

Summary of changes in ongoing reporting and disclosure requirements following implementation of amendments to Transparency Directive in the Netherlands

The amendments to the EU Transparency Directive (2004/109/EC) have now been implemented into Dutch law (effective 29 January 2016). This briefing focuses on the main changes relevant for the ongoing reporting requirements of Dutch companies whose securities are traded on one or more regulated markets and which have the Netherlands as their home member state for the purposes of the Transparency Directive. This briefing also discusses the amendments relevant for the disclosure of major shareholdings by investors.

Publication of home member state

Issuers must notify all relevant competent authorities of the identity of their home member state as soon as possible but not later than 26 February 2016. By that date issuers must also disclose their home member state by way of a press release, unless issuers who had a choice of home member state already communicated their choice of home member state to the relevant competent authority before 27 November 2015.

This requirement, by exception, also applies if the issuer's home member state is another member state but its securities are exclusively admitted to trading on a regulated market in the Netherlands. Issuers of securities that have the Netherlands as their home member state and whose securities are admitted to trading on at most one regulated market outside the Netherlands are not required, as a matter of Dutch law, to disclose their home member state by way of a press release. However this may still be required under the laws of the host member state where the issuer's securities are traded.

An issuer needs to complete a standard form, which can be downloaded from the ESMA website;
https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-1596_standard_form_for_disclosure_of_home_member_state.docx
and send it to the relevant competent authorities, eg for the AFM to HMS.Registration@afm.nl.

Publication deadline for semi-annual financial reports extended

The publication of semi-annual financial reports must take place at the latest three months after the end of the relevant reporting period. This used to be two months.

Ten years disclosure requirement

All published semi-annual and annual financial reports must remain available to the public on the issuer's website for at least ten years. This used to be five years.

Abolition of quarterly financial reports for issuers of shares

The requirement to publish twice a year a quarterly report has been abolished for issuers of shares. The removal of this requirement is effective from 1 January 2016.

Abolition of submitting draft amendments of articles of association to the competent authority and regulated markets

The requirement to submit draft amendments to an issuer's articles of association to the competent authority of its home member state and to the regulated markets on which its securities have been admitted to trading has also been abolished.

Abolition of requirement to publicly announce subsequent debt securities offerings

An onerous requirement to publish subsequent debt securities offerings has been abolished. The abolished rule, the result of an extensive interpretation of article 16 of the Transparency Directive by the Dutch legislator and competent authority, required issuers to issue a press release in relation to any Prospectus Directive exempt offer of debt securities regardless the target investor base, the offer jurisdiction or listing venue. With the abolition of the rule in the Transparency Directive this onerous Dutch rule has now been finally removed.

Amendments relevant for the disclosure of major shareholdings by investors

A new requirement has been introduced, requiring any person whose substantial shareholding in a qualifying listed company has changed in character because of either (i) the exercise or conversion of certain derivatives relating to the shares (eg convertible bonds or call-options) into the underlying (listed) shares, or (ii) the conversion of share certificates into the underlying shares, to report that fact to the AFM within four trading days, but only if the substantial shareholding reaches or crosses a relevant threshold (eg 3% of the company's issued share capital or total voting rights) as a result of such conversion.

This new requirement is hard to comply with, because the disclosure trigger, a change of a person's substantial shareholding such that a relevant threshold is crossed, is in principle not affected by a conversion or an exercise of derivative financial instruments relating to the underlying listed shares. Based on the fact that potential or economic stakes held through, for instance, options or convertible bonds are already included in a person's substantial shareholding, a person's total substantial shareholding will in principle not cross any threshold upon the exercise or conversion of financial derivatives into the underlying (listed) shares, or upon the conversion of share certificates into the underlying shares. Nonetheless, based on the explanatory notes and the relevant provision in the Transparency Directive, we believe that the legislator has intended to require a notification by investors if they exercise or convert derivative financial instruments (or convert share certificates into the ordinary shares) and as a consequence their "actual" (rather than potential) shareholding increases to such extent that the actual shareholding in itself crosses a relevant threshold.

The AFM as the competent authority of the Netherlands has mentioned on its website that it will publish, at short notice, the most important Q&A's concerning the amendments on the notifications of major shareholders.

Reporting on payments to national governments

Issuers active in the extractive or logging of primary forest industries must prepare on an annual basis a report on certain payments made to governments.

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