EUMEDION
CORPORATE GOVERNANCE FORUM

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European Parliament
Committee on Economic and Monetary Affairs
B-1049 Brussels
Belgium

Amsterdam, 20 April 2012

Ref: B2012.41

Subject: Suggestions for amendments on the European Commission's proposal for amending the Transparency Directive

Dear Members of European Parliament,

Eumedion is very grateful for the considerable efforts currently being made by the European Parliament to increase harmonisation and the level of transparency under the Transparency Directive for the benefit of investors and issuers. Eumedion is the dedicated representative of the interests of 69 long term institutional investors – all with a long term investor horizon – and aims to promote good corporate governance and sustainability in the companies our participants invest in. Together they have more than € 1 trillion assets under management.

Whilst we strongly support the Transparency Directive review objectives, we believe the proposals could be further improved by addressing some serious issues institutional investors are confronted with when investing in European listed companies. We will clarify two major issues and suggest some amendments to the proposals (Annex) in order to make the new rules more useful and less burdensome for long term institutional investors.

I. Further harmonisation needed

Currently, the thresholds that trigger the notifications of major holdings (Articles 9-13) and their calculation methods and notification procedures differ from Member State to Member State and in some Member States even from company to company. For all those institutional investors with cross-border investments, it appears to be particularly costly and time-consuming, if not impossible, to get familiar with and meet all these different requirements.

We are very concerned that under the Commission's proposal each Member State will continue to be allowed to impose extra notification thresholds in their national legislation above those already laid down in the overarching Transparency Directive. This would neither facilitate compliance by investors with cross-border investments, nor diminish their massive compliance costs. We strongly advise to introduce a more uniform regime in this area and thereby facilitate the overall convergence towards a single rule book in the securities markets area. Full harmonisation for the notifications of significant holdings in terms of the level of relevant thresholds, methods of calculation, language and ways of notification, without a possibility for additional national measures, is increasingly needed in order to make European listed companies more attractive for institutional investors and strengthen the overall economic environment.

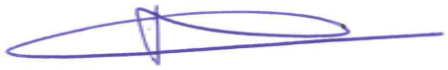
II. Acting in concert

In the European Union, institutional investors are faced with a wide range of supervisory approaches and practices on 'acting in concert' (article 10, paragraph a). Lack of clarity in the supervisory authorities' approach to facts and circumstances that would change "normal cooperation between shareholders" into "collusion" – possibly triggering a joint notification obligation – makes institutional investors reluctant to share information and research efforts, when, for example, preparing for a shareholder meeting or a joint dialogues with a listed company (engagement). This is detrimental to the European Parliament's own resolution of 29 March 2012 encouraging institutional investors' engagement with the companies.[1] To encourage long term institutional investors to participate in collective engagement activities with companies, we would recommend mandating ESMA to provide guidance in order to set out a uniform and consistent application on 'acting in concert' across the European Union.

[1] European Parliament resolution of 29 March 2012 on a corporate governance framework for European companies.

We hope that our suggestions and clarifications are of assistance. If you would like to discuss our views in further detail, please do not hesitate to contact us.

Yours sincerely,



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Annex

RECOMMENDATIONS FOR AMENDMENTS TO
Commission's proposal for amending the Transparency Directive
(COM(2011) 683 FINAL)

Recommended amendment (I):

Article 3

(2) Article 3(1) is replaced by the following:

'1. The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive, except requiring issuers to publish periodic information other than annual financial reports referred to in Article 4 and half-yearly financial reports referred to in Article 5.

The home Member State may not make a holder of shares, or a natural person or legal entity referred to in Articles 10 or 13, subject to requirements more stringent than those laid down in this Directive, ~~except setting lower notification thresholds than those laid down in Article 9(1).~~'. The home member states ensures that issuers are not allowed to set additional notification thresholds in their articles of association.

Justification

Pursuant to the currently proposed article 3 (2) home Member States will not only be allowed to determine a lower first notification threshold in their national legislation than that referred to in the Directive (5%), but also to determine extra notification thresholds between the various notification thresholds inside the range of 5% to 75% stipulated in the Directive. Moreover, individual listed companies are free to include additional notification thresholds in their articles of association.

As a consequence, institutional investors with an internationally diversified equity portfolio will be forced to set up tailored notification systems at Member State level and sometimes at company level. This is very burdensome for an institutional investor of this kind, as was already acknowledged by the European Commission in its 2010 report on the operation of the Transparency Directive.[2] *One of the objectives of*

[2] See paragraph 12 of the report of 27 May 2010 from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the operation of Directive 2004/109/EG on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (COM(2010)243 final).

the European Commission is to reduce the administrative burden on enterprises. EU wide harmonisation of the notification thresholds would save institutional investors a lot of time and costs and can make a significant contribution to achieving this objective.

Therefore, we recommend full harmonisation of the notification thresholds in the EU Member States. Maximum harmonisation was also recommended by the European Securities Market Expert Group (ESME) in 2007 and was designated a "high priority"[3] by this group of experts. Maximum harmonisation should not apply to Member States national legislations, but to the listed companies as well, in order to ensure that the stipulation of extra notification thresholds in the articles of association is no longer possible.

Recommended amendment (II):

Article 10

(8a) Article 10 is amended as follows:

The following paragraph 2 is added:

2. ESMA shall develop by [ ] at the latest, and update periodically, guidelines for uniform and consistent application of point (a) of paragraph 1.[4]

Justification

In the European Union institutional investors are faced with a wide range of supervisory approaches and practices on 'acting in concert' (article 10, paragraph, a). Lack of clarity concerning supervisory authorities approaches to the facts and circumstances that would transform "normal cooperation between shareholders" into "collusion" and may subsequently imply a joint notification obligation when the joint interest is such that a notification threshold is crossed, result in institutional investors being reluctant to share information and research efforts when preparing for shareholders' meetings or joint dialogues with issuers. This is detrimental to the institutional investor stewardship objectives, which includes effective preparation for shareholders´ meetings and does not contribute to the objective of casting "informed votes" at general meetings. ESME already identified this point as well.[5] In addition, the European Commission feedback statement in response to the consultation held in 2010 also reports that many

[3] First Report of ESME on the Transparency Directive, 5 December 2007.
[4] Article 10 (1) states: The notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise
voting rights in any of the following cases or a combination of them: (a) voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
[5] ESME, Preliminary views on the definition of "acting in concert" between the Transparency Directive and the Takeover Bids Directive, 17 November 2008.

respondents asked for clarification of the definition of 'acting in concert'.[6] *However, the European Commission has not acted on these comments. In order to solve the fragmentation problem , we would recommend mandating ESMA to provide guidance in order to set out a uniform and consistent application on 'acting in concert' across the European Union.*

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[6] European Commission, 'Feedback Statement; Summary of responses to the consultation by DG Internal Market and Services on the Modernisation of the Transparency Directive' (Annexe 10 to the Impact Assessment of the proposed directive).