newspapers, internet, use of service providers or OAMs<sup>7</sup>, in order to fulfill requirements of Article 12 of Commission Directive 2007/14/EC.

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<sup>6</sup> Article 19 and 21 of the TD refers to "issuer or the person who has applied for admission to trading without the issuer's consent".

<sup>7</sup> In case national legislation allows OAMs to disseminate regulated information throughout the Union in addition to its storage.

The requirement of making regulated information available to the public is fulfilled when regulated information is disseminated to the public. However, the requirement to disseminate regulated information is not fulfilled when the information is only made public.

**Question b:** Does making the regulated information available to the OAM meet the criteria of making regulated information public?

**Answer b:** No. Making regulated information available by filing it with the OAM does not meet the criteria of making regulated information public. The OAM is in charge of the storage of regulated information. The storage of regulated information (filing with the OAM) and making public regulated information are two separate obligations imposed on the issuer.

Nevertheless, when national legislation allows for it, OAMs may also disseminate regulated information to the public throughout the Union in addition to its storage<sup>8</sup>.

### Question 17: Responsibilities of the host Member State; TD Art. 21(3)

Date last updated: October 2015

**Question:** According to Article 21(3) of the TD the host MS shall ensure disclosure of regulated information in accordance with Article 21(1) of the TD if the securities are only admitted to trading in the host MS. In this case the disclosure of the regulated information will be done under the legal regime of the host MS. Article 19(1) of the TD demands that an issuer who discloses regulated information files that information with the Competent Authority in its home MS. Since the home MS necessarily differs from the host MS (cf. to Art. 2(1)(i) and (j) of the TD) the CA of the host MS may not know that the issuer is required to disclose/has disclosed certain information and which particular information has to be disclosed/has been disclosed. How can the CA of the host MS ensure that the issuers fulfil their obligations in these cases?

**Answer:** According to the TD, in case the securities are not admitted to trading in their home Member State, the applicable regime depends on the number of host Member States where the securities have been admitted to trading:

Securities admitted to trading	Rules on disclosure	Who does the enforcement of the rules on disclosure?
Only in one host MS	Those of the host MS	The host CA
In several host MSs	Those of the home MS	The home CA

<sup>8</sup> The Commission Recommendation of 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 provides that OAM should allow investors and interested parties to easily access to regulated information.

Some CAs informed that their Member States have implemented a solution in their national legislation where the issuer has an obligation to file all regulated information also with the host CA. In other Member States the Competent Authorities involved agree on a case by case basis on how to apply Article 21(3) of the TD.

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### Question 18: Dissemination of regulated information; L2D Art. 12

Date last updated: October 2015

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**Question:** Many issuers use service providers for the dissemination of regulated information. In some Member States, these service providers are required to be approved by the competent authority, whereas in other Member States such authorisation is not required.

Article 12 of the L2D sets the minimum standards for the dissemination of regulated information in order to “ensure that investors, even if situated in a Member State other than that of the issuer, have equal access to regulated information” (first sentence of recital 16 of the L2D). Pursuant to Article 12(4) of the L2D “the issuer (...) shall not be responsible for systemic errors or shortcomings in the media to which the regulated information has been communicated.”

When the issuer uses a service provider for dissemination of regulated information, will the service provider be covered by the definition of media? If not, what kind of recovery procedures for system failures should a service provider have in order to ensure the dissemination of regulated information in a manner ensuring fast access to such information on a non-discriminatory basis as required by article 21(1) of the TD?

**Answer:** The second sentence of recital 16 of the L2D states: “*Issuers should ensure that those minimum standards [for the dissemination of regulated information] are met, whether by disseminating the regulated information by themselves or by entrusting a third party to do so on their behalf.*” Therefore, a service provider cannot be considered being covered by the exemption of article 12(4) of the L2D.

Dissemination of regulated information may take place through different ways including entrusting services providers to do so. ESMA considers that issuers are ultimately legally responsible for ensuring that the requirements of Article 21 of the TD are met. Therefore, issuers’ responsibilities in relation to dissemination of regulated information are only fulfilled when information reaches the media, even if a service provider is used to do so.<sup>9</sup> The responsibility under the TD remains within the issuer regardless of any contractual obligation and/or responsibilities that may derive from the contract between the issuer and the service provider.

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<sup>9</sup> Paragraph 9 of CESR’s advice (ref. CESR/05-407).

In its Level 2 Advice (ref. CESR/05-407) ESMA has set out standards for issuers using a service provider. ESMA considers that whenever issuers make use of service providers to meet their obligations under Article 21 of the TD, the issuers should ensure that the service provider meets the requirements set out in paragraphs 47–59 of the Level 2 Advice. Pursuant to these standards, the recovery service of a service provider must be available during the operational hours of the service provider (i.e. 24 hours a day, seven days a week) in order to ensure the timely receipt and dissemination of regulated information to media.

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### Question 19: Reporting of payments to governments at consolidated level; TD Art 6

Date last updated: October 2015

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**Question:** What type of issuers should prepare reports on payments to governments according to Article 6?

**Answer:** Issuers that are active in the extractive or logging of primary forest industries (thereafter “issuers”) are subject to Article 6 of TD and also to the Accounting Directive 2013/34/EU (hereinafter “AD”). The latter provides for the definition of these issuers as well as their obligations.

Issuers incorporated in the EU that fall under the definition of "Public Interest Entities" (PIEs) according to Article 2(1) of the AD and consequently, if they are active in such industries, are subject to the PIEs' requirement to prepare a report on payments to governments (Chapter 10 of AD).

Given that issuers incorporated in a third country do not fall under the definition of PIE, the AD is not directly applicable to them. Therefore and in order to cover third country issuers in addition to EU issuers, the TD requires all issuers to report payments to governments at consolidated level. As a result, issuers incorporated in a third country which are falling under the TD scope are also required to prepare a consolidated report.

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### Question 20: Horizontal aggregation; TD Art 13a

Date last updated: October 2015

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**Question:** How do the new aggregation requirements set out in Article 13a work with the existing articles 9, 10 and 13 in practice?

**Answer:** Article 13a extends to a natural person or a legal entity the notification requirements laid down in Articles 9, 10 and 13 when the number of voting rights held directly or indirectly by such person or entity under Articles 9 and 10 aggregated with the number of voting rights relating to

financial instruments held directly or indirectly under Article 13 reaches, exceeds or falls below the thresholds set out in Article 9(1).

The table below illustrates the changing position in an issuer and provides examples of the notifications to be performed assuming the minimum threshold for notification is 5%:

Day	Position of direct/ indirect holdings of voting rights (Art. 9/10) <sup>10</sup>	Position in financial instruments (Art. 13)	Total position (Art. 13a)	Notification required? Yes/No	Threshold triggered according which basket (Art. 9/10 <sup>11</sup> , 13, 13a TD)?
1	7%	-	7%	Yes	Art. 9/10
2	7%	2%	9%	No	-
3	8%	4%	12%	Yes	Art. 13a(1)
4	11% (exercise of 3% f.i.)	1%	12%	Yes	Art 9/10
5	8%	6%	14%	Yes	Art. 9/10 Art. 13
6	8%	4%	12%	Yes	Art. 13
7	9% (exercise of 1% f.i.)	3%	12%	No	-
8	9%	7%	16%	Yes	Art 13 Art. 13a(1)
9	12%	7%	19%	Yes	Art. 9/10

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## Question 21: Change of home Member State and impact on Prospectus Directive; TD Art 2(1)(i) letter (iii)

Date last updated: October 2015

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**Question:** Is a change of home Member State by a third country issuer during the transitional period valid for the purposes of the PD?

**Answer:** Yes. Article 2(1) letter (i) point (iii) of the Transparency Directive permits an issuer whose securities are no longer admitted to trading on the regulated market of its home Member State but are admitted to trading in one or more other Member States, to choose a new home Member State from amongst the Member States where its securities are admitted to trading on a regulated market and, where applicable, the Member State where the issuer has its registered office.

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<sup>10</sup> For purposes of convenience holdings under Article 9 and 10 are not separately represented.

<sup>11</sup> This case is an example of Art. 13a(2), where the holder acquires the underlying shares of the financial instrument and crosses or reaches a threshold laid down by Article 9(1) and has to make a disclosure accordingly.

In the case of third country issuers of shares or debt securities the denomination per unit of which is less than EUR 1,000, Prospectus Directive 2003/71/EU (PD)<sup>12</sup> and the TD are linked in order to ensure consistency. As such, if those issuers choose a new home Member State under Article 2(1)(i)(iii) of the TD, such choice also applies in the context of the PD (Article 2 Point (1)(m)(iii) of the PD).

The before-mentioned change of home Member State pursuant to article 2(1)(i)(iii) of the TD by a third country issuer of shares or debt securities the denomination per unit of which is less than EUR 1,000 shall be valid for the purposes of Point (1)(m)(iii) of Article 2 of the PD, even if such a change of home Member State has been made prior to 27 November 2015.

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### Question 22: The requirement to “remain publicly available”; TD Art 4, 5 and 6

Date last updated: October 2015

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**Question:** From what date, should an issuer apply the 10 year period requirements for the information to remain publicly available under Articles 4(1), 5(1) and 6 of the TD?

**Answer:** Amending Directive 2013/50/EU introduces the requirement that annual financial reports (Article 4), half-yearly financial reports (Article 5) and reports on payments to governments (Article 6) (thereafter “the reports”) published after national transposition of the amending Directive should remain publicly available for at least 10 years.

For those reports that were made publicly available less than 5 years before the transposition date, the reports should remain publicly available for at least 10 years. This period of time will start counting from the date the reports were originally published and not the transposition date.

For those reports that were made publicly available 5 years or more before the transposition date, the requirement of the amending Directive will not apply.”

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### Question 23: Additional periodic information (including quarterly reports); TD Art 3

Date last updated: October 2015

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**Question:** Could additional periodic financial information (including quarterly reports) published on a voluntary basis be considered as regulated information?

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<sup>12</sup> 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



**Answer:** Issuers may publish additional periodic financial information (including quarterly reports) on a voluntary basis as well as in other instances such as when resulting from market practice in the absence of national legal obligations or when requested by regulated markets in the absence of national legal obligation.

Publication of additional periodic financial information (including quarterly reports) stemming from those situations should not be regarded per se as regulated information according to the Transparency Directive. However, the issuer shall assess whether the disclosed information falls under the definition of inside information according to Article 7 of MAR. In such a case, additional periodic financial information (including quarterly reports) should be also treated as regulated information under Article 17 of MAR.

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#### **Question 24: Publication of sanctions and administrative measures without “undue delay”; TD Art 29**

Date last updated: October 2015

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**Question:** As regards the decision making process, shall National Competent Authorities (NCAs) publish decisions on sanctions and measures only after the exhaustion of all relevant legal remedies (or the expiry of the deadline to exercise them)?

**Answer:** No. According to Art 29(1) of the TD, decisions on administrative measures and sanctions as referred to in Art 28b of the TD shall be published by NCAs without undue delay without prejudice to any legal remedy of appeal against such decisions.

Given the presumption of lawfulness of administrative acts, final decisions on administrative measures and sanctions shall be published immediately after they have been adopted by the national competent authority, in compliance with the relevant national administrative procedures. Prompt publication of such decisions is an important tool for the competent authorities to inform market participants of what practices are to be considered an infringement of the TD, and should not be dependent on the legal remedies against them, which are not harmonized across Member States.

The publication of such administrative measures and sanctions adopted by national competent authorities does not have any impact on the right of appeal. Indeed, pursuant to Article 29 (2) of TD, where an appeal is submitted against the adopted decision, national competent authorities are obliged either to include information to that effect in the publication at the time of the publication or to amend the publication if the appeal is submitted after the initial publication.

## Question 25: Major shareholding notification – group notifications; TD Art. 12(3)

Date last updated: October 2015

**Question a:** According to Article 12(3) an undertaking is exempted from making the notification if the notification is made by its (ultimate) parent undertaking – in which cases does Article 12(3) apply?

**Answer a:** Article 12(3) applies in cases, where one or more subsidiary undertakings cross a threshold irrespectively whether the parent undertaking crosses a threshold itself or not.

The basic principle of Article 12(3) is to treat groups as a single investor and to require only a single notification in a case of groups. However, in the situations provided for in Article 12(4) and (5), subsidiaries can disregard the interests of its parent undertaking(s) and thus the group cannot be considered as a single investor.

Although Art. 12(3) is not mandatory it is according to the purpose of Art. 12(3) recommended that even in cases where only on subsidiary level a threshold is crossed the (ultimate) parent undertaking discloses the notification as only by this way the markets get always the full picture of the aggregated group holdings. If the notification is disclosed on an individual level, it is expected that at least the group's full chain of controlled undertakings i.e. including the parent undertaking(s), is provided.

The following table\* reflects when Art. 12(3) is applicable and when not. Parent undertaking A has only indirect holdings in the issuer through subsidiary B and C. Both B and C have only direct holdings in the issuer and are directly controlled by A.

\*The examples in the table are based on the thresholds set out in the Transparency Directive.

Day	Aggregated holdings of parent undertaking A	Holdings of subsidiary undertaking B	Holdings of subsidiary undertaking C	Case of Art. 12(3)? (Yes/No)	Threshold crossed by?
1 <sup>st</sup>	18%	9%	9%	Yes	A, B, C
2 <sup>nd</sup>	18%	7%	11%	Yes	C
3 <sup>rd</sup>	18%	6%	12%	No	None

4 <sup>th</sup> .	18%	0%	18%	Yes	B, C
5 <sup>th</sup>	17%	1%	16%	No	None
6 <sup>th</sup> .	14%	0%	14%	Yes	A, C

**Question b:** What details regarding its subsidiary undertakings does a parent undertaking have to provide if it makes use of Art. 12(3)?

**Answer b:** In principle the information according to Art. 12(1) and Art. 11(3) of the Commission Directive 2007/14/EC have to be content of the notification. As the parent undertaking discloses the notification, the information of the resulting situation in terms of voting rights according to Art. 12(1)(a) and Art. 11(1) 2007/14/EC has to reflect the situation of the whole group. However, it is expected that the notification reflects at least the names and the individual holdings of Art. 10(a) to (d) of such subsidiary undertakings, which hold more than the minimum threshold set out in Article Art. 9.

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*In case the UK withdraws from the EU without a withdrawal agreement*

**Question 26: Choice of TD home Member State<sup>13</sup> for third country issuers *\*new\****

Date last updated: January 2019

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***This Q&A is prepared for the eventuality that the UK withdraws from the EU on 29 March 2019 with no withdrawal agreement in place. If a withdrawal agreement is in place at the time of the UK's withdrawal, this Q&A will not be applicable.***

**Question:** In case the UK withdraws from the EU without a withdrawal agreement, under the Transparency Directive (TD) which obligations does an issuer which currently has the UK as its home Member State and is admitted to trading on one or more regulated markets in EU27 / EEA EFTA have in relation to disclosing its choice of a new home Member State?

**Answer:** In the event of the UK withdrawing from the EU without a withdrawal agreement, an issuer which had the UK as its TD home Member State before the withdrawal and is admitted to trading on one or several regulated markets in EU27 / EEA EFTA must determine its TD home

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<sup>13</sup> In case the UK withdraws from the EU without a withdrawal agreement, the choice of a home Member State under the Transparency Directive will consist of the EU27 Member States and the three EEA EFTA States Iceland, Liechtenstein and Norway.

Member State according to the rules laid down in TD Article 2(1)(i). The issuer is required to disclose its new home Member State in accordance with TD Articles 20 and 21 and additionally to disclose its home Member State to:

- the competent authority of the Member State where it has its registered office, where applicable;
- the competent authority of the home Member State; and
- the competent authorities of all host Member States.

To facilitate a timely transfer of supervisory tasks from the UK to the new home Member State, ESMA considers that it would be beneficial if issuers would choose and disclose their new home Member State under the TD without delay following 29 March 2019. In case the issuer does not disclose its new home Member State within a period of three months following 29 March 2019, based on TD Article 2(1)(i)(iii), third paragraph, ESMA is of the view that the Member State where the issuer's securities are admitted to trading on a regulated market should be considered its home Member State. Where the issuer's securities are admitted to trading on regulated markets situated or operating within more than one Member State, ESMA is of the view that those Member States should be considered the issuer's home Member States until a subsequent choice of a single home Member State has been made and disclosed by the issuer.