



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Guidance on Transparency Regulatory Framework

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1. Introduction

In accordance with the provisions of Section 1383(7) of the Companies Act 2014, the Central Bank of Ireland ('the Central Bank') has issued guidance on the steps that may be taken to comply with transparency (regulated markets) law. This guidance document is intended to assist users of:

- the Transparency (Directive 2004/109/EC) Regulations 2007, as amended (the Transparency Regulations).
- Part 2 (Transparency Requirements) of the Central Bank (Investment Market Conduct) Rules (the IMC Rules).
- Related legislation.

This guidance is periodically updated, with the updated guidance applicable as of the date of publication.

In addition, the Central Bank website¹ sets out the procedures that should be complied with when sending notifications to, or making filings with, the Central Bank.

The European Securities and Markets Authority (ESMA) has issued Guidelines and Q&As which are relevant to those that are subject to Directive 2004/109/EC (the Transparency Directive) and its implementing measures:

- In particular, the ESMA Guidelines on Alternative Performance Measures (the APM Guidelines) apply to alternative performance measures disclosed by issuers when publishing regulated information. The Central Bank has incorporated the APM Guidelines into its supervisory practices and expects issuers to comply with them.
- ESMA Q&As on the Transparency Directive can be accessed on its website². The purpose of these Q&As is to promote common supervisory approaches and practices in the application of the Transparency Directive and its implementing measures, as well as to provide guidance regarding certain requirements of the Transparency Directive.

Relevant persons should monitor the Central Bank and ESMA websites including the Central Bank's Markets Update publications to familiarise themselves with relevant Guidelines and Q&As in order to comply with

¹ <https://www.centralbank.ie/regulation/industry-market-sectors/securities-markets/transparency-regulation/forms>

² ESMA previously published a PDF document with Q&As on the Transparency Directive. This document is not updated after 30 June 2024. Q&As issued from 01 July 2024 onwards as well as Q&As issued prior to that date can now be accessed via the ESMA Q&A IT-tool located on the ESMA website: <https://www.esma.europa.eu/publications-and-data/questions-answers>

transparency (regulated markets) law (as defined in section 1379 of the Companies Act 2014).

It is not the policy of the Central Bank to provide legal advice. Accordingly, any guidance provided should not be construed as legal advice or a legal interpretation of transparency (regulated markets) law. It is a matter for any person who may fall within the scope of transparency (regulated markets) law to seek legal advice regarding its application or otherwise to their particular set of circumstances.

2. Notification of Home Member State

In accordance with Regulation 2A(4)(b) of the Transparency Regulations, notifications to the Central Bank of an issuer's home Member State should be made using the *Standard form for disclosure of Home Member State* published on the ESMA website³.

3. Publication and Dissemination of Regulated Information

3.1 Publication and Dissemination of Regulated Information

An issuer subject to Regulation 33 of the Transparency Regulations which is disseminating and making public regulated information in accordance with Rule 6 of the IMC Rules, must send that regulated information either:

- a) Directly to a regulatory information service (RIS).
- b) Indirectly to a RIS through the Announcements Service of Euronext Dublin⁴ (Euronext Direct).

References in the IMC Rules to regulated information being sent directly to a RIS shall be interpreted accordingly.

An issuer is obliged to publish regulated information within the timeframes specified in the Transparency Regulations and the IMC Rules. It is the issuer's responsibility to ensure that announcements sent directly to a RIS or indirectly to a RIS through Euronext Direct are published within the timeframes specified in the Transparency Regulations and the IMC Rules. An issuer must therefore ensure that announcements are sent in good time and in the correct format to enable such publication.

³ Available at <https://www.esma.europa.eu/document/standard-form-disclosure-home-member-state-0>

⁴ The Irish Stock Exchange plc trading as Euronext Dublin. Information regarding the process for disseminating and making public regulated information via Euronext Direct is available at <https://direct.euronext.com/>.

3.2 Distribution when a RIS is not available

The fact that there is no RIS open for business is not, in itself, sufficient grounds for delaying the dissemination and making public of regulated information. Where such a situation arises, the issuer must comply with Rule 7 of the IMC Rules. In accordance with Rule 7(2), the issuer should inform the Central Bank of the manner in which it intends to comply with Rule 7(1) and should specify:

- a) The two news wire services or other media that ensure dissemination and making public of regulated information in accordance with transparency (regulated markets) law and the RIS to which the regulated information will be distributed; or
- b) The circumstances which give rise to the need to disseminate and make public regulated information when no RIS is open for business.

4. Periodic Financial Information

4.1 Requirement to communicate regulated information to the media in unedited full text

Issuers must ensure that regulated information is communicated to the media in unedited full text. In the case of half-yearly financial reports and annual financial reports, this requirement may be met as outlined in sections 4.1.1 and 4.1.2 of this guidance document.

4.1.1 Half-Yearly Financial Report

In the case of a half-yearly financial report the requirement specified at section 4.1 is considered fulfilled where:

- a) An announcement is published on a RIS containing the unedited full text of the half-yearly financial report or a PDF document of the half-yearly financial report; or
- b) the announcement on the RIS relating to the publication of the half-yearly financial report includes an indication of the website, in addition to the Officially Appointed Mechanism⁵ where the unedited full text report is available.

The unedited full text version of the half-yearly financial report must be submitted to the Central Bank and the OAM.

⁵ Refer to Section 6 of this document for information regarding the Officially Appointed Mechanism.

4.1.2 Annual Financial Report

In the case of an annual financial report the requirement specified at section 4.1 is considered fulfilled where:

- a) an announcement is published on a RIS containing the entire annual financial report in unedited full text and prepared in accordance with the requirements of the European Single Electronic Format (ESEF) Regulations⁶; or
- b) the announcement on the RIS relating to the publication of the annual financial report includes an indication of the website, in addition to the Officially Appointed Mechanism where the unedited full text report in ESEF format is available.

Furthermore, the issuer should make it clear on their website that the ESEF-compliant accounts are those that comply with the Transparency Regulations.

The unedited full text version of the annual financial report must be submitted to the Central Bank and the OAM. Annual financial reports should be prepared in accordance with the requirements of the ESEF Regulations as annual financial reports submitted in other formats do not meet the requirements of the Transparency Regulations.

4.2 Compliance with the obligations set out in the Transparency Regulations

The Central Bank may impose administrative sanctions in the case of an adverse assessment in relation to a contravention of the Transparency Regulations, any other provision of transparency (regulated markets) law or Part 2 of the IMC Rules. In addition, failure to publish periodic financial information within the timeframes specified in the Transparency Regulations may result in the suspension of an issuer's securities from trading.

The Central Bank has requested Euronext Dublin suspend trading in the securities of an issuer due to a relevant issuer's failure to publish annual financial or half-yearly financial reports on time. In order to avoid such suspension (and potential administrative sanctions) issuers should ensure that regulated information is published within the timeframes and using the method(s) and format(s) of publication specified in the Transparency Regulations.

⁶ Commission Delegated Regulation (EU) 2018/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format

4.3 Reliance on universal registration document to fulfil obligation to publish periodic financial reports

When filing a universal registration document with the Central Bank for the purpose of fulfilling transparency (regulated markets) law requirements, the website details specified in Rule 56(c) of the IMC Rules should be included in the submission email.

4.4 Change in accounting reference date

If an issuer changes its accounting reference date after the relevant financial year has ended, the obligations under the Transparency Regulations to prepare and make public an annual financial report for the period ending on the original accounting reference date will still apply and cannot be avoided by any subsequent change to the accounting reference date.

4.5 Content of Annual Management Report

Rule 9 of the IMC Rules, requires that an issuer's annual management report include (to the extent necessary) analysis using "*financial key performance indicators*". The Central Bank understands these to be KPIs which are used to effectively measure the development, performance or position of the issuer's business.

5. Major Shareholdings

5.1 Timeliness of disclosure

To ensure the timely disclosure of major shareholding information, it is essential that both the person making the notification and the issuer comply with their obligations under Part 5 of the Transparency Regulations and the IMC Rules. Both parties need to ensure that adequate procedures and controls are put in place to ensure such compliance and be mindful of the need to liaise effectively with each other in this regard. In particular, an issuer should ensure it is readily apparent to those making a notification to which email address the notification to the issuer should be sent (for example, by setting out an appropriate email address on its website). Those making a notification should ensure that notifications are sent to the correct email address of the issuer.

5.2 Form of Notification to Issuer and filing with Central Bank

A notification to the issuer in accordance with the notification requirements of Part 5 of the Transparency Regulations or Rule 13 of the IMC Rules should

be made using the **Standard Form TR-1: (Notification of the acquisition or disposal of major holdings)** available on the Central Bank website⁷.

The information to be filed with the Central Bank under Regulation 22 and Rule 13 of the IMC Rules must include the details required in the Annex to the Standard Form TR-1. The details contained in this Annex do not need to be sent to the issuer.

5.3 Notification thresholds

For the purposes of calculating whether any percentage threshold in Part 5 of the Transparency Regulations, or in Rule 13 of the IMC Rules is reached, exceeded or fallen below and in any resulting notification, the proportion of voting rights held should if necessary be rounded down to the next whole number.

5.4 Effective date of Acquisition or Disposal

For the purposes of Part 5 of the Transparency Regulations, an acquisition or disposal of shares is to be regarded as effective when the relevant transaction is executed, unless the transaction provides for settlement to be subject to conditions which are beyond the control of the parties to the transaction, in which case the acquisition or disposal is to be regarded as effective upon the settlement of the transaction.

5.5 Notification Timeframes – Knowledge of Transactions

For the purposes of Rule 14 of the IMC Rules and Regulation 21(3)(a) of the Transparency Regulations, where a transaction is conditional on the approval by a public authority of the transaction or on a future uncertain event the occurrence of which is outside the control of the parties to the transaction, the Central Bank's view is that the parties to the transaction have knowledge of the acquisition, disposal or possibility of exercising voting rights only when the relevant approvals are obtained or when the event occurs.

5.6 Calendar of Trading Days

The IMC Rules provide that “trading day” means a day referred to in the calendar of trading days specified on the website of the Central Bank.

For this purpose, the days on which the Euronext Dublin cash market is open, as set out in the “**Holiday Calendar for Cash and Derivatives Markets**” published on the Euronext website⁸ in respect of the relevant year should be

⁷ <https://www.centralbank.ie/regulation/industry-market-sectors/securities-markets/transparency-regulation/forms>

⁸ <https://www.euronext.com/en/trading/trading-hours-holidays>

regarded as included in the calendar of trading days for the purposes of the IMC Rules.

5.7 Bearer instruments

For the purposes of the Transparency Regulations, the Central Bank considers the holder of a bearer instrument to be the shareholder of any underlying shares represented by the bearer instrument..

5.8 Determining whether a notification is required

In determining whether a notification is required a person's net (direct or indirect) holding in a share (and of relevant Regulation 17 financial instruments⁹) may be assessed by reference to that person's holdings at a point in time up to midnight of the day for which the determination is made (taking account of acquisitions and disposals executed during that day).

5.9 Indirect shareholders

Cases (a) to (h) in Regulation 15 of the Transparency Regulations identify situations where a person may be able to control the manner in which voting rights are exercised and where (taking account of any aggregation with other holdings) a notification to the issuer may need to be made.

In the Central Bank's view:

- (1) Case (e) means that it is always necessary for the parent undertaking of a controlled undertaking to aggregate its holding with any holding of the controlled undertaking (subject to the exemptions implicit in Case (e) and others in Regulation 18);
- (2) Case (f) includes a person carrying on investment management and which is also the custodian of shares to which voting rights are attached;
- (3) Case (g) does not result in a unit holder in a collective investment scheme or other investment entity being treated as the holder of voting rights in the scheme property (provided always such persons do not have any entitlement to exercise, or control the exercise of, such voting rights); neither are such persons to be regarded as holding shares "indirectly";
- (4) Case (h), although referring to proxies, also describes and applies to a person undertaking investment management, and to a management company, and which is able to effectively determine the manner in

⁹ "Regulation 17 financial instrument" refers to a financial instrument that satisfies the conditions of Regulation 17(1)(a) or (b) of the Transparency Regulations. See also section "Regulation 17 Financial Instruments" in this Guidance Note.

which voting rights attached to shares under its control are exercised (for example through instructions given directly or indirectly to a nominee or independent custodian). Case (e) provides for the voting rights which are under the control of such a person to be aggregated with those of its parent undertaking.

A person falling within Cases (a) to (h) is an indirect holder of shares for the purpose of the definition of shareholder. These indirect holdings have to be aggregated, but also separately identified in any notification to the issuer. Apart from those identified in the Cases (a) to (h), the Central Bank does not expect any other significant category of "indirect shareholder" to be identified. Cases (a) to (h) are also relevant in determining whether a person is an indirect holder of qualifying Regulation 17 financial instruments which result in an entitlement to acquire shares.

5.10 Regulation 17 Financial Instruments

Regulation 17 of the Transparency Regulations transposes the provisions of Article 13 of the Transparency Directive into Irish law. ESMA has published an **Indicative List of Financial Instruments** on its website¹⁰. Relevant persons should familiarise themselves with this list in order to comply with the Transparency Regulations.

Financial instruments as described in Regulation 17(1)(a) of the Transparency Regulations should be taken into account in the context of notifying major holdings, to the extent that such instruments give the holder an unconditional right to acquire the underlying shares (or the discretion to acquire the underlying shares or cash) on maturity. Consequently, financial instruments as described in Regulation 17(1)(a) should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying share reaching a certain level at a certain moment in time. Nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.

5.11 Notification of Combined Holdings

A person may have to make a notification if the overall percentage level of their voting rights remains the same but there is a notifiable change in the percentage level of one or more of the categories of voting rights held.

¹⁰ Available at the following link:

<https://www.esma.europa.eu/document/indicative-list-financial-instruments>

5.12 Notification by both the Relevant Shareholder and Proxy Holder

It may be necessary for both the relevant shareholder and a proxy holder to make a notification. For example, if a direct holder of shares has a notifiable holding of voting rights and gives a proxy in respect of those rights (such that the recipient has discretion as to how the votes are cast) then for the purposes of Regulation 14(1) to 14(4) of the Transparency Regulations this is a disposal of such rights giving rise to a notification obligation. The proxy holder may also have such an obligation by virtue of their holding under Regulation 15.

Regulation 21(4)(c) of the Transparency Regulations provides that “[i]n the circumstances referred to in Regulation 15(1) (h) if a shareholder gives the proxy in relation to one shareholder meeting, notification may be made by means of a single notification when the proxy is given provided it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights discretion”. Such a single notification may be made by the direct holder of the shares or by the proxy holder.

Regulation 21(4)(d) of the Transparency Regulations provides that “[i]f in the circumstances referred to in Regulation 15(1) (h) the proxy holder receives one or several proxies in relation to one shareholder meeting, notification may be made by means of a single notification on or after the deadline for receiving proxies provided that it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion”. Such a notification should be made on or as soon as is reasonably practicable following the proxy deadline. Unless it discloses what the position will be in respect of each proxy after the proxies have expired, such a notification will not relieve any direct holder of the shares of its notification obligation (if there is a notifiable disposal).

A proxy which confers only minor and residual discretions (such as to vote on an adjournment) will not result in the proxy holder (or shareholder) having a notification obligation.

5.13 Credit Institutions and Third Country Investment Firms acting as a Market Maker

References to a market maker in Regulation 14(6) of the Transparency Regulations also include a third country investment firm (i.e. an investment firm within the meaning of Directive 2014/65/EC which has its head office outside of the EEA) and a credit institution when acting as a market maker and which, in relation to that activity, is subject to regulatory supervision under the laws of a Member State.

5.14 Market maker notifications

A notification by a market maker to the Central Bank in accordance with Regulation 14(6)(b) of the Transparency Regulations should be made using **Standard Form TR-2: Notification by Market Makers** available on the Central Bank's website¹¹.

6. Filing of regulated information with Central Bank and OAM

Under the Transparency Directive, regulated information, in addition to being disseminated and filed with the Central Bank, must also be stored in the Officially Appointed Mechanism (OAM). The Transparency Directive requires that there is at least one OAM for the central storage of regulated information in each Member State. Euronext Dublin is the OAM which operates this storage mechanism in Ireland.

All issuers whose home Member State is Ireland that disclose regulated information should make this information available to Euronext Dublin in its capacity as OAM. Details of how to file regulated information with Euronext Dublin via Euronext Direct are available at <https://direct.euronext.com/#/>.

An issuer that disseminates its annual financial report in accordance with Regulation 33(5) of the Transparency Regulations must also file a copy of the unedited full text report with the Central Bank and with the OAM.

7. Third Country Equivalence

If the Central Bank determines that a Third Country State has laws which enact requirements equivalent to those imposed on issuers under the Transparency Regulations, it will publish a list of such Third Country States on the Central Bank website.

8. Information about payment of dividends

Regulation 27(2) of the Transparency Regulations requires an issuer of shares to publish a notice or distribute a circular on the allocation and payment of dividends. It is not necessary to publish a notice or distribute a circular concerning dividends on ordinary shares that are not admitted to trading on a regulated market.

¹¹ <https://www.centralbank.ie/regulation/industry-market-sectors/securities-markets/transparency-regulation/forms>



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