

European Commission
DG Internal Market and Services
Attn. Commissioner McCreevy
Rue de la Loi 200
1040 Brussels
Belgium

Re: Implementation Transparency Directive
Ref: 2008.103
Date: Schiphol, 28 November 2008

Dear Commissioner McCreevy,

In September 2008, the Committee of European Securities Regulators (CESR) launched a summary of responses to the Questionnaire on the Transposition of the Transparency Directive. Eumedion, the Dutch corporate governance forum for institutional investors¹, would like to express its concerns on the situation of the transposition of this directive in the different Member States, especially with regard to the variety of notification thresholds within the European Union, which poses an unnecessary heavy administrative burden on investors.

In various Member States different regimes apply or will apply with regard to the initial thresholds for the notification of substantial holdings. These currently differ from 2% to 5%. In addition, there are many other differences between Member States in the transposition of the Transparency Directive (*i.e.* on the definition of acting in concert). Internationally active institutional investors already face difficulties in finding the different requirements in the 27 Member States. Investors therefore have to put tremendous effort in implementing these requirements into their systems, into keeping these systems updated and into their day-to-day monitoring activities. These differences in transposition result from the directive's minimum harmonisation status, which resulted in additional measures in various Member States. Institutional investors have to make yearly employment costs to monitor the notifications that follow from legislation and costs to maintain an adequate and up to date notification system. These costs are substantial. Looking at

¹ Eumedion has 64 members at present (pension funds, asset managers, investment institutions and insurance companies). Together these members have more than 1000 billion euro of assets under management

the EU as a whole, we believe that this fragmented picture is very much worrying, and not in line with the effort of creating a state-of-the-art Internal Market.

Recently, we have also been confronted with additional difficulties with regard to the applicable initial thresholds. Next to the differences in transposition many Member States have also allowed issuers to require notification of holdings to their regulator through provisions in their articles of association². As a result, some issuers have introduced lower thresholds in their articles of association. We believe that this practice should be avoided. Internationally active institutional investors often have holdings in hundreds or thousands of European issuers. The obligation to also follow and monitor the articles of association of all these issuers is, if at all possible, a very costly and time-consuming business and does not have any added value.

We would therefore like to ask you to address these difficulties that investors face as a priority. We would certainly favor mandatory and uniform European rules regarding substantial holdings above the current fragmentation. The possibility for exceptions in regulation at Member State level or in articles of association of issuers should be avoided. However, as long as this maximum harmonization has not been realised, we would like ask you to urge CESR or the national securities regulators to oblige companies to make public the thresholds that apply on the basis of their articles of association on the website of their national securities regulators. In this way investors will have more transparency about the applicable thresholds, without time-consuming checking of all articles of association of companies they invest in.

Finally, please be referred to the report on the Transparency Directive of the European Securities Markets Expert Group in which this expert group also recommended that a uniform threshold should be used by all Member States as soon as possible³.

If you would like to discuss our views in further detail, please do not hesitate to contact us.

Yours sincerely,



Rients Abma
Executive director

Copy to: CESR, Dutch Ministry of Finance and Dutch Authority for the Financial Markets

² Please be referred to point 10 of the Summary of responses to Questionnaire on Transposition of the Transparency Directive and the reactions of Member States on question 13 of Annex II to the Summary (www.cesr.eu).

³ First report of ESME on the Transparency Directive of December 2007 (http://ec.europa.eu/internal_market/securities/esme/index_en.htm)