

# European Corporate Governance Network

## Adopting the Acquis Communautaire in central and eastern Europe: a report on the transposition and implementation of the so-called Large Holdings Directive (88/627/EEC)<sup>1</sup>

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## **Abstract**

After some ten years of economic, political and legal reform in central and eastern Europe much still remains to be done. A common denominator for many of the yet unresolved issues is that it relates to what commonly has been termed “institution-building”. An area where the need for such structural changes has become painfully apparent is that of capital market regulation. Even though formal stock exchanges were quickly established in most countries in the region, many of them currently function at such a low level of efficiency, and enjoys such a very limited public confidence, that it is doubtful as to whether they perform any of the functions commonly associated with a functioning capital market.

Many analysts assert that the only way forward in this area is to seek to enhance market transparency and thus in the long run raise investor confidence. Given that the European Union over the years has adopted quite extensive capital market regulation it could have been hoped that the ongoing process of legislative harmonisation would have led to substantial progress. This report, however, illustrates that progress has been uneven and that there are a lot of problems connected to this process of legal transposition.

The report more specifically looks at how, and to what extent, the Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of, or more popularly the Large Holdings Directive, has been transposed and implemented in the central and eastern European accession countries. The results are mixed, pointing to progress in some countries coupled with a reluctance and/or inability to incorporate the Large Holdings Directive into national legislation in others. Research has also found that there is a serious lack of understanding with regard to the implications and meaning of the directive.

The report is structured as follows: Section one provides an introduction. Section two presents the Large Holdings Directive, and discusses its implications. Section three gives a brief overview of the formal transposition of the directive in the countries in question. Section four, constituting the main part of the report, provides a more detailed analysis of the critical areas relating to transposition and implementation and concludes with an over-all assessment of the progress made. Section five, finally, attempts an analysis of factors that can account for the uneven progress in the countries studied. It concludes with a short discussion of the policy implications of our findings, and proposes some changes that may cater for a quicker and more efficient transposition and implementation of other capital market related European Union directives.

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‘Publicity is justly commended for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman. [...] But the disclosure must be real. And it must be a disclosure to the investor. It will not suffice to require merely filing a statement of facts with the Commissioner of Corporations or with a score of other officials, federal and state. That would be almost as ineffective as if the Pure Food Law required a manufacturer merely to deposit with the Department a statement of ingredients, instead of requiring the label to tell the story.’

Brandeis (1914), Chapter V.

## 1 Introduction

In the early 1990’s much of the economic reform efforts in the Baltic and central and east European countries was directed towards what was then seen as the three main pillars of economic reform, i.e. macroeconomic stabilisation coupled with rapid and extensive economic liberalisation and privatisation of the means of production. By now, however, it is more or less conventional wisdom that these reform programmes to some extent were flawed in that they failed to sufficiently stress a fourth pillar of reform, namely institution-building.<sup>4</sup> Yet a reason for the focus on institution-building is that the imposition and enforcement of the European Union regulatory framework (*Acquis Communautaire*) has become a policy-issue of top priority as the European Union have progressed in the membership negotiations with a number of countries.

An area of particular interest with regard to institution-building has come to be the financial sector – a statement that holds in the current member states as well as the central and eastern European accession countries. In the former case, the problems and needs for improvements have been analysed and put high on the agenda not least as a consequence of the recent report from Lamfalussy Group.<sup>5</sup> In the latter case, it is a consequence of that the securities markets in many of the emerging market economies functions at such a low level of efficiency that it is doubtful as to whether they perform any of the four functions commonly associated with a functioning securities market.<sup>6</sup> This failure of the securities market in, for example, attracting and generating new funds for companies is particularly worrying as many of the formerly state-owned enterprises are in dire need of restructuring and the therewith-connected investments.

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<sup>4</sup> Cf. EBRD (1999).

<sup>5</sup> Cf. Final Report (2001).

<sup>6</sup> On the role of capital and securities markets, cf. Mayer (1994), p. 179.

One often referred to explanation as to why these markets do not work has focused on the lack of efficient regulations. The argument derived from this line of thought is that due to the initial lack of regulations and the therewith-connected abuse of minority shareholders and other “outside” investors these markets must (re)gain public confidence before liquidity can grow in any significant manner. A key issue in this respect, then, concerns market transparency; currently a majority of observers and analysts would agree that much is to be wished for in this area. It can, for example, be assumed that improvements in the information generated and dispersed as well as the protection of minority shareholders may serve to increase investor confidence in these markets and thus to increase the funds available for companies already on the market as well as companies wishing to enter the market. The lack of generally and publicly available information is also something that can help to explain why many of these emerging markets are characterised by very high transaction costs, often only mitigated by various types of insider knowledge.

When the European Union Commission in 1985 proposed to introduce a new directive *on information to be published when major holdings in the capital of a listed company are acquired or disposed of*, similar considerations that lay at the core (see Section 2). Thus, for policy-makers in these emerging markets the ongoing transposition of the *Acquis Communautaire* presents a good opportunity to at least partly improve market transparency by means of adopting and enforcing this directive; in many of the emerging markets such information is all the more important for market confidence, especially considering that many of the issuers have been recently privatised and there is thus not the kind of tacit knowledge about the issues and issuers that in more mature markets would have been generated and accumulated over time. The faith of this directive, and the data generated by it (or its approximation and enforcement), thus lies at the core of this report.

The report is structured as follows. In section two, the directive and its intended implications are introduced. In section three, we look briefly at to what extent, and by what means, the directive has been transposed in the ten accession countries in question. In section four, constituting the main part of the report, we continue by looking in more detail at key areas of this transposition – areas that we find critical to its actual implementation. This section concludes with an attempt to provide an overall assessment on whether, and to what extent, the directive has been implemented in practice in the different accession countries. Section five concludes and attempts to provide an analysis of the variance with regard to the means, speed, and scope with which the directive has been implemented in the countries studied. The

section also includes a discussion of the policy implications of our findings, and proposes some changes that may cater for a quicker and more efficient transposition and implementation of other securities market related European Union directives in the accession countries.

## **2 The Large Holdings Directive: an overview**

The European Union directive of 12 December 1988 *On the information to be published when a major holding in a listed company is acquired or disposed of* (88/627/EEC, henceforth the Large Holdings Directive),<sup>7</sup> in short, obliges all individuals and corporations (irrespective of their legal form) to notify the issuer and a supervisory body when acquisition or disposal of securities leads to the proportion of voting rights held by that person or entity to cross any of the thresholds set out by the directive (10, 20, 33.3, 50 and 66.7 per cent).<sup>8</sup> The intention with the Large Holdings Directive was to provide adequate information for investors, it was for example explicitly stated that it was adopted with an aim to ‘strengthen public confidence in securities’ by means of improving ‘the quantity and quality of the information made available to the public’.<sup>9</sup> This task was seen as increasingly necessary with the furthered integration of national securities markets within the European Union. The particularities of the market and forms of control might be relatively transparent to the investors and market participants in the individual country in question, but still provide a cumbersome task for foreigners and other would-be investors. This argument is particularly relevant for many of the emerging markets in the accession countries where the small size of the market implies that domestic corporate investors may have quite clear information over who controls a particular business but the market still remains opaque for foreign investors and other “outsiders”. The directive was supposed to solve this problem by forcing owners (and the issuers) to disclose information on the ultimate blockholdings, thus giving a more relevant picture of corporate control.

The novelty with the directive above all refers to two aspects of corporate control. Firstly, the directive focuses on the *voting power* commanded over a listed company, as opposed to the percentage of its *capital* that is controlled by a person or corporation. This allows us to make a distinction between ownership (capital) and control (votes). Secondly, the directive aims to make transparent the *blocks* of votes that are controlled, as opposed to the *direct stakes* controlled. This, in turn, allows for investors and potential investors to be informed of with

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<sup>7</sup> For the full text of the directive, see Appendix 1.

<sup>8</sup> Alternatively, the directive also allows for thresholds of 10, 25, 50 and 75 per cent of the votes, see Article 4, para. 1, 88/627/EEC.

whom (and how) ultimate control (or, at least, how much of the control) of a listed company rests. It also deserves to be noted that an advantage of the reporting chain established by the directive is that it obliges the party that actually has the correct information to disclose it. For example, it is only the ultimate controller of a block which knows how he/she commands the various votes, it is thus required that it is this party that reports to the issuer and a supervisory authority. Furthermore, since the issuer is the one that actually knows how many votes that are outstanding in the corporation in question it is on him that the requirement to report to the public rests.<sup>10</sup> It is also the issuer that has the best information on the possible existence of e.g. voting caps and/or “golden shares”, and thus on how such provisions may affect the potential influence derived from the shares in question.

An example of which data should be available from the Large Holdings Directive is presented in Figure 1 below where Company D is the listed company in question. In the example Company A holds a direct stake of 20 per cent of the votes (V), albeit only 10 per cent of the capital (C). Holding company C, in turn, holds a direct stake of 35 per cent of the votes and 17.5 per cent of the capital. In addition three individual investors, Mr. E, Mr. F and Mrs. F, holds direct stakes of 10.1, 6 and 5 per cent of the votes, respectively. Their corresponding stakes in the capital of the company are 5.05, 6 and 5 per cent, respectively. Prior to the introduction of the Large Holdings Directive the information visible to investors in general (depending on national regulations) would be of the direct stakes of capital exceeding the national reporting limit, for example 10 per cent; in this case meaning that other and potential investors would be aware only of Company A and Holding company C, holding 10 and 17.5 per cent of the equity, respectively. In total this would add up to 27.5 per cent of the capital subscribed to two different investors; the largest individual “stake” being 17.5 per cent.

The implication of the Large Holdings Directive is nevertheless that it would be the voting power that would be disclosed (it is optional for countries to make also the disclosure of capital stakes mandatory). Disclosure of voting power rather than capital stakes would thus increase the “ownership concentration” in the sense that 65.1 per cent of the votes are held by the two aforementioned investors (Holding Company C and Company A) in addition to the one individual investor exceeding the supposed reporting threshold of 10 per cent (Mr. E). In

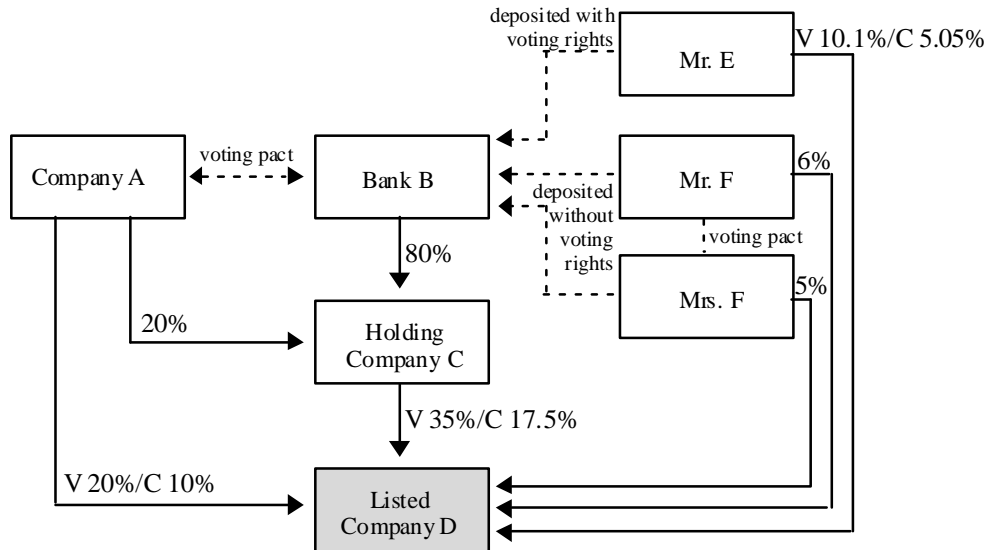
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<sup>9</sup> On the argumentation for adopting the directive, see Commission of the European Communities (1985).

<sup>10</sup> Article 10 (para. 1) of the Large Holdings Directive (88/627/EEC) states that “[a] company which has received a declaration referred to in the first subparagraph of Article 4 (1) must in turn disclose it to the public in each of the Member States in which its shares are officially listed on a stock exchange as soon as possible but not more than nine calendar days after the receipt of that declaration. A Member State may provide for the disclosure to

this “first step” of improved disclosure the “ownership concentration” thus more than doubles – with the same basic situation with regard to ownership; now the largest individual stake is 35 per cent.

**Figure 1. Direct capital/voting stakes vs. voting blocks according to the Large Holdings Directive**



Source: Free adaptation of Becht and Röell (1999), p. 1052.

However, the perhaps most important aspect of the Large Holdings Directive is that it requires owners to disclose the *total voting power that is in their control*.<sup>11</sup> In our example this means that the combined *voting blocks* of different investors should be reported. One such *block* would be the one controlled by Bank B (which previously did not report any ownership at all). The bank apparently has full control over Holding Company C together with Company B (through a voting pact); the total extent of their votes in Company D is thus 55 per cent. In addition the bank controls the votes held by individual investor Mr. E who has not given any specific instructions for how his 10.1 per cent of the votes should be used. Thus, the total *voting block* in Company D controlled by the bank reaches 65.1 per cent. This, however, is not the only voting block that would have to be reported. Given that Mr. and Mrs. F have an agreement to act in concert also they exceed the reporting threshold of 10 per cent with their 11 per cent voting block (5 + 6%). Thus, with the introduction (and enforcement) of the Large Holdings Directive the picture of Company D changes from being one where there

the public, referred to in the first subparagraph, to be made not by the company concerned but by the competent authority, possibly in co-operation with that company.’

<sup>11</sup> The directive is in essence rather stringent on what should be considered an indirect holding, in Article 2 is for example declared that ‘[f]or the purposes of Directive, ‘acquiring a holding’ shall mean not only purchasing a holding, but also acquisition by *any other means whatsoever*, including acquisition in one of the situations

are only two significant owners, the largest holding 17.5 per cent of the capital, to one where it is apparent that more than 75 per cent of the votes are held by two groupings/voting blocks.<sup>12</sup> This is indeed important information for a potential investor.

The reporting procedure that is intended to relay this information to the market is illustrated in Figure 2, where we retain the same agents as in the example above. Here we see that once any of the two blockholders either acquire or dispose of shares so that they cross one of the thresholds laid down by the directive (time A) they are obliged to inform *both* the relevant Supervisory Authority and the issuer of this fact within seven days (time B). The purpose of putting the information obligation on the blockholders is of course that only they can have the relevant information on how large a portion of the shares they control directly and/or indirectly; it is also only they that have first-hand information on when this transaction takes place. An advantage of reporting both to the authorities and the issuer is that it may (as mentioned above) be so that only the issuer has full insight into the structure of the capital and votes issued by the company – they thus have the possibility to correct any misunderstanding on behalf of the blockholder with regard to how large a portion of the votes his shares actually command. After receiving the notification (time C) it is the obligation of either the issuer or the Supervisory Authority to inform the public within 9 calendar days (time D); the directive allows for national legislators to decide upon which one of the two that the information obligation should rest on. Also regarding the way in which the information is made public there is left some discretion to the national authorities to set the exact rules; the main point is that it should be distributed widely.<sup>13</sup>

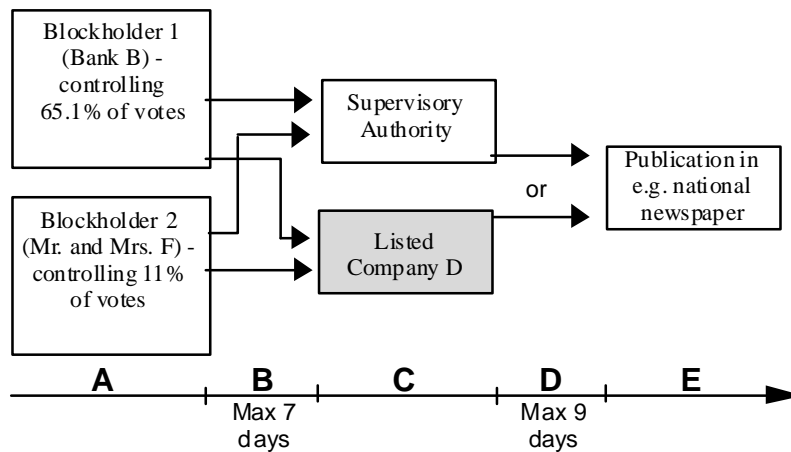
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referred to in Article 7.’ Article 7 then lists a number of instances in which votes should be added into one “block”, cf. Table 3 and Appendix 1.

<sup>12</sup> It should be noted that the picture would change somewhat if Mr. E either did not deposit his shares with Bank B, or if he (like Mr. and Mrs. F) retained the voting rights and/or gave instructions to the bank on how to vote on his behalf – in all of these alternative scenarios it would be Mr. E directly that would have to submit a notification.

<sup>13</sup> The directive states that disclosure ‘must be made by publication in one or more newspapers distributed throughout or widely in the Member State or States concerned *or* be made available to the public either in writing in places indicated by announcements to be published in one or more newspapers distributed throughout or widely in the Member State or States concerned *or* by other equivalent means approved the by the competent authorities.’ See, 88/627/EEC, Article 10, para. 2 [emphasis added].

**Figure 2. The intended information flow according to the Large Holdings Directive**



Thus, ideally, once the directive has been implemented it will be possible to trace various types of control structures (e.g. pyramidal holdings; blocks held through proxy voting etc.) depending on the specific features of the national transpositions, which otherwise would have remained hidden for the normal investor.<sup>14</sup>

### **3 The Large Holdings Directive in the accession countries: an overview of the legal transposition**

In this section the aim is to provide a brief overview of the current status of transposition of the so-called Large Holdings Directive in the ten accession countries that form the focus of this report. It is important to note that the transposition and implementation of this and other directives is not only something which may be beneficial for the development of the respective national securities market – it is also something which the accession countries have undertaken to do in that they signed their respective Europe agreement. The goals set out in the Europe agreements were then reflected in the White Paper presented in Cannes in 1995 which also, for the first time, made a clear distinction between the transposition of the community legislation in the area of the internal market on the one hand and its implementation in practice on the other.<sup>15</sup> The Commission in the White Paper also stated that the main challenge for any applicant country was not the technical adjustment of legal texts (i.e. transposition) but rather the enforcement of harmonised law – something that will be shown to hold true also with regard to the Large Holdings Directive.

<sup>14</sup> In terms of research the adoption and implementation of the directive would also allow for the construction of a truly comparative dataset, which could be used to study both the concentration of control (votes) and the degree of separation of ownership (capital) and control.

<sup>15</sup> The official name of the White Paper is the *White Paper on preparation of the accession countries of Central and Eastern Europe for the integration into the internal market of the union*, Brussels, 10.05.1995, COM(95) 163 final/2.

In the White Paper the Large Holdings Directive is defined as one belonging to the “first stage” measures, i.e. a directive ‘which introduce the basic principles for establishment of financial institutions...’,<sup>16</sup> and thus should have been given a high priority in the process of approximation of law. The initial aim with stage one measures was that they should have been transposed and implemented within approximately five years – i.e. around year 2000 at the latest. In mid-2001, however, there still remains a lot to be done in a number of countries.

We begin our overview in the northernmost accession country, *Estonia*. There the current situation is such that no part of the Large Holdings Directive has yet been transposed into valid law (see Table 1). The current state of ownership disclosure is that some minor parts of the directive are reflected in the Tallinn Stock Exchange (TSE) *Requirements for issuers*.<sup>17</sup> However, as the rules and regulations of the exchange are only binding between the contracting parties (issuer and exchange) they cannot force owners in general to disclose neither their direct stakes nor their voting blocks. This underlines the necessity of having such provisions introduced through generally valid national law and/or regulations. In the current Estonian Securities Markets Act, initially adopted in 1993, this is nevertheless lacking.

This is not to say that there is a lack of awareness with regard to the shortcomings – to the contrary. The need for a thoroughly revised Securities Market Act has for long been recognised; in the National Programme for the Adoption of the Acquis in 1999 it was stated that a new Securities Market Act ‘that would harmonise all EU legal acts in the field of securities analysis’ would be submitted to Parliament no later than mid-1999.<sup>18</sup> This work, though, has met with numerous and lengthy delays. One year after the initial deadline (July 2000) officials at the Ministry of Finance stated that the draft law would be made public and circulated on 15 August 2000, with an ambition that the act should be in force as of January 2001.<sup>19</sup> This, once again, proved to be overly optimistic. Yet a year later (July 2001) it looks like the earliest date of effectiveness would be in January 2002.

On the positive side can be noted that the most recent draft of the Securities Market Act made available to the European Corporate Governance Network (ECGN) (September 2000) indeed

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<sup>16</sup> White Paper (1995), p. 301.

<sup>17</sup> These rules, with regard to the reporting of major holdings, state that ‘[w]here a natural person or legal entity acquires or disposes of a holding in an issuer, and where, following that acquisition or disposal, the proportion of the voting rights of shares reaches, exceeds or falls below one of the thresholds of 5, 10, 20, 33, 50 and 66 per cent, *the issuer* is required to notify the Exchange immediately after becoming aware of such an occurrence.’ (*Requirements for issuers*, Tallinn Stock Exchange, para. 6.11.1; emphasis added) In addition issuers are to report significant holdings in other undertakings in their listing particulars which are filed with the TSE; as such are e.g. included all undertakings in which the issuer holds at least 10 per cent of the equity.

<sup>18</sup> *National Programme for the Adoption of the Acquis* (1999).

includes provisions which are, at least roughly, in line with the Large Holdings Directive, i.e. it concerns voting rights, it targets blockholdings and the information should be made public within given time-limits. Positive is also that the act most likely will cover a larger number of issuers since it will apply to all public limited companies (listed and unlisted) that are registered at the ECDS – a figure which is set to increase with the new (2001) law on the Central Register of Securities.<sup>20</sup> On the negative side can be noted that the draft fails to include some types of concerted action mentioned in the directive (cf. Section 4.2, Table 3). Even if these shortcomings are tackled in future versions and/or in later detailed regulations, we must conclude that Estonia, despite much advances in membership negotiations in general, indeed will be the last of the three Baltic countries to reach a full transposition of the directive.

In neighbouring *Latvia* the problems are not so much connected with delays. Indeed Latvia already in 1997 introduced provisions in its law *On Securities* that led to at least a partial transposition of the directive. These provisions, after amendments to the law on 25 May 2000, have resulted in what must be considered a full transposition of the directive and the rules currently are applicable to all shares in public circulation – in year 2000 some 120 issuers.<sup>21</sup> A problem, however, is that implementation lags behind transposition. For example, it is only enforced for the 17 companies (June 2001) that are on the first and second tier of the Riga Stock Exchange – not the companies listed on the third tier or the unlisted companies. In this sense Latvia is not unique – rather this is a pattern found in a number of countries that may be said to be in the “middle-ground”, i.e. the directive is formally transposed but, as will be discussed in Section 4, not fully implemented.

In comparison to Latvia the developments in *Lithuania* set a welcome example in that it belongs to one of the few countries where the directive: (i) is fully transposed; (ii) is relatively well enforced; and (iii) data availability is good. In Lithuania the directive was transposed with the adoption of the *Rules on Disclosure of acquisition of a block of shares* issued by the Lithuanian Securities Commission (LSC) in January 1997. The legal basis for issuing these

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<sup>19</sup> Interview July in Estonia, Finance Ministry, Financial Services Department.

<sup>20</sup> The new law on the Central Register of Securities entered into force as of 1 January 2001; according to the law all public limited companies have to register their stock books with the ECDS no later than 1 January 2003; those not willing to do that should reorganise themselves into a private limited company, see *Estonian Central Register of Securities Act*. The changes have been provoked by the fact that the current situation is confusing in that many companies, which are by name public, are actually *private* (i.e. their shares are not publicly traded). Cf. Kink (2000) [interview].

<sup>21</sup> In Latvia the law “On Joint Stock Companies” – the other law that regulates joint-stock companies – permits for companies to choose either a closed or open form; the latter has been chosen by approximately 120 companies.

rule are found in the *Law on Trading in Securities* (Art. 9).<sup>22</sup> A consequence of being referred to in the law is, just like in the case of Latvia, that the rules apply to all joint-stock companies whose securities are public, a figure that in Lithuania totals more than one thousand companies (!) as a consequence of their voucher privatisation programme. The rules in themselves set an example for other accession countries in that they outline the types of concerted action that is targeted and also include a standardised form that needs to be filled out by the reporting party.<sup>23</sup>

*Poland* is a country which often (and rightly) has been assessed to have the most thoroughly regulated securities market in central and eastern Europe – much thanks to the efficient work of the Polish Securities and Exchange Commission (PSEC) which was established already in 1991. Also here the Large Holdings Directive is fully transposed, even though it did not take place until January 2001 when amendments to the *Law on the public trading in securities* brought the definitions of concerted action into line with the directive (see Table 3).<sup>24</sup> The first provisions relating to disclosure of ownership participation, however, were introduced already in 1994. Disclosure requirements in general are now very strict – going further than the directive on a number of counts. For example, the current provisions cover both listed and unlisted shares. Also, the thresholds are tighter than required by the directive, although less so for issues traded at the OTC-market. Further, unlike most countries covered by this report, owners are also required to disclose their percentage of the capital, i.e. one has chosen to transpose the optional provisions in the last indent in Article 4.1 of the directive.<sup>25</sup>

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<sup>22</sup> See, *Law on Trading in Securities*, Article 9.

<sup>23</sup> A translated copy of the implementing regulations and the attached form for notification is included in its entirety in Appendix 2.

<sup>24</sup> See, *Law on the public trading in securities*, Art. 158a.

<sup>25</sup> The notification shall contain information about the number of shares currently held, their percentage share in the initial capital and the voting rights derived from such shares and their percentage share in the total number of votes at the general meeting of shareholders (GSM).

**Table 1. Transposition of 88/627/EEC: an overview**

Country/Indicator	Status	Transposition date	What law/regulation?	Comment
Estonia	Not transposed	2002 (planned)	Will be partially transposed with the new <i>Securities Market Act</i>	n.a.
Latvia	Transposed	1997 (partially); 2000 (fully)	<i>Law On Securities</i> (arts. 64, 65, 65.1, 68)	n.a.
Lithuania	Transposed	Jan. 1997; May 1998	Rules on Disclosure of acquisition of a block of shares, referred to in the law On Securities, art. 9	n.a.
Poland	Transposed	1991, 1994, 1997 (partially); 2001 (fully)	<i>Law on the public trading in securities</i> (arts. 4.16, 147, 148, 150, 156, 158a, 167 and 173)	The relevant definitions of concerted action into effect 2001.
Czech Republic	Transposed	1996 (partially); 2001 (fully)	Commercial Code (para. 183d)	n.a.
Slovak Republic	Not transposed	January 2002 (planned)	Will be more or less fully transposed with the amended <i>Securities Act</i> (600/1992), para. 110.	n.a.
Hungary	Transposed	18 July 2001	<i>Act CXI of 1996 on the Offering of Securities, Investment Services and on the Stock Exchange</i> as amended (para. 94)	The assessment is based on oral information about provisions yet to be adopted.
Romania	Transposed	1996	<i>Instruction no. 13/1996</i> of the National Securities and Exchange Commission (on the basis of the <i>Law on securities and stock exchanges</i> (52/1994))	n.a.
Bulgaria	Transposed	November 2000	Law on Public Offering of Securities (Dec. 1999) + Ordinance on the Disclosure of Major Holdings in Public and Investment Companies (Decree 233, Nov. 2000)	n.a.
Slovenia	Transposed	1997	Art. 64 of the Take-overs Act ( <i>Zakon o prevzemih</i> , Uradni list RS, 47/97)	Partial and indirect transposition through the take-overs act.

If Poland often has come to serve as the positive example with regard to securities market regulation and development in central and eastern Europe, the *Czech Republic* has often been the country referred to when wanting to illustrate the dangers of a laissez-faire approach to securities markets. The country in 1991-1994 pursued two waves of mass privatisation with investment vouchers that resulted in a vast number of disinterested issuers of publicly tradable securities (some 1,800); a multitude of greedy investment funds and investment companies and among the highest ratios in the world of retail investors (more than 60 per cent of the population) – most of them with no experience whatsoever of investments. This mix, in combination with close to non-existent minority protection, and slack enforcement of the

rules and regulations that did exist, also resulted in a Klondike for insider trading, fraud and tunnelling.

With such a background it is therefore encouraging to be able to give a positive report regarding the implementation of the Large Holdings Directive – even though also here the transposition has been stepwise. A first such step was taken with the 1996 amendments to the Commercial Code.<sup>26</sup> In this amendment a reporting duty for voting blocks was introduced (Art. 183d), modelled on the Large Holdings Directive. Even though the provisions succeeded in generating data there were apparent shortcomings with regard to enforcement, which *de facto* was absent (cf. Section 4.4), and the definitions of groups and concerted action (cf. Section 4.2). Finally, however, on 1 January 2001 the directive was fully transposed with the adoption of the once again revised Commercial Code. The novelties with the amendment concern the definitions of groups, controlled undertakings and concerted action (cf. Art. 66a) – as well as a change in the thresholds applied (prev. 10%). In addition, the amendments have made enforcement practically possible for the Czech Securities Commission (CSC).

*Slovakia* is, much like the Czech Republic, a country where the regulation and supervision of the securities markets came to lag far behind the actual emergence of the same. Also, like in the Czech Republic, there has for long been a general awareness of the problems. In the *National Programme for the Adoption of the Acquis 2000* (NPAA) the following harsh (albeit correct) assessment of the country's capital market was given: '[t]he capital market in the Slovak Republic [...] is marked by a relatively low liquidity, a lack of high-quality issues, a lack of transparency, the misuse of privileged information and the insufficient protection of minority shareholders.'<sup>27</sup> It was also, like in e.g. Estonia, stated that '[t]he main objectives of the Slovak capital market reform is to revitalise the capital market, regain the confidence of investors, and to adapt the capital market in the Slovak Republic to the EU and OECD accession requirements.'<sup>28</sup>

Indeed some changes were made with a revision of the Securities Act (Act no. 600/1992 Coll.) in 1999 – these, however, fell far short of fulfilling the requirements set out in the Large Holdings Directive on most counts. Even so the official line of Slovakia was for long that the directive had been implemented, and it was not until late in 2000 that representatives of the Ministry of Finance were made aware/admitted that the directive had not been

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<sup>26</sup> See, Commercial Code, Act no. xxx/1991 Coll. as amended.

<sup>27</sup> *National Programme for the Adoption of the Acquis Communautaire 2000*, Section 3.1.2.2.

<sup>28</sup> *National Programme for the Adoption of the Acquis Communautaire 2000*, Section 3.1.2.2.

implemented.<sup>29</sup> Against this background it is therefore gratifying to be able to report that finally it seems that the provisions of the directive will at least be partially implemented in the re-codified Securities Act, planned to be in force as of 1 January 2002. In the current draft (July 2001) most aspects of the directive have been directly and/or indirectly transposed – even though there remain a number of weak areas.<sup>30</sup> Hopefully, however, there is still time for correcting some of these deficiencies before the law is finally adopted.<sup>31</sup>

Hungary is yet another country who is in the process of transposing the Large Holdings Directive through its recently passed *Act on the Modification of the Finance-Related Acts* (2001/L). This act amends *Act CXI of 1996 on the Offering of Securities, Investment Services and on the Stock Exchange* by introducing a new chapter (Chapter XIV/A) which treats the *Acquisition of an Influencing Interest in a Public Company Limited by Shares*. The amendment is to become effective as of 18 July 2001 – and after an initial reporting period of 60 days this will mean that on a formal level the directive will be fully transposed also in Hungary.

In *Romania* the situation is such that there is no formal transposition of the Large Holdings Directive into a separate piece of legislation – even so most of the important aspects of the directive have indeed been incorporated by means of Instruction no. 13 of the Romanian National Securities Commission (RNSC).<sup>32</sup> These instructions outline in a more detailed manner the provisions laid down in the *Law and securities and stock exchanges* (Law no. 52/1994) and together make for a relatively comprehensive transposition of the directive.

*Bulgaria* is yet a country that made a rather remarkable turnaround with regard to securities markets regulation and investor protection – a turnaround that has taken place in two phases. At the outset, in the early 1990's, the country was rightly characterised as belonging to the “wild east”; having a more or less totally unregulated equity market working with a minimum

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<sup>29</sup> See discussion in Section 5.

<sup>30</sup> The weak spots may be summarised in five points (analysed in more detail in Section 4): (i) the use of cross-references to other laws (the Commercial Code), which also are in the process of re-codification, for defining concerted action; (ii) the lack of provisions catering for a first time reporting by owners (see Section 4.1); (iii) the lack of explicit mentioning of sanctions in case of non-compliance, and the related question about the limits to the jurisdiction of the Financial Market Authority (see Section 4.4); (iv) the lack of provisions ensuring that the voting stakes reported are based on true information about the total amount of outstanding votes (see Section 4.3); (v) and, finally, the lack of provisions catering for easy access to cumulative data by the public (see Section 4.5).

<sup>31</sup> There has, for example, been indications from the Ministry of Finance that they take seriously the points made by the ECGN – and that they will make attempts to change the law to improve on the points i, ii, iv and v (see footnote above).

of regulation and transparency.<sup>33</sup> On the various markets were even traded some issues which turned out to be pyramids, leaving investors with great financial losses as well as a loss of confidence in the market.

A first step towards a more orderly market set-up was taken with the adoption of the *Securities, Stock Exchanges and Investment Companies Act* in late 1995, which among other things led to the establishment of the Bulgarian National Securities Commission (BNSC). Amendments to the act in 1997 and 1998 were paralleled with the establishment of a central depository system (1997) and the Bulgarian Stock Exchange (BSE) (September 1997), the latter having a monopoly position in the execution of trades since 1998.<sup>34</sup> A second, and yet more comprehensive step was taken with the adoption of the new *Law on Public Offering of Securities* (LPOS), which as of 1 January 2000 was to replace the above-mentioned law from 1995. In the new law much attention was given to strengthening minority protection and thus to restore confidence in the market.

Among many other changes the LPOS also laid the ground for the transposition of the Large Holdings Directive.<sup>35</sup> Adding to this the decree of 24 November 2000 on the adoption of an *Ordinance on the Disclosure of Major Holdings in Public and Investment Companies* and the outcome was, at least on paper, a solution that transposed most of the objectives in the directive. For example, it applies to votes rather than capital; it has a rather comprehensive and detailed listing of what should be considered indirect holdings (see Section 4.2); it puts the obligation to report the blocks held on the person/legal entity controlling the block in question; and, perhaps most importantly, it caters for the publication of the information, both in the official bulletin and on the web-page of the Commission. Also the Bulgarian regulations in fact goes further than the Large Holdings Directive on some counts, for example in that it applies to all public companies (which, in essence, is only natural in many of the emerging markets of central and eastern Europe) and it has a lower reporting threshold (5%) than what the directive prescribes.

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<sup>32</sup> The below information on Romania draws on Kaznovsky (2001), Earle et al. (2001) and other unpublished research by Almos Telegdy, Central European University and Nela Filimon, Universitat Autònoma de Barcelona.

<sup>33</sup> The number of issues was small (mostly financial sector and tourism companies) and liquidity low. Several stock exchanges had been established, competing for the existing liquidity, amongst others the Sofia Stock Exchange and the First Bulgarian Stock Exchange.

<sup>34</sup> The aforementioned amendments to the *Securities, Stock Exchanges and Investment Companies Act* put an end to OTC-trade among other things.

<sup>35</sup> See, Chapter 11, division 1 on the 'Disclosure of participation' (Articles 145-148).

In *Slovenia*, finally, the directive is can be said to be partly and indirectly transposed through the provisions that are included in Art. 64 of the Take-over Act (Zakon o prevzemih, Uradni list RS, 47/97). However, serious shortcomings with regard to the definitions of groups and concerted action (see Section 4.2) must result in a question mark concerning its full transposition – as is also indicated in the comments to Table 1.

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To summarise, with regard to transposition we may tentatively conclude that eight of the ten countries to date have undertaken actions that aim to a transposition of the Large Holdings Directive. Further, in both of the countries where no transposition has yet come into effect (Estonia and Slovakia) there are underway revisions of their respective Securities Act that aim to transpose the directive. These transpositions nevertheless exhibit considerable differences with regard to the level of adherence to the text and intentions of the directive – differences that will be looked upon more in detail in the section to follow. Thus, with regard to the formal transposition of the directive the overall assessment is that the accession countries have made – or are about to – make good progress. The question remaining to analyse, however, is to what extent this formal transposition has been transformed into a real and effective implementation.

Regarding transposition it deserves to be noted that the majority of countries have opted to make it through provisions in their respective securities act, the exceptions being the Czech Republic that have included a full transposition in the Commercial Code and Slovenia, which only can be assessed to have an indirect transposition through their Take-overs Act. In many cases these provisions have been complemented by special regulations adopted as decrees or ordinances. However, in no case has the transposition entailed the adoption of a separate legal act.

A final comment to make concerns the *process* by which the directive has been implemented. In almost all countries that as of now have a full transposition of the directive it has been accomplished in a stepwise process. In Latvia and the Czech Republic, for example, it took two sets of amendments before the transposition was complete. In Poland it was a process of numerous amendments, which only in 2001 resulted in the full transposition. Similar patterns are apparent also in Bulgaria, Romania and Hungary. In Lithuania – which was the first country to bolster a complete transposition – it nevertheless took one amendment and the

adoption of a decree before transposition was complete. The potential implications of this observation are commented upon in Section 5.

#### **4 National transpositions and implementation: the critical areas**

When analysing the content and meaning of the directive, and comparing to the transposition and implementation of it in the respective countries in central and eastern Europe, four areas have come to stand out as more critical than others if the intentions of the directive are to be realised. In short these areas concern: (i) the thresholds applied and the initial notification (Articles 4 and 5); (ii) the definition of groups and concerted action (Articles 1, 2, 7 and 8); and (iii) the build-up of the information chain (Articles 4 and 10) and (iv) the powers and sanctions vested with national authorities responsible for the implementation of the directive (Article 12). In addition to these four areas a fifth one also stand out as crucial with regard to fulfilling the “spirit” of the directive even though there are no explicit rules pertaining to this included in the directive, namely the national rules relating to the actual provision of data. Below we turn to look at these aspects in turn (Sections 4.1-4.5), using examples from different countries to illustrate strengths and weaknesses. The section then concludes with an overall assessment of the effectiveness of the directive as transposed and implemented (Section 4.6).

##### *4.1 Thresholds and initial notifications*

The one area that seems to have been the least problematic is also the one that is most straightforward, i.e. in transposing into national regulation some type of reporting thresholds. All ten countries have done this at least at the minimum standard given by the directive – many have further imposed additionally “stiff” reporting standards.<sup>36</sup> In fact, only two of the surveyed countries (Latvia and Lithuania) have settled for having ten per cent of the votes as the lowest threshold – all others have opted for a five per cent reporting threshold (see Table 2). Even though this may be positive in terms of providing information to the market and its actors it should be noted that the five per cent threshold seldom has any economic “rationale” in reference to national company law, i.e. five per cent does in most cases not provide for a

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<sup>36</sup> It should be noted that henceforth, where possible, the assessments of the developments in Estonia and Slovakia are based upon what is known about their future plans through the draft versions of their respective Securities Act that has been made available to the representatives of the European Corporate Governance Network.

blocking minority nor does it suffice to give some special prerogatives at the general shareholders meetings.<sup>37</sup>

As can be seen in Table 2 it is not only with regard to the lowest threshold that the accession countries have been more “conscientious” than the directive mandates – rather this applies also to the other thresholds. Of the countries studied only one (!) has opted for one of the two alternatives spelled out in the directive (i.e. either 10, 20, 33.3, 50, 66.6 or 10, 25, 50 and 75 per cent) namely Latvia. Estonia and Slovakia come close in their draft laws – having opted for alternative one in the directive – with the addition of a 5 per cent threshold. Lithuania chose to use both “belt and suspenders” – i.e. implementing both options given by the directive, resulting in a total of 7 thresholds. All six other countries have opted for even stricter reporting requirements – choosing either to require notifications at every 5 per cent increase (Czech Republic, Bulgaria and Slovenia) or at every 2 per cent (!) (Poland and Romania) from 10 per cent and upwards. It should be noted that some of these countries have chosen to apply different thresholds for different groups of companies. In Poland, for example, the obligation to notify about every two per cent change in the holdings over ten per cent applies only to companies traded at the Warsaw Stock Exchange (WSE); for OTC-companies the corresponding limit is every 5 per cent.<sup>38</sup> Also, in Bulgaria as can be seen in Table 2, the notifications at every five per cent change apply only to listed companies; for unlisted issues the initial threshold is 10 per cent and notifications are then to be made at the thresholds of 25, 33.3, 50, 66.6 and 75 per cent, respectively.

The overall impression is thus that the accession countries have been almost overly conscientious with regard to imposing notification thresholds. This situation may be partly explained by some uncertainty about the intentions with the directive; therefore opting for (as in the case of Lithuania) all thresholds mentioned or even tighter thresholds. It may also be a reflection of a wish on the side of the authorities to receive this kind of information and to instil in owners a “tradition” of reporting. However, it may at least be speculated that this zeal

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<sup>37</sup> An exception is the Czech Republic where a owners holding a minimum of five per cent of the votes may ask the Board of Directors to call an extraordinary General Shareholders Meeting – or, for companies with at least Kc 100 million of share capital the equivalent threshold is as low as three per cent. Another partial exception is Poland where shareholders holding at least 5 per cent at has the right to make a request for the GSM to appoint an external auditor to review certain aspects of the management of the issuer.

<sup>38</sup> In addition to this “normal” notification of voting stakes a notification for reaching or exceeding the 10 per cent threshold must include information about the possible intent to further increase the involvement in a public company in the forthcoming 12 months and, if so, the aim with such an increase. Each time such intent or the purpose thereof changes the shareholder is obliged immediately to notify accordingly the PSEC, the issuer and the antimonopoly office (the Office for Competition and Consumer Protection).

may come at a cost in terms of effectiveness in that it may actually reduce the preparedness of owners to report their stakes by making it an overly “cumbersome” procedure.

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Regarding the functioning of the directive there is one small, albeit important, provision that many of the candidate countries have failed to implement, namely the “first-time notification” catered for in Article 5 of the directive. This, in short, states that all blockholders must make a notification no later than one year after the transposition of the directive into national law. Without such a notification it would, given that no significant changes in the ownership of voting stock took place, still be impossible to map the control structure of a listed firm. Given the importance of the provision it is distressing to have to report that only two of the ten countries so far have taken explicit notice of this part of the directive and transposed it into the national law/regulations, namely the Czech Republic and Hungary. In two other countries, Bulgaria and Romania, one may talk about an indirect transposition in that the regulations in question speak about owners having passed or “reached” a certain level of voting rights. However, such an approach gives room for ambiguity in the interpretation – and, as has been noted in these cases, a lack of reporting. The other countries, including Poland and Lithuania, both of which otherwise have made great effort to transpose the essence of the directive, are currently lacking such provisions (see Table 2).

Our interpretation of this state of affairs is, once again, that in many cases the implementing authorities have been lacking a clear vision of what the transposition of the directive is meant to achieve, and consequently also of the importance of Article 5. Slovakia may be taken as a good case in point in this respect. In the current reading of the draft Securities Act (July 2001) there are no provisions making such an initial reporting mandatory. Representatives of the Ministry of Finance, having had the functionality of this feature explained and thus made aware of this shortcoming, were however willing to try to make the necessary changes before the draft goes to Parliament. With regard to this two alternatives were discussed – either to make an explicit mentioning that blockholders would have to make a notification within, for example, six months of the law coming into force – a solution advocated by the representative of the ECGN – or to make an “indirect” transposition similar to that of Bulgaria and Romania.<sup>39</sup> The latter, however, would as argued above risk leading to confusion in the

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<sup>39</sup> The “indirect” transposition discussed would entail making Article 1 of Paragraph 110 in the Securities Act apply to voting blocks existing at a level above one of the reporting thresholds (rather than only passing one of the thresholds), and thus relying on the general transitory provisions of the law.

future. The conclusion, however, is that it is still uncertain whether Article 5 of the directive will be implemented in the Slovak transposition.

**Table 2. Thresholds and first-time notifications**

Country	Lowest threshold (%)?	Thresholds (%)?	Up and down?	First time notification?
Estonia*	5	5, 10, 20, 33.3, 50, 66.7	Yes	No
Latvia	10	10, 25, 50, 75 (acquisitions); every 5 per cent reduction (disposals)	Yes	No
Lithuania	10	10, 20, 25, 33.3, 50, 66.7, 75	Yes	No
Poland	5	5 and 10 – then every 2 (listed) or 5 (non-listed); additional requirements at 25, 50 and 75	Yes	No <sup>40</sup>
Czech Republic	5	5, 10, 15, 20, 25, 30, 33.3, 40, 45, 50, 55, 60, 66.7, 70, 75, 80, 90 and 95	Yes	Yes (5%) (30 June 2001)
Slovak Republic*	5	5, 10, 20, 33 50 or 66	Yes	Uncertain
Hungary	5	5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 75 and 90	Yes	Yes (end-September 2001)
Romania	5	5, then every two per cent	Yes	Indirectly <sup>41</sup>
Bulgaria	5	5 and multiples of 5 (listed); 10, 25, 33.3, 50, 66.7 and 75 (unlisted)	Yes	Indirectly <sup>42</sup>
Slovenia	5	5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90 and 95	Yes	No

\* Information in the table refers to draft laws (July 2001), not yet in force.

Equally or more important as the provisions of Article 5 – from the point of view of a “functioning” implementation – is of course that notifications are made by owners both when surpassing and going below the thresholds. Since the information ensuing from the implementation of the directive is what one may term “flow-data” it would, without this provision, be impossible to know which notifications that are still valid or not.<sup>43</sup> It is therefore gratifying to see that all countries indeed have transposed this provision. However, and much less encouraging, in terms of implementation it may be noticed that in e.g. the Czech

<sup>40</sup> In the legal amendments in 2000 that made the definitions of concerted action come into line with the directive as of 2001, there were however no provisions were made for a first time notification that would reveal the existing voting pacts in accordance with the new standards.

<sup>41</sup> There is no explicit first time notification in the Romanian rules. However, indirectly such notification is catered for in the RNSC instruction (No. 13/1996) – it is for example stated that notification is mandatory for all natural or legal persons whose voting rights have *reached* or are above 5%. [Art. 11 items 1&2, emphasis added]. In Art. 12 the obligation is also extended to any Securities Society that has knowledge about or has participated in any transactions following which up to or above 5% of the voting rights have been reached... .

<sup>42</sup> There is no explicit first time notification in the Bulgarian rules. However, indirectly such a notification requirement is transposed in Art. 2 which states that notification is mandatory for all persons ‘whose voting rights has *reached*, exceeded or fallen below...’ [emphasis added]. The minimum threshold applied is 5 per cent for companies on the official market on a stock exchange (i.e. tiers A, B and C on the BSE) and 10 per cent for companies whose shares are listed on a regulated securities market other than the stock exchange.

<sup>43</sup> It may be noted that Latvia is the only country that has chosen different reporting standards for owners decreasing their involvement in an issuer – having more frequent thresholds (every 5 per cent) when selling shares than when acquiring shares (10, 25, 50 and 75 per cent).

Republic it is apparent that there is a definitive “underreporting” when it comes to reducing voting stakes below the thresholds. The fact that very little effort seems to be put on enforcing this particular provision may, again, point to a lack of understanding with regard to the intentions of the directive. Also, this situation seems to hold across the board – and in general being related to this lack of understanding of the nature of the data that is supposed to come out of the directive.

To sum up it has to be pointed out that already after the initial more detailed look at the transposition of the directive it has become apparent that it may become necessary to revise the first initial and very positive assessment in Section 3. Particularly worrying is the lack of provisions for a first-time notification that characterises all but three of the countries in question.

#### 4.2 *Concerted action*

The perhaps most critical issue with regard to transposing the Large Holdings Directive concerns how a country chooses to define “groups” and “concerted action” – it is this (together with its enforcement) that is decisive for what type of information that is generated by the implementation of the directive. The Large Holdings Directive is as mentioned quite stringent on what should be considered a indirect holding; Article 2 states that ‘[f]or the purposes of [the] Directive, “acquiring a holding” shall mean not only purchasing a holding, but also acquisition by *any other means whatsoever*, including acquisition in one of the situations referred to in Article 7.’<sup>44</sup> The latter paragraph, in turn, gives a rather comprehensive list of what kind of instances that should be considered an acquisition. Unluckily the national transpositions of the directive vary greatly with regard to this – both in terms of the “scope” and ambition for reporting – and in terms of the approach taken to try to implement this. In practice this means that voting blocks will not be fully comparable among countries.

In Table 3 the national transposition of the directive is compared to the text of the directive, with Y indicating that the national regulations are fully in congruence with the directive, N indicating that there is no mentioning at all of the relationship in question and P indicating that there is at least a partial and/or indirect transposition of the relationship in question. The last row summarises the total number of affirmative answers, aiming to give an indication of the overall congruence between the respective national transpositions and the directive. As

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<sup>44</sup> 88/627/EEC, Article 2, emphasis added.

can be seen there is not one single country that have transposed all of the provisions in the directive. The highest number of fully “affirmative” answers have been collected by Lithuania, the Czech Republic and Hungary (7), closely followed by Latvia, Poland and Bulgaria (6).

Given the great variance in results and approaches taken by the different countries each and everyone deserves some mentioning. Firstly, regarding Estonia it must be pointed out that the low number of affirmative answers is partly due to the fact that one has opted for a two-tier solution that leaves it to the Ministry of Finance to devise more detailed regulations.<sup>45</sup> In Latvia, where great progress was made between the first transposition in 1997, which contained only a very vague definition of concerted action, and the May 2000 amendment which contains six out of the eight provisions in the directive it should also be noted that one has implemented even the “general” clause used in the directive covering voting rights ‘acquired in any other indirect way’.<sup>46</sup> The problem though, as will be discussed below, relates to enforcement. Lithuania is interesting in that it not only belongs to the countries which have made the “best” transposition but also is the only country that explicitly have added instances of “concerted action” that are not specifically mentioned in the directive. In Lithuania there is for example explicit mentioning that in case a manager of a company holds shares he should – with his notification – include also all other voting rights held by managers of the same company. While such a provision may look controversial in that it presupposes a common interest it is probably based on a very realistic assessment of how control of post-privatisation enterprises is exercised in the country in question. Most likely a similar provision could/should have been added to many other national transpositions. Lithuania is also one of only two countries in our sample that explicitly states that all shares held by spouses, parents, children, brothers and relatives should be included in the notification.<sup>47</sup>

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<sup>45</sup> Article 165:4 of the draft *Securities Markets Act* reads as follows: ‘The Minister of Finance has the right to specify the features of controlling voting rights, voting rights granted directly or indirectly by a share, co-ordinated operating and the rights of acquiring shares, as well as the issues pertaining to the above and also to the calculation of voting rights and the term of notification.’ It should be pointed out that such a solution, however, entails the danger of further delaying the full transposition of the directive.

<sup>46</sup> Extracts from the law “On securities”: ‘When calculating voting rights provided for in Articles 64 and 65 of this Law, the following voting rights are added: [...] voting rights acquired in any other indirect way.’

<sup>47</sup> See paragraphs 5.6 and 5.7 of the *Rules on disclosure of information about acquisition of a block of shares*.

**Table 3. Groups and concerted action: comparing the directive with the transposition**

Indicator	Estonia*	Latvia	Lithuania	Poland	Czech Republic	Slovakia*	Hungary	Romania	Bulgaria	Slovenia	Transposition ratio
1. 'voting rights held by other persons or entities in their own names but <u>on behalf</u> of that person or entity'	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	10/10
2. 'voting rights held by an <u>undertaking controlled</u> by that person or entity' <sup>48</sup>	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	10/10
3. 'voting rights held by a third party with whom that person or entity has concluded a <u>written agreement</u> which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting <u>common policy</u> towards the management of the company in question'	P	Y	Y	Y	Y	Y	Y	Y	Y	P	8/10
4. 'voting rights held by a third party under a written agreement concluded with that person or entity or with an undertaking controlled by that person or entity providing for the <u>temporary transfer</u> for consideration of the voting rights in question'	P	Y	Y	Y	Y	P <sup>49</sup>	Y	Y	Y	N	7/10
5. 'voting rights attaching to <u>shares</u> owned by that person or entity which are <u>lodged as security</u> , except where the person or entity holding the security controls the voting rights and declares his intention of exercising them, in which case they shall be regarded as the latter's voting rights'	N	Y	Y	P	Y	P <sup>50</sup>	Y	P	Y	N	5/10
6. 'voting rights attaching to shares of which that person or entity has the <u>life interest</u> '	N	N	N	N	N	Y	N	P	N	N	1/10
7. ' <u>voting rights</u> which that person or entity or one of the other persons or entities mentioned in the above indents is <u>entitled to acquire, on his own initiative alone</u> , under a formal agreement; in such cases, the notification prescribed in Article 4 (1) shall be effected on the date of the agreement'	P	N	Y	Y	Y	P <sup>51</sup>	Y	N	N	Y	5/10
8. 'voting rights attaching to <u>shares deposited</u> with that person or entity which that person or entity can exercise at its discretion in the absence of specific instructions from the holders'	N	Y	Y	Y	Y	Y	Y	Y	Y	N	8/10
Sum "Y"	2	6	7	6	7	5	7	5	6	3	0.68

\* Data in the table refer to draft laws (July 2001), not yet in force.

<sup>48</sup> On the definition of controlled undertaking, see 88/627/EEC, Art. 8 (Appendix 1).

<sup>49</sup> Transposed by means of a footnote reference to para. 66b of the Commercial Code; also, the transposition is doubtful since the relevant section in 66b speaks only of 'parties, which entered into agreement on uniform exercise of voting rights in one company in matters concerning the management thereof...' whilst the directive, in our understanding, refers to any temporary transfer of voting rights.

<sup>50</sup> That we refer to this provision of the directive as being partially implemented relates to the fact that there is at least no explicit note about that shares lodged as security should *not* be counted. According to Slovak law the general rule is that only the legal owner can execute voting rights and a pledge of securities made with the securities register (SCP) does not transfer the voting rights (cf. 151a and 151m of the Slovak Civil Code) – only if the obligations are not fulfilled will ownership (and thus voting rights) be transferred.

<sup>51</sup> In the current reading of the Securities Act this provision is not fully implemented. Indeed there is a mentioning in section 7 (para. 110) of the fact that the acquisition of convertible bonds with a right to shares exceeding 10 per cent of the basic capital of the company must be reported to the Financial Market Authority within seven days; however, there is no mentioning that these bonds should be added to and included in existing direct and indirect holdings of voting shares. At a meeting with the persons in charge was nevertheless discussed the possibility of including a revised version of section 7 as section 3e in paragraph 110 – thus making such acquisitions part of the mandatory disclosure.

Also in Poland adaptations to the national characteristics have been made in that one has included explicit provisions that shares held by investment funds that are under the management of one and the same investment company should be added together in the notifications. Further, one has also – unlike many other countries – explicitly included concerted action based on oral agreements.<sup>52</sup> In the Czech Republic no such national features have been included – instead one opted for a rather “unabridged” version of the text in the Article 7 of the directive with the exception of one – namely that referring to ‘voting rights attaching to shares of which that person or entity has the life interest’ (item 6, Table 3). Given that trust funds and their like are not very common in these countries this must nevertheless be considered a minor problem. In fact, neighbouring Slovakia is the only country that has “translated” also this provision into their (draft) Securities Act. On the other hand Slovakia still lacks and/or are unclear about some of the more important provisions (items 4, 5 and 7) in the directive (see footnotes in Table 3). It is nevertheless, as mentioned, encouraging that there seems to be a willingness to try to correct these shortcomings before the act goes to Parliament (September 2001).

Some of the question marks surrounding the Slovak transposition concern issues of a more principal nature, and therefore deserve some commenting. For example, items 2 and 4 in Table 3 are partially transposed by means of cross-references to other laws. In a legal sense such a solution poses no problem. However, as is the case in Slovakia and in many of the other accession countries, much of the legislation relating to securities markets and company law are still in a process of being revamped. To choose a solution with cross-references under such conditions bears with it the apparent practical risk that these related provisions might be changed, thereby rendering the transposition ineffective. A preferred solution is thus to try to implement the provisions into the one piece of legislation that is within the jurisdiction of the authority in question – or to create a solid and coherent base for more detailed provisions by the supervisory authority.

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<sup>52</sup> The *Law on the Public Trading of Securities* (para. 158a) states that the notification obligations are, firstly, ‘binding jointly upon all entities bound by a written or oral understanding regarding: a) the joint acquisition of shares of the public company or the depository receipts issued in connection with such shares, or b) the concerted voting of the company’s shareholders in the general meeting of shareholders on matters of significance for the company, or c) the pursuit of a long-term joint policy regarding the company’s management...’ It is further stated that the same applies to ownership by investment funds that are managed by the same investment funds society (section 2). Finally the paragraph states (section 3) that the notification obligation is binding also for voting rights acquired ‘by a third party in its own name but for and to the order of the said entity...’ and for voting rights that a portfolio manager, on behalf of its clients, may exercise at the GSM.

Hungary, in turn, has much like the Czech Republic undertaken a “by-the-book” transposition, leaving out only the aforementioned item 6 in Table 3. It is however difficult to give a definitive assessment of the Hungarian transposition since it yet has to come into force and some of the more detailed provisions are still not published. In neighbouring Romania there is also some uncertainties about the transposition with regard to concerted action, especially items 5-7 in Table 3. In Bulgaria, as can be seen above, one has indeed implemented most of the provisions which are expressly noted in the directive, the one important exception being item 7 in Table 3. On the other hand, however, there is also in the Bulgarian transposition a direct mentioning of the fact that shares held by spouses and minors should be added to the voting block (except when the person in question is unable to influence the exercising of the voting rights). Slovenia, finally, is perhaps the country that has the furthest to go before a full transposition of the provisions relating to concerted action is in place. This, in turn, is probably due to the fact that one has not attempted to adopt requirements that treat this information obligation separately – but rather has opted for some type of indirect transposition by means of the information obligations arising from the take-overs act.

From Table 3 it is clear that we may divide the alternatives listed in Article 7 of the directive into three groups. A first such includes items one and two in the table – which in fact has been transposed by all countries covered. A second group consists of three items (3, 4 and 8) that have been transposed by the majority of countries. The third group consists of items 5-7 and have been transposed by half or less than half of the countries surveyed in this report. This means, as illustrated in the last column in Table 3, that on average 68 per cent of the provisions have been transposed. The fact that items 5-7 are the ones that have been transposed in the least number of instances is probably also related to the fact that they represent practices that as of yet is not very common in the accession countries, e.g. trust funds, the use of equity as security and latent voting rights connected to e.g. options. However, this should not be taken as a reason not to transpose them.

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In addition to the variation that the above exposé has revealed between different countries there is one additional factor that deserves to be mentioned with regard to how voting blocks are defined – and that concerns the definitions of controlled undertakings. Even though all ten countries have included provisions that cover item 2 in the table above, this does not mean that the information generated will be comparable and this has to do with *how* a controlled

undertaking is defined. In order to avoid inconsistencies in the data generated by the directive there was therefore included a definition of controlled undertaking in Article 8 of the directive. In Poland, for example, the definition of groups and controlled undertakings are fully in accord with the definition in the Large Holdings Directive.<sup>53</sup> This is not the case in for example Slovakia whose law does not explicitly acknowledge the provisions relating to the right to appoint or remove the majority of the board members referred to in Article 8, section 2, item b. In Bulgaria on the other hand one has adopted a definition that is more stringent than what the directive states, in that it defines “control” as existing when one person holds more than 10 per cent of the number of votes in the GSM *or* may appoint (directly or indirectly) more than half of the members of the governing body *or* may otherwise exercise a decisive influence on the decision-making in relation to the company’s business. The above three examples only serve to underline that even the transposition of one single directive indeed represents a very complex task, it also underlines the interconnectedness of this kind of transposition with other aspects of legal harmonisation. Without going into details we may however conclude that it is more common that the definition of controlled undertakings is less stringent than prescribed – thus introducing yet a factor that make cross-country comparisons difficult.

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Another aspect of the reporting by groups and actors acting in concert concerns what kind of information that they must reveal about their *internal relations*. The directive in itself set no specific standards with regard to this, but rather left it to the member states to decide upon their own reporting standards and mechanisms. It is therefore encouraging to see that at least some of the accession countries in their transpositions have opted for trying to reveal such information. As can be seen in Table 4 below there are actually a total of five countries that have opted for reporting standards that, at least in theory, would result in information being available on how the different voting blocks are constructed. However, of these countries the directive still awaits implementation in two of them (Hungary and Slovakia). The faith of the

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<sup>53</sup> The directive (Article 8) states that a controlled undertaking ‘shall mean any undertaking in which a natural person or legal entity: (a) has a majority of the shareholders' or members' voting rights; or (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or (c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.’ Also, included into a parent undertaking’s rights should be included ‘the rights of any other controlled undertaking and those of any person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.’

reporting in the other three does however give us an indication about one crucial point in the information chain.

The fact is, namely, that only in Lithuania does this provision lead to the desired outcome in terms of making available data on the construction of voting blocks. The explanation, in our eyes, is that Lithuania is the only country in the group where one has a specially designed and standardised reporting form which must be used for all notifications. The form contains the headings referring to the various provisions in the regulation that defines groups and concerted action and should be filled out by all reporting parties (see Appendix 2). In the Czech Republic similar reporting standards were introduced as of 1 January 2001. From then on notifications should indicate what part of the voting rights that refers to what section in the law. Still lacking, however, are the detailed regulations that are to be adopted by the Ministry of Finance and, above all, the therewith connected standardised reporting form.<sup>54</sup> The result of this state of affairs is visible when going through the notifications that have been made during the course of 2001 in that only a very limited number contain all the information that is required by law. In Bulgaria the situation is also similar in that the data required by the law and regulations are not submitted; also here does one await the development of a standardised reporting form.

Even if omitting information on the internal build-up of the voting blocks is not contrary to the directive it is still closely related to a feature that is, since the lack of this information is connected in almost all cases to a reporting regime where the identity of the ultimate blockholder is not revealed. The directive, however, states that (Arts. 4 and 6) it is the person who acquires a holding – directly or indirectly – who shall make the notification. As voting blocks currently are reported in the Czech Republic this is not possible to find out given the absence of the detailed information on the build-up of the voting block; what the notification in most cases give is only a list of different persons/entities but with no indication on “who controls who” or what other kind of arrangements that trigger their joint reporting of a voting block. In this sense the Czech Republic is nevertheless not unique – it is a shortcoming shared by the majority of accession countries.

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<sup>54</sup> See, Commercial Code, § 183d, section 1. Representatives of the CSC believe that this will be implemented during the course of 2001 and that it is included in the legislative plan of the government, cf. Jezek (2001) [interview].

**Table 4. Information on concerted action included in the notifications**

Country	How a voting block is constructed?	How a controlled undertaking is controlled?	Comment
Estonia*	No	No	-
Latvia	No	No	-
Lithuania	Yes	No	Data on the build-up of a voting block is <i>de facto</i> available; a special standardised form for reporting is used.
Poland	No	No	The definitions of concerted action were brought in line with the directive only in 2001.
Czech Republic	Yes	No	The “block-info” is a new feature as of 2001 – data is frequently missing.
Slovak Republic*	Yes <sup>55</sup>	No	Law not yet in force – uncertainty about how reporting should be done in practice.
Hungary	Yes	Yes	Details on how the notifications will look, and what information they will actually contain, are not yet available.
Romania	No.	No.	
Bulgaria	Yes <sup>56</sup>	Yes <sup>57</sup>	The notification forms not yet prepared – data on the build-up of a voting block not available.
Slovenia	No	No	

\* Information in the table refers to the respective draft laws, not yet in force.

It is possible, of course, to bring this disclosure of ownership and control-relations one step further by having owners notify also about *how* “controlled undertakings” *de facto* are controlled, i.e. which of the alternatives (a, b or c) of Article 8 that apply. Of the accession countries, however, it is only Bulgaria and Hungary that have done this. Once again, however, it is not possible to assess the practice in the case of Hungary. Also, the practical experience in Bulgaria shows that what is on paper does not always correspond to reality – since there have been delays in deciding upon which form the notifications should be made according to there is as of yet no standard for such data reporting. The lesson from the above is quite apparent, i.e. if one wants to have standardised and comparable data one should, from the side of the authorities, give priority to devising standards for the actual reporting – be it on paper or directly in electronic form.

<sup>55</sup> The draft Securities Act (§ 110) states that owners must report which of the options (Art. 5d-e) that apply – this thus does not apply to the types of concerted action which is indirectly referred to in Art. 1 (with a reference to the Commercial Code). However, according to the representatives of the Ministry of Finance one will consider changing the draft to include also this type of concerted action into the law proper – thus making it eligible for notification. Regarding controlled undertakings Art. 5e only states that legal entities and physical persons acting in concert must report the individual stakes held as well as the total.

<sup>56</sup> Art. 6, para. 2, item 3b and 3c of the implementing regulation (see above) may be interpreted in this way. In practice, however, the notification forms in question are still not prepared by the SSEC and the notification is made as before in a non-standardised way.

<sup>57</sup> Art 8 of the implementing regulation (see above) requires the form of control to be disclosed if different from control through direct ownership of voting rights shares; in practice this seems to mean the cases 5 to 8 of Art 2 para 2. Again, however, there is no practice, since there is no form.

### 4.3 *The information chain*

As was discussed above the Large Holdings Directive was set up in a relatively ingenious way, putting the information duty on the parties having the most relevant information. Whether or not these possible advantages are realised nevertheless depend on what kind of information chain that is established through the national transpositions; once again, the directive left a rather high degree of discretion regarding this. In all cases, however, the information flow must begin with the owner/group of owners who either acquire or dispose of shares. According to the directive these then have a maximum of seven days before disclosing this change (Art. 4). As can be seen in Table 5 all countries adhere to this time limit, even though some variance is apparent with the stipulated time limit ranging from “immediately” to seven days.

When it comes to the question of whom the owner/group of owners should notify we get some variation of a more serious nature though. In all cases it has been made mandatory to notify the respective securities market commission (SMC); this is not to surprise since it is exactly what the directive prescribes (Art. 4). More surprising, however, is that three of the countries do not follow the directive in that they do not make it mandatory to report to the issuer in question. These countries are Romania, Bulgaria and Estonia. Indeed the directive allows for the notification to the public to be made by the actual supervisory authority rather than the issuer. There is however left no room for excluding the issuer from the information chain altogether (cf. Art. 4 & 10:1).

On one level this may seem like a semantic question of little weight, especially since it is permissible according to the directive to delegate the actual duty of informing the public to the supervisory authority. However, we claim that this exclusion of the issuer from the information chain may have serious consequences with regard to the quality of the data that is made available in that one loses even the “theoretical” opportunity that the issuer can “correct” the information submitted by the owner, e.g. by correcting the voting power to take into account possible voting caps, golden shares or non-public issues that the owner does not know about.

Indeed, the latter example (non-public issues) is a problem even in countries where the issuer should be informed but has little to do with the actual information handling. In the Czech Republic, for example, owners are to notify the Czech Securities Commission, the issuer and also the Czech Securities Centre (SCP). In this information chain it is nevertheless only the owner(s) and the SCP that are active, and representatives of the SCP admit that they have no

resources to check the information submitted by owners against e.g. the Commercial Register (where all equity issues must be registered) or even against their own records for dematerialised securities. They also do not find it realistic that owners go through the effort to check the Commercial Register and/or the statutes of the issuer in question.

The omission of the issuer in the information chain is all the more problematic given that few (if any) of the accession states have in place a system that ensures compliance with Article 4:2 of the directive. This article states that: ‘[m]ember states, shall, if necessary, establish in their national law, and determine in accordance with it, the manner in which the voting rights to be taken into account for the purposes of applying paragraph 1 are to be brought to the notice of the natural persons and legal entities referred to in Article 1 (1).’ In short this means that the states should establish a manner by which the total “outstanding” voting rights are to be disclosed.

**Table 5. The information chain according to the national transpositions**

Country	Time 1 (notification to issuer/authority)	Who shall be notified by owner?	Time 2 (notification to the public)	Who notifies the public?
Estonia*	‘Immediately’	SMC + SE	9 days	SE
Latvia	7 days	Issuer (+ SMC) <sup>58</sup>	9 days	Issuer
Lithuania	7 days	SMC + issuer	8 days	SMC + SE (for listed issues)
Poland	7 days	SMC + issuer + anti-monopoly office	‘Immediately’	Issuer
Czech Republic	3 working days	SMC + depository + issuer	9 days	Depository (SCP)
Slovak Republic*	1 working day	SMC + depository + issuer	9 days	Depository (SCP)
Hungary	2 working days	SMC + issuer	Not yet specified	Issuer in co-operation with SE
Romania	2 working days	SMC + SE	Not specified/1 day <sup>59</sup>	SMC + SE
Bulgaria	7 days	SMC + SE	3 days	SMC
Slovenia	3 working days	SMC + issuer	3 working days	Issuer

*Note:* In the table SMC denotes the respective Securities Market Commission; SE denotes the official Stock Exchange; SCP (in Slovakia and the Czech Republic) is the abbreviation used for the respective central Securities Centre.

\* Information in the table refers to the respective draft laws, not yet in force.

<sup>58</sup> The practice differs depending on the threshold that is passed; in the case of surpassing 10 or 25 per cent of the votes the owners notify the issuer who in turn notifies the SMC; in the case of surpassing 50 or 75 per cent of votes the owners notify first the SMC who is to approve such a purchase and then, if approved, both the issuer and the SMC.

<sup>59</sup> In practice both notifications are made on the same day since the notification to the public is made quickly by the Stock Exchange.

With the above in mind it is thus slightly sad that only four (Latvia, Poland, Romania and Slovenia) out of ten countries have opted for putting the obligation to notify the public on the issuer. In all other countries this duty has been put either upon the respective securities market commission (Romania and Bulgaria), the depository (Slovakia and the Czech Republic), the stock exchange (Estonia) or on both the securities commission and the stock exchange (Lithuania). We are not claiming that such solutions are bad or contrary to the directive – what we do claim however is that there is a trade-off between the advantages in terms of e.g. data distribution that such a centralised approach bear with them and the potential quality of the data that is disseminated. The way in which data is actually disseminated is something that we return to in Section 4.5.

#### *4.4 Sanctions and enforcement powers*

If the definition of concerted action can be said to be the most important aspect relating to the legal approximation of the Large Holdings Directive, then the provision and capacity relating to enforcement is probably the crucial aspect with regard to implementation. The directive gave more discretion to the national authorities with regard to this than to any other aspect of the directive – all that the directive says (Article 12:2) is that ‘[m]ember States shall ensure that the competent authorities have such powers as may be necessary for the performance of their duties.’ In addition it is stated (Art. 15) that ‘[m]ember states shall provide for the appropriate sanctions in cases where [...owners...] do not comply with the provisions of the directive.’

To ensure this is nevertheless a very complex issue since a solution will be dependent on a variety of factors. On a formal level it is of course about what powers that theoretically are vested with the supervisory authority in question – we therefore begin by comparing the sanctions that are mentioned in the respective legal documents in the countries in question. Looking at Table 6 we first of all see that all countries except for Lithuania have provisions that allow for fines to be administered to non-reporting owners and/or issuers. As can be seen the level varies widely and there is of course room for discussion about an appropriate level, but here it may suffice to say that the \$35 for natural persons and \$350 for legal person which is applied in Romania does probably not have a very strong deterring effect. The other extreme is the Czech Republic where the theoretical maximum fine equals \$2.5 million

A stronger preventive effect in general is probably connected to the potential loss of voting rights and possibly the *ex post* annulment of decisions at the GSM that were taken with non-

reported votes. Such provisions are also easier to in “parity” with the breach of the rules. Therefore it is worrying to see that one-third of the countries do not have provisions that allow for the nullification of voting rights (Bulgaria, Romania and Slovakia). The exact provisions for how voting rights may be suspended in the other six countries vary. In Lithuania, for example, the voting rights may be suspended for two years for parties who have acquired shares and crossed one of the thresholds without reporting it. These sanctions, evidently, are not applicable in case of disposal – which could be one of the explanations for the relative lack of such notifications as was discussed in Section 4.1.<sup>60</sup> In Poland similar sanctions apply, although with the possibility of combining the loss of voting rights with a fine. The PSEC can, for example, impose a fine of up to one million zloty on a listed company which has not immediately published the received information about the passing the respective thresholds by a shareholder since the duty to inform the public rests with the issuer in Poland.

**Table 6. Sanctions and enforcing authorities: an overview**

Indicator	Fines?	Amount?	Loss of voting rights?	Who applies sanctions?	Comment
Estonia	n.a.	n.a.	n.a.	n.a.	Sanctions are not yet decided upon
Latvia	Yes	20,000 LVL (\$31,500)	Yes	SMC	Only the “unreported” portion of votes is lost.
Lithuania	No	n.a.	Yes	Court	-
Poland	Yes	1 mn PLZ (\$236,000)	Yes	SMC	Fines also for issuers not publishing notifications
Czech Republic	Yes	100 mn CZK (\$2.5 mn)	Yes	SMC	-
Slovak Republic	Yes	n.a.	No	SMC or Court	Sanctions are not yet decided upon, but most likely only fines
Hungary	Yes	100 mn HUF (\$335,000)	Yes	SMC	-
Romania	Yes	1 or 10 mn ROL (\$35 or 350)	No	SMC	Low figure is fines for natural persons.
Bulgaria	Yes	2,000-10,000 BGL (\$900-4,500)	No	SMC	-
Slovenia	Yes	300,000 SIT (\$1,200)	Yes	SMC	Loss of voting rights <i>and</i> fines.

<sup>60</sup> Also, all decision adopted between the acquisition of the block of shares and disclosure of correct information may be annulled in court in the event that the issuers managing bodies have been changed or property or non-property rights were violated by the decision(s). (Chapter 3, Article 9.6 of the Securities Law). It can be mentioned, however, that the route to avoid the sanctions is disposing of the shares that cannot be voted under sanctions and buying them back reporting the purchase accordingly.

In a normative sense this latter approach, i.e. being able to combine fines with a loss of voting rights, seems like the most viable solution. It is also the solution found in five out of the ten countries. However, even if the authorities, during the phase of legal approximation, are given proper tools in terms of potential sanctions and fines it is by no means clear that they will be able to enforce and administer them. Rather, it is at this stage that factors such as legal tradition, other laws, competence and resources of the authority, the reach of jurisdiction of the authority etc. all become defining.

One example, which may well illustrate our point, is that of the Czech Republic. When the first provisions relating to disclosure of voting blocks were introduced in 1996 enforcement rested solely with the Commercial Courts, thus requiring a formal lawsuit by one party. With regard to a provision like this in effect meant that enforcement was absent. In 1998, however, one set out to improve the situation with the adoption of the new *Law on the Securities Commission*.<sup>61</sup> The law led to the establishment of an independent Securities Commission (Komise pro cenné papíry, CSC) charged with the supervision of market actors and securities trading – including the reporting duties of owners. However, it turned out that legal disputes concerning the actual jurisdiction of the CSC to enforce the provisions meant that in practice not much changed. On paper the powers vested with the CSC looked satisfactory – however, according to representatives of the CSC “formalist lawyers” made a case of the fact that the reference to the SMCs authority was made in a footnote, claiming that footnotes were not considered law proper. In effect this meant that all powers meant to be granted to the SMC with the adoption of *Law on the Securities Commission* were nullified.<sup>62</sup> This may look like an extreme example, but it is nevertheless a fact that things like these can alter the best of plans. At the same time it is also an explanation as to why the transposition of the directive in many cases have been stepwise. In the Czech Republic things were set straight with the amendments to the Commercial Code coming into effect as of 1 January 2001.

Also in neighbouring Slovakia similar considerations may turn out to be a hindrance for the effective implementation of the directive once the revised Securities Act comes into effect. In this case the issue concerns a combination of specific legal provisions for sanctions and the general scope of jurisdiction of its recently established (November 2000) supervisory

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<sup>61</sup> *Law on the Securities Commission*, (Act. no. 15/1998 Coll.)

<sup>62</sup> Section 7 of the *Law on the Securities Commission* stated that the Commission performs state supervision pursuant to this Act and special Acts; and that ‘the following shall be subject to the Commission’s state supervision: [...] b) the fulfilment of obligations set forth in special Acts (1) (8) (9), provided this Act so specifies.’ The problem, as explained to us, was that the figure 8 was referring to a footnote where para. 183d of

authority, the Financial Market Authority (FMA). Firstly, in the draft Securities Act there is no specific mentioning of sanctions in case of violation of the reporting duty – only the general authority of the FMA to fine capital market participants for non-fulfilment of their duties.<sup>63</sup> Secondly, and more problematic, since in Slovakia it is not possible for state authorities to give penalties to physical persons (only courts can do this) it means that the FMA can only punish licensed subjects of the capital market. In case of violation of the reporting duty by an owner which is not a licensed subject of the capital market the FMA can only hand over the matter to the Criminal Court – a situation which also applies to e.g. suspicions of insider trading by non-licensed subjects.<sup>64</sup> From this it stands clear that enforcement of the directive may indeed come to pose a problem in Slovakia.

The above two cases are of course only anecdotal evidence relating to the enforcement of the directive – but they nevertheless point to the problems of enforcing the type of regulations for which there is no tradition, by authorities with little or no tradition and seldom enough financial and other resources to take on the task with the desired efficiency. In this context it is thus not surprising in any way that the authority that seems to be handling its task of enforcement with the highest degree of efficiency is the Polish Securities Market Commission – having a 10-year history to fall back on already. The example of Slovakia also point to the potential problems of leaving it to the courts to administer penalties for non-reporting. The court system in many of the accession countries is still relatively underdeveloped, and relying on them for the enforcement carries the danger of long delays and thus indirectly a less efficient enforcement. Also the experience in Lithuania points in this direction.

#### *4.5 Information flow and data availability*

The final litmus test of whether the transposition and implementation of the Large Holdings Directive has been successful or not relates to various aspects of data availability. A first, rather obvious, dimension concerns whether voting block data is being generated in practice or not – and for what issuers that this apply to. A second dimension concerns how the data is being distributed and by whom. What we are saying by this is that the “usefulness” of the data varies with the way it is made public. A third dimension, affected above all by the definitions of concerted action (Section 4.2) and the enforcement of the same (Section 4.4), is what the

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the Commercial Code is mentioned – and according to a ruling by the Constitutional Court what is in a footnote should not be considered law proper, they should rather be used only for explanations.

<sup>63</sup> See Article 138, draft Securities Act (July 2001).

generated data actually tell us. Do they give a relevant picture of how voting power is exercised and by what groupings, or are they merely a reflection of direct ownership of shares?

Regarding the first dimension it is gratifying that the vast majority of countries have extended the reporting requirement beyond the narrow definition of “listed” companies that originally was targeted by the directive. In all countries but Hungary the disclosure regime actually applies to all publicly traded issues – irrespective of their formal listing status at the respective national stock exchange (see column 2, Table 7). This is good news since in many countries in central and eastern Europe the formal listing status of a company does not correspond to the relative “importance” of an issuer. There are many cases where an issuer chooses not to be on the “official list” only to avoid the stricter disclosure requirements connected to such a listing. Regarding the actual data availability, however, it should be apparent from the preceding sections of this report that no voting block data currently is being generated in Estonia, Slovakia or Hungary since the directive either not yet has been transposed or, as in the case of Hungary, only very recently (18 July 2001) became valid. In addition though, as previously mentioned, voting block data in Latvia is not available for all companies targeted by the transposition, not even for all “listed” companies – only for the companies on the first and second tier – thus the “Yes/No” in column three of Table 7. Reportedly this lack of enforcement is a conscious choice on behalf of the Latvian Securities Markets Commission – wanting to focus their resources on the most important companies – but the fact remains that voting block data is only available for a little more than a dozen issuers; as of mid-2001 there were a total of 17 issues listed on the first and second tier.

This leaves us with a total of seven out of the ten countries where data on voting blocks – to a greater or lesser extent – is currently available. This, however, does not mean that these countries have succeeded equally well in the implementation of the directive. There are still significant differences among these countries with regard to the usefulness of the data that is available; depending above all on in what form it is made available to the market and potential investors.

Looking at column four in Table 7 it is apparent that the way in which the public is notified varies greatly. Admittedly almost all countries have transposed and implemented the

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<sup>64</sup> Furthermore, according to representatives of the Ministry of Finance, it is uncertain whether Art. 110 of the Securities Act (where the transposition of the Large Holdings Directive is found) is covered by the Criminal Act – something that would be necessary for the courts even to consider such a matter.

provisions in Article 10.2 relating to publication in a newspaper. However, in terms of availability of data the mere publishing in a newspaper has serious drawbacks that deserve to be mentioned since they pose a critique also of the Large Holdings Directive in itself. Firstly, with such a system of public notification of the type of “flow-data” that we are talking about it is necessary for a potential investor to basically have access and go through all the issues of this publication if he is to get a relevant picture of the control structures of that particular market or even for a certain company – indeed a very cumbersome procedure. Secondly, publications in local newspapers limit the availability for potential foreign investors. Thirdly, the use of newspaper publications presupposes a working knowledge of the local language in which the notification is published. This is of course partly true also for other types of publications – but experience tells us that it is easier to “master” the structure of data if it is provided in e.g. the form of a unified database. Given that the Large Holdings Directive was drafted in the mid-1980s it is to some extent understandable that it did not make mandatory e.g. the publication through internet and/or databases. This, however, is no reason not to make use of modern information technology when it now exists.

**Table 7. Data availability**

Country	What issues are subject to the reporting requirements?	Is data on voting blocks currently available?	How is the public notified about voting blocks?	Is data on voting blocks available on the internet?	Is the data available cumulatively /historically?	Who is the provider of such cumulative/historical data?	Is the cumulative/historical data available electronically?
Estonia	All public companies	No	n.a.	n.a.	n.a.	n.a.	n.a.
Latvia	All public companies	Yes/No	Official gazette ( <i>Latvijas Vestnesis</i> ) + local newspaper	No	No	n.a.	No
Lithuania	All public companies	Yes	Official gazette + news agency + SE Bulletin	No	Yes	SMC	Yes (minor fee)
Poland	All public companies	Yes	Business press (indirectly, see text)	Yes (paid service by private providers)	No/Yes	SMC	Partly
Czech Republic	All public companies	Yes	Web-site	Yes (free)	Yes	SCP	Yes (minor fee)
Slovak Republic	All public companies	No	n.a.	n.a.	n.a.	n.a.	n.a.
Hungary	Listed companies	No	n.a.	n.a.	n.a.	n.a.	n.a.
Romania	All public companies	Yes	Official bulletin of SMC	Yes (free)	Yes	SMC	Unknown
Bulgaria	All public companies	Yes	Official bulletin of SMC	Yes (free)	Yes	SMC	Unknown
Slovenia	All public companies	Yes	Daily newspaper	No	No	n.a.	No

Note: Unlike many of the previous tables the above table reflects only the current state of data availability, thus the results for Estonia, Slovakia and Hungary.

Therefore it is gratifying that a number of countries indeed have chosen to put to use this kind of more advanced information technology. The perhaps best example – setting an example also for many of the current member states of the European Union – is the Czech Republic. There all notifications from 1996 onwards can be found free-of-charge on the internet homepage of the securities centre (SCP, <http://www.scp.cz>), and a search facility allows users to look up all notifications for any single issuer. An extra bonus is that this facility is available also in English. In addition to this the SCP provide the data upon request on disk or CD for a minor cost. Similar, although perhaps not as advanced, web-based solutions have been put in place also in Romania and Bulgaria. The importance of making data available in a cumulative form cannot be underestimated given the nature of the data ensuing from the directive. This is

even more so given the observed underreporting for disposals of shares – something that may make it necessary to go through all notifications for a certain issuer in order to “eliminate” old notifications that no longer are valid but have not been reported as disposals. Web-based solutions nevertheless give this opportunity to investors.

An extra bonus for investors and/or researchers wanting to be able to get an overview of the prevailing control structures of a certain market is if the data on voting blocks is also available in an electronic format. To our knowledge, however, this is so far really only the case for the Czech Republic and Lithuania where the Securities Centre and the Securities Commission, respectively, provide such data on Excel-files for a minor cost. In Poland and Latvia private providers offer similar services, although then at a considerably higher cost.

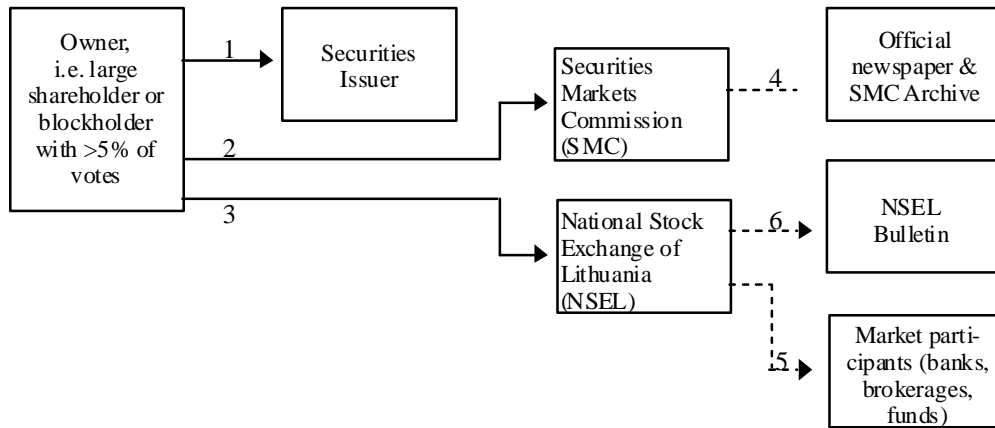
However, even in the absence of web-based solutions the information flow can be made more or less efficient and user-friendly. Poland and Lithuania are good examples of this. In Poland the information about the changes in the composition of shareholders is reported by the issuers in the form of the so-called current report, via an electronic system called ‘Emitent’ (Issuer), and then published by press and electronic media. These reports are then available to the public at the Information Centre of the Securities and Exchange Commission. This Information Centre also makes available the collective data about the ownership of listed companies (in a printed form only, updated every two weeks, available for a fee equal to the cost of a photo copy). It deserves to be noted that the provision of this data by the Commission is purely voluntary and does not result from any detailed regulations.<sup>65</sup> In Lithuania the information on voting blocks is available to the public free of charge via three means: (i) the official gazette, where an abridged version of the notification is published; (ii) the NSEL newsletter/website; and (iii) in the reading room of the Securities Market Commission (SMC) in paper files organised by company. The resulting information flow

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<sup>65</sup> There are also a number of additional disclosure requirements relating to ownership which cater for a relatively good information flow to other investors and potential investors. Firstly, in the prospectus of the issuer, shareholders having more than 5 per cent of the votes must be disclosed together with detailed information about the shares owned directly and indirectly through subsidiaries. Secondly, there are separate requirements concerning the notification of exceeding the thresholds of 25, 50 and 75 per cent, respectively, of the total vote in the GSM. Thirdly, an investor is also obliged to notify the PSEC about intention to buy shares resulting in exceeding the thresholds of 25, 33 and 50 per cent, respectively, of any company listed at the stock exchange, and to receive the approval for such an acquisition. Upon giving such an approval the PSEC also reveals this information to general public. In addition to this a public company is also, on a regular basis, obliged to: (i) deliver to the PSEC the list of shareholders entitled to participate in the GSM, and information about the number of shares and votes assigned to each of them (before the meeting); (ii) deliver to the PSEC and the information agency a list of shareholders having at least 5% of total vote in the GSM, specifying the number of shares and votes to which each of them is entitled (after the meeting). Further, any public company is also obliged to pass on information to the PSEC about the purchase or sale of its own shares – either it is done in its own name or by a dependent entity.

from the shareholder to the general public via supervisory bodies and the issuer is depicted in Figure 3.

**Figure 3. Information flow in the voting stake disclosure process in Lithuania**



*Legend*

- Information on *voting rights*
- ..... Publicly available information on *voting rights*

1. The natural or legal person (acting independently *or in concert* with other persons) who crosses one of the thresholds as listed in the ‘Rules on Disclosure of Information about Acquisition of a Block of Shares’ (10, 20, 25, 33.3, 50, 66.7, 75 per cent) of *votes* reports the total number of voting shares and the votes belonging to him to the issuer within 7 days from the moment of acquisition (disposal). This is done by submitting 1 copy of standard notification found in the annex to the ‘Rules...’
2. Reporting to the Securities Commission (SMC) is identical to that in 1, except two copies of notification are submitted
3. The Stock Exchange receives one copy of the notification form.
4. The Securities Commission makes the information public by publishing it in the official gazette and informing at least one news agency within 8 days. In addition the information is available to the public, free of charge, in the archives of the SMC.
5. NSEL makes the information on the total “new” number of voting shares/votes of the accountable issuer held by a person making a declaration through the information service of the website. This used to be targeted primarily to market participants (via email), but now is increasingly available publicly via the NSEL website.
6. NSEL also publishes this information in the bulletin of the stock exchange, which is distributed out three times a week to subscribers.

From the above it should be apparent that we judge transpositions and implementations, which only cater for the publication of data in the press as being far inferior to any of the above examples. Sadly this is nevertheless the case in Slovenia and Latvia. In addition it is also what is implied in the current draft law in Slovakia where the only publication of the data catered for is through an advertisement made by the Securities Centre (SCP) in the daily business press (Hospodarske Noviny). However, in discussion with the representative of the ECGN, the person responsible for the draft law at the Ministry of Finance were sympathetic to making it mandatory for the SCP to make this information available to the public “on request in cumulative form”. Such a requirement in the law would very likely lead the SCP to make the notifications available also through the internet since such a solution would be more

cost-efficient than printing and copying all files as demanded by the public. It is our hope that similar considerations may lead also Hungary, Estonia, Latvia and Slovenia to implement more user-friendly solutions since this would be crucial if the countries are to live up to the *intentions* of the Large Holdings Directive, i.e. to make control-structures more transparent to non-insiders, rather than only to the exact letter of the directive.

Finally some words relating to the third dimensions of the information flow, i.e. the quality of the data. With regard to this Lithuania set an example in that apart from the size of the voting block also the type of concert action is disclosed according to the seven definitions of reportable concerted action in the rules.<sup>66</sup> One shortcoming, though, in comparison with the directive is that there in Lithuania was established no initial date at which all voting blocks had to be reported; hence there is as discussed in Section 4.1 not voting block data available for issuers where no significant acquisitions and/or disposals of shares have yet occurred. Regarding the quality of the data in the other countries it would be apparent from the preceding sections of the report that the differences in transposition of e.g. the definitions of concerted action make this a problematic issue. Before comparisons between countries are possible it is thus necessary to make a thorough analysis of what a “voting block” actually means in the individual country. The bottom line is that the quality of the data made public will never be better than what the transposition of the directive allows.

#### *4.6 The real implementation of the directive: a summary*

From the preceding sections of this report it stands clear that the manner in which the Large Holdings Directive has been transposed in the ten accession countries in question varies widely. As a consequence, the quantity, quality and the type of data that is available also differ widely. It is therefore difficult to provide a fair and just assessment of to what extent the Large Holdings Directive has been implemented in the different countries. Even so an attempt will be made. As an aid Table 8 attempts to deliver our overall judgement relating to the factors that have been covered in this report. The table and the underlying assessment aim to take into account the majority of the factors that we have deemed to be importance for the transposition, implementation and enforcement of the directive. Also, in order to give an assessment of the potential consequences of the eventual implementation we have also chosen to include Estonia and Slovakia where the directive is not yet transposed. It should be noted though that their respective “rating” represents a systematic underevaluation in that much

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<sup>66</sup> See Appendix 2.

weight is given to the availability of data; this is of course the case also for Hungary where data as of yet is not available.

We start by providing a short description of each of the factors that have been assessed and the underlying logic for including them. Beginning with the first column (coherence of transposition) it refers to the way in which the directive has been transposed into national law, e.g. has it been transposed coherently into one specific law and are there complementing instructions which provide further details (e.g. Lithuania and Romania) – or has it been introduced only as a “by-product” of other legislation (Slovenia)? Column 2 only assesses the two features looked upon in Section 4.1, i.e. were the thresholds implemented (+) and were the provisions concerning the first-time notification been implemented (+). Column 3 is based on Table 3 where the different types of concerted action was analysed. Given the importance of this the maximum rank is 3+ for those who had implemented 6 or more of the instances referred to in the table; 2+ for those who had implemented a majority; and 1+ for those that had transposed less than half of the types of concerted action mentioned in the Large Holdings Directive. With regard to this it should be remembered that the intention in Estonia is to provide the additional definitions by means of Ministry of Finance regulations – something that once it is done will probably increase the rating of Estonia substantially. The column ‘Voting-block info’ refers to Table 4 above and gives 1+ if there are provisions transposed which aim to make information on the actual build-up of the voting block accessible and yet 1+ if such information is currently actually available. In the column assessing the characteristics of the information flow 1+ has been given to countries which have included the issuer in the information chain as prescribed by the directive and yet 1+ for those that have put the information duty (towards the public) on the issuer – the latter feature is then deemed as a quality-guarantee. It may seem unfair to disregard the benefits of a centralised distribution of data – but this is on the other hand reflected and compensated for in the last column on the availability of data. The column on enforcement is calculated as 1+ for provisions on fines and 1+ for provisions relating to the loss of voting rights. Once again this however is slightly unfair and, per definition, biased towards those that have already transposed the directive; Estonia for example will most likely have at least one of these provisions but score nothing in this comparison while Romania with its \$35 fine for physical persons still get 1+. Finally, given that we stress the need to make data easily available if the transposition of the directive is going to have the intended effect the column on data availability has also been given a high weighting with 1+ each for the actual availability of

voting-block, the availability of historical/cumulative data, and for electronic and/or web-based distribution of data, respectively.

**Table 8. Over-all assessment of the transposition and implementation of the Large Holdings Directive**

Country	Coherence of transposition (0-3)	Thresholds and initial notifications (0-1)	Concerted action (0-3)	Voting-block info (0-2)	Info. flow (0-2)	Enforcement (0-2)	Availability of data (0-3)	Sum (max 17)
Czech Republic	+++	++	+++	+	+	++	+++	<b>15</b>
Lithuania	+++	+	+++	++	+	+	+++	<b>14</b>
Poland	+++	+	+++		++	++	+++	<b>14</b>
Hungary	+++	++	+++	+	++	++		<b>13</b>
Bulgaria	+++	+	+++	+		+	+++	<b>12</b>
Latvia	++	+	+++		+	++	+	<b>10</b>
Romania	+++	+	++			+	+++	<b>10</b>
Slovenia	+	+	+		++	++	+	<b>8</b>
Slovakia	++	+	++	+	+	+		<b>8</b>
Estonia	++	+	+					<b>4</b>

When adding the figures we see that the group of three countries’ that often were used as positive examples rather expectedly come out with the highest “score”. Slightly more surprising is the high score reached by Hungary where the directive as of yet is not fully effective; this, however, is attributed to their very good and well thought through transposition. As expected though the two countries that have not yet even made the final transposition of the directive, Estonia and Slovakia, come out in the bottom of the table. Bulgaria, Romania and Latvia come out in the middle ground – indicating that the directive indeed has been transposed but that there remain things to be done before it is actually fully implemented and functional. The same goes for Slovenia, albeit with a larger question mark for the actual transposition and, especially, the definitions of concerted action. All in all, however, it should be remembered that the above composite index for transposition and implementation gives a relatively high weight to the quality, quantity and availability of data – i.e. on aspects relating to the latter rather than the former.

## **5 Transposition and implementation of law: why so difficult?**

As has become evident the transposition and implementation of the Large Holdings Directive has met with different fate in different countries. We have documented a large variance with regard to almost every aspect of its transposition. In general it seems that the transposition and implementation has taken longer time than expected. Despite being classified as a first stage measure in the White Book less than half of the countries have managed a full

implementation by mid-2001. Further, as has been noted the progress made has been stepwise with no country managing a full transposition of the directive in one step. This points to that the process has been more complicated and complex than initially thought. An interesting question is thus why it has been so problematic to fully implement the Large Holdings Directive (88/627/EEC)? We are not in any position to give any definite answer to this question – we may, however, speculate about some of the possible reasons.

One reason for the slow pace in transposition and implementation concerns knowledge. It has become clear during research that in many cases government agencies and supervisory authorities have been lacking a true understanding of what this (and other) directives really intend to achieve. A good case in point may be Slovakia where a great deal of confusion for long surrounded the Large Holdings Directive, and the official position, as recorded in the TAIEX database, was that the directive was implemented. The Bratislava Stock Exchange also stated with regard to the directive that it ‘is embedded in §79a of the Act no. 600/1992 Coll. on Securities [...which...] is principally in compliance with the requirements of the aforementioned Directive.’<sup>67</sup> However, as our research has showed, this position was based on a misinterpretation of the actual content and implications of the directive. It is true that the current reading of the Securities Act indeed states that if anyone acquires or disposes of shares ‘in connection with voting rights that represent more than 5, 10, 20, 30, 50 or 65 per cent share [...] the person is obliged to notify in writing the centre [SCP] and the issuer...’.<sup>68</sup> The SCP later arranges for a publication of the facts in national press (Hospodarske Noviny). However, in practice, what is being published is data on direct ownership of individual shares issues of an issuer, i.e. a far cry from the data that is intended to come out of the directive.

Against this background it was therefore encouraging to be able to report that finally it seems that the provisions of the directive will be transposed in the re-codified Securities Act set to be in force as of 1 January 2002. It is also gratifying for the ECGN to see that the research activities may have had a positive impact with regard to the understanding of the intentions behind and the importance of the directive. However, it must be stressed that the Slovak experience is not unique in any sense – similar questions and misunderstandings have been commonplace in our communications with ministries, supervisory authorities, depositories and stock exchanges.

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<sup>67</sup> See, Bratislava Stock Exchange (2000), p. 1. The one objection voiced about the compliance of the paragraph was that it referred to the stake of the capital held rather than to the per cent of voting rights – this objection, however, was taken away with the amendment to the Act on Securities in July 1999.

<sup>68</sup> See Securities Act (Act No. 600/1992 Coll. of laws) para. 79a.

Another reason for the delays and uneven progress may be – although it may sound peculiar – “too high” ambitions on the side of the authorities. It has, for example, been argued by representatives of the supervisory authorities (e.g. in Estonia, Slovakia and to some extent Latvia) that one views the problems of actually obtaining and verifying such data on indirect control-structures (voting blocks) as a reason for not transposing the directive. It also stands clear that the directive has been perceived as being very “difficult” to implement since – in some cases at least – the relevant authorities do not have the jurisdiction over “owners”. This kind of arguments may have their background in a very centralised approach on behalf of the authorities – an approach that has given rise to the attitudes like “...why bother to adopt a law that cannot be checked and enforced...”. Admittedly, enforcement will always pose a problem. In our view, however, this should not be used as an argument for not even trying to implement the adequate regulations. As the experience of Lithuania shows it is no bearing reason not even to try. In Lithuania there are clear indications that the implementation and effectiveness of the directive is gradually improving; in 1997 only 554 block-holdings were reported, while in the figure doubled in 1998 to 1,005 and in 1999 increased to 1,294 notifications. Likewise, in the Czech Republic there were actually thousands of notifications submitted in the 1996-2000 period – a period where, as discussed above, there was de facto no legal ground for enforcement at all.

Another reason for the slow pace of implementation in terms of owners actually reporting data relates to what has been aired by officials in Slovakia and Estonia during more informal conversations, namely that this reluctance is due to the fact that nobody (with an influence) is really interested in making public (finding out) who controls what. This kind of arguments and resistance on behalf of owners must be understood in the light of the privatisation policies pursued. In the case of Slovakia, for example, much of the large-scale privatisation programme was corrupt and gave rise to complicated cross-holdings and industrial conglomerates controlled by individuals with close ties to the (Meciar) government(s).<sup>69</sup> In Estonia and Latvia officials have weathered similar possible explanations. Thus, given that privatisation generally was a very politically sensitive process – leading to the build-up of pyramidal industrial holding structures (often with political connections) and off-shore ownership – it is in fact little surprise that one finds serious resistance against real disclosure to the public. However, for policy-makers attempting to improve the situation on the securities market this should not be an argument – quite to the opposite.

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<sup>69</sup> Cf. Olsson (1999).

Yet an aspect that can at least explain part of the variance that has been noticed relates to the different legal traditions within the region with regard to centralisation vs. decentralisation. An overly centralised approach, leaving little or no room for e.g. decrees or instructions by the responsible ministries or supervisory authorities, carries the risk of causing excessive delays since revisions and implementation of law usually is a more cumbersome procedure. The approach in this matter differs among countries. In the former Czechoslovakia, for example, there has for long been a tradition of trying to keep down the amount of secondary regulations to a minimum. It is thus significant that in neither the Czech Republic nor the Slovak Republic are there as of yet any regulations or decrees in force relating to the Large Holdings Directive. In Lithuania, by contrast, the Lithuanian Securities Markets Commission devised the major part of the implementing regulations – Lithuania was also the first country to fully transpose and implement the directive. Also Bulgaria adopted such a “two-tier” approach to the regulation of the securities markets. In the first tier one finds among others the LPOS, adopted by Parliament, which sets out the general framework for public offerings, trade on secondary markets, the role and functions of intermediaries, the central depository and state supervision – and the disclosure of ownership. On a second tier one has left the slightly more detailed provisions to be adopted by the Council of Ministers by means of decrees. In the case of the Large Holdings Directive this was implemented in decree 244 of 24 November 2000 on the adoption of an *Ordinance on the Disclosure of Major Holdings in Public and Investment Companies*. Further, the decree authorizes the Commission to guide the enforcement of the same. Such an approach – not very dissimilar to that suggested by the group of wise men for revamping the European Union financial market regulation – indeed have some advantages. Among other things it has allowed for a more rapid response to the changing needs of the market. Also, the more detailed regulations are in this sense developed by those who are closer to practitioners and market actors.

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None of the above is meant to deny the fact that legal reforms in general may be very difficult. Also, the process is made more difficult by the fact that changing regulations often entails consecutive changes in many rounds and involves many different agencies. The problems are also exacerbated when so much of the legislation is in the process of being revamped at the same time, as now is the case in the majority of accession countries. However, even if difficult, a number of reasons give that the work with regulatory harmonisation must continue. In addition to the obvious, and rather instrumental, reason that

lies with meeting the European Union requirement of full adoption of the *Acquis Communautaire*, the need for regulatory harmonisation in the field of securities market regulation is indeed a very real one, namely to tackle the acute problems relating to the lack of transparency. In this context it may be noted that it is perhaps not a question about developing the “perfect” regulations – more important is that regulations are somewhat in conformity with other countries if these markets are to attract also foreign investors. Or, as it was stated in a report presented at the Baltic Development Forum Summit in September 2000, ‘*what matters is not so much what the rules are but more that they are the same*’ and therefore ‘*legislators should as a minimum implement existing EU regulation...*’<sup>70</sup>

‘Existing EU regulation’ is nevertheless a problematic term; currently the accession countries are in fact chasing a “moving target”. EU regulations today are already very different than they were when the White Paper was published in 1995 – and with regard to securities markets regulation the target is set to move at an even quicker pace if any of the objectives set out by the group of wise men are to be met. This poses a real challenge – not only for the accession countries but also for the European Union. If the EU wants to take seriously the harmonisation of securities regulation at the same time as one presses ahead with enlargement it would therefore be of utmost importance that resources were devoted to assistance in this field. As our research has indicated lack of know-how and insight into the intentions and workings of the various existing directives as well as future directives may be the real explanation to the uneven and stepwise progress in this field. To avoid these piecemeal transpositions is clearly needed better information and co-operation based on mutual trust. It indeed seems as if in the more formal screening processes which are part of the accession negotiations the national representatives are more interested in showing a good result – and thus making formal advances in the accession process – than in taking to themselves constructive criticisms. Increasing support and co-operation during the pre-accession period may thus well be a “good investment”. It is probably also very “cost-effective” to devote these resources (human and financial) already now when much of the laws and regulations relating to the securities markets are still in a flux – it may be easier and better to get things right from the beginning.

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<sup>70</sup> Clausen et al. (2000), p. 6.

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## **Appendix 1. The full text of the Large Holdings Directive**

388L0627

### **Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of**

*Official Journal L 348 , 17/12/1988 p. 0062 - 0065*

*Finnish special edition....: Chapter 6 Volume 2 p. 188*

*Swedish special edition....: Chapter 6 Volume 2 p. 188*

#### **Text:**

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#### **COUNCIL DIRECTIVE**

of 12 December 1988

on the information to be published when a major holding in a listed company is acquired or disposed of  
(88/627/EEC)

#### **THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas a policy of adequate information of investors in the field of transferable securities is likely to improve investor protection, to increase investors' confidence in securities markets and thus to ensure that securities markets function correctly;

Whereas, by making such protection more equivalent, coordination of that policy at Community level is likely to make for greater inter-penetration of the Member States' transferable securities markets and therefore help to establish a true European capital market;

Whereas to that end investors should be informed of major holdings and of changes in those holdings in Community companies the shares of which are officially listed on stock exchanges situated or operating within the Community;

Whereas coordinated rules should be laid down concerning the detailed content and the procedure for applying that requirement;

Whereas companies, the shares of which are officially listed on a Community stock exchange, can inform the public of changes in major holdings only if they have been informed of such changes by the holders of those holdings;

Whereas most Member States do not subject holders to such a requirement and where such a requirement exists there are appreciable differences in the procedures for applying it; whereas coordinated rules should therefore be adopted at Community level in this field,

**HAS ADOPTED THIS DIRECTIVE:**

#### **Article 1**

1. Member States shall make subject to this Directive natural persons and legal entities in public or private law who acquire or dispose of, directly or through intermediaries, holdings meeting the criteria laid down in Article 4 (1) which involve changes in the holdings of voting rights in companies incorporated under their law the shares of which are officially listed on a stock exchange or exchanges situated or operating within one or more Member States.

2. Where the acquisition or disposal of a major holding such as referred to in paragraph 1 is effected by means of certificates representing shares, this Directive shall apply to the bearers of those certificates, and not to the issuer.

3. This Directive shall not apply to the acquisition or disposal of major holdings in collective investment undertakings.

4. Paragraph 5 (c) of Schedule C of the Annex to Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing (4), as last amended by Directive 82/148/EEC (5), is hereby replaced by the following:

'(c) The company must inform the public of any changes in the structure (shareholders and breakdowns of holdings) of the major holdings in its capital as compared with information previously published on that subject as soon as such changes come to its notice.

In particular, a company which is not subject to Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of (\*) must inform the public within nine calendar days whenever it comes to its notice that a person or entity has acquired or disposed of a number of shares such that his or its holding exceeds or falls below one of the thresholds laid down in Article 4 of that Directive.

(\*) OJ No L 348, 17. 12. 1988, p. 62.'

#### **Article 2**

For the purposes of Directive, 'acquiring a holding' shall mean not only purchasing a holding, but also acquisition by any other means whatsoever, including acquisition in one of the situations referred to in Article 7.

#### **Article 3**

Member States may subject the natural persons, legal entities and companies referred to in Article 1 (1) to requirements stricter than those provided for in this Directive or to additional requirements, provided that such requirements apply generally to all those acquiring or disposing of holdings and all companies or to all those falling within a particular category acquiring or disposing of holdings or of companies.

#### **Article 4**

1. Where a natural person or legal entity referred to in Article 1 (1) acquires or disposes of a holding in a company referred to in Article 1 (1) and where, following that acquisition or disposal, the proportion of voting rights held by that person or legal entity reaches, exceeds or falls below one of the thresholds of 10 %, 20 %, 1 / 3, 50 % and 2 / 3, he shall notify the company and at the same time the competent authority or authorities referred to in Article 13 within seven calendar days of the proportion of voting rights he holds following that acquisition or disposal. Member States need not apply:

- the thresholds of 20 % and 1 / 3 where they apply a single threshold of 25 %,
- the threshold of 2 / 3 where they apply the threshold of 75 %.

The period of seven calendar days shall start from the time when the owner of the major holding learns of the acquisition or disposal, or from the time when, in view of the circumstances, he should have learnt of it.

Member States may further provide that a company must also be informed in respect of the proportion of capital held by a natural person or legal entity.

2. Member States shall, if necessary, establish in their national law, and determine in accordance with it, the manner in which the voting rights to be taken into account for the purposes of applying paragraph 1 are to be brought to the notice of the natural persons and legal entities referred to in Article 1 (1).

#### **Article 5**

Member States shall provide that at the first annual general meeting of a company referred to in Article 1 (1) to take place more than three months after this Directive has been transposed into national law, any natural person or legal entity as referred to in Article 1 (1) must notify the company concerned and at the same time the competent authority or authorities where he holds 10 % or more of its voting rights, specifying the proportion of voting rights actually held unless that person or entity has already made a declaration in accordance with Article 4.

Within one month of that general meeting, the public shall be informed of all holdings of 10 % or more in accordance with Article 10.

#### **Article 6**

If the person or entity acquiring or disposing of a major holding as defined in Article 4 is a member of a group of undertakings required under Directive 83/349/EEC (1) to draw up consolidated accounts, that person or entity shall be exempt from the obligation to make the declaration provided for in Article 4 (1) and in Article 5 if it is made by the parent undertaking or, where the parent undertaking is itself a subsidiary undertaking, by its own parent undertaking.

#### **Article 7**

For the purposes of determining whether a natural person or legal entity as referred to in Article 1 (1) is required to make a declaration as provided for in Article 4 (1) and in Article 5, the following shall be regarded as voting rights held by that person or entity:

- voting rights held by other persons or entities in their own names but on behalf of that person or entity,
- voting rights held by an undertaking controlled by that person or entity;
- voting rights held by a third party with whom that person or entity has concluded a written agreement which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the company in question.
- voting rights held by a third party under a written agreement concluded with that person or entity or with an undertaking controlled by that person or entity providing for the temporary transfer for consideration of the voting rights in question,
- voting rights attaching to shares owned by that person or entity which are lodged as security, except where the person or entity holding the security controls the voting rights and declares his intention of exercising them, in which case they shall be regarded as the latter's voting rights,
- voting rights attaching to shares of which that person or entity has the life interest,
- voting rights which that person or entity or one of the other persons or entities mentioned in the above indents is entitled to acquire, on his own initiative alone, under a formal agreement; in such cases, the notification prescribed in Article 4 (1) shall be effected on the date of the agreement,
- voting rights attaching to shares deposited with that person or entity which that person or entity can exercise at its discretion in the absence of specific instructions from the holders.

By way of derogation from Article 4 (1), where a person or entity may exercise voting rights referred to in the last indent of the preceding subparagraph in a company and where the totality of these voting rights together with the other voting rights held by that person or entity in that company reaches or exceeds one of the thresholds provided for in Article 4 (1), Member States may lay down that the said person or entity is only obliged to inform the company concerned 21 calendar days before the general meeting of that company.

#### **Article 8**

1. For the purposes of this Directive, 'controlled undertaking' shall mean any undertaking in which a natural person or legal entity:

- (a) has a majority of the shareholders' or members' voting rights; or
- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
- (c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.

2. For the purposes of paragraph 1, a parent undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.

#### **Article 9**

1. The competent authorities may exempt from the declaration provided for in Article 4 (1) the acquisition or disposal of a major holding, as defined in Article 4, by a professional dealer in securities, in so far as that acquisition or disposal is effected in his capacity as a professional dealer in securities and in so far as the acquisition is not used by the dealer to intervene in the management of the company concerned.

2. The competent authorities shall require the professional dealers in securities referred to in paragraph 1 to be members of a stock exchange situated or operating within a Member State or to be approved or supervised by a competent authority such as referred to in Article 12.

#### **Article 10**

1. A company which has received a declaration referred to in the first subparagraph of Article 4 (1) must in turn disclose it to the public in each of the Member States in which its shares are officially listed on a stock exchange as soon as possible but not more than nine calendar days after the receipt of that declaration.

A Member State may provide for the disclosure to the public, referred to in the first subparagraph, to be made not by the company concerned but by the competent authority, possibly in cooperation with that company.

2. The disclosure referred to in paragraph 1 must be made by publication in one or more newspapers distributed throughout or widely in the Member State or States concerned or be made available to the public either in writing in places indicated by announcements to be published in one or more newspapers distributed throughout or widely in the Member State or States concerned or by other equivalent means approved by the competent authorities.

The said disclosure must be made by publication in the official language or languages, or in one of the official languages or in another language, provided that in the Member State in question the official language or languages or such other language is or are customary in the sphere of finance and accepted by the competent authorities.

#### **Article 11**

The competent authorities may, exceptionally, exempt the companies referred to in Article 1 (1) from the obligation to notify the public set out in Article 10 where those authorities consider that the disclosure of such information would be contrary to the public interest or seriously detrimental to the companies concerned, provides that, in the latter case, such omission would not be likely to mislead the public with regard to the facts and circumstances knowledge of which is essential for the assessment of the transferable securities in question.

#### **Article 12**

1. Member States shall designate the competent authority or authorities for the purposes of this Directive and shall inform the Commission accordingly, specifying, where appropriate, and division of duties between those authorities.
2. Member States shall ensure that the competent authorities have such powers as may be necessary for the performance of their duties.
3. The competent authorities in the Member States shall cooperate wherever necessary for the purpose of performing their duties and shall exchange any information useful for that purpose.

#### **Article 13**

For the purpose of this Directive, the competent authorities shall be those of the Member State the law of which governs the companies referred to in Article 1 (1).

#### **Article 14**

1. Member States shall provide that every person who carries on or has carried on an activity in the employment of a competent authority shall be bound by professional secrecy. This means that no confidential information received in the course of their duties may be divulged to any person or authority except by virtue of provisions laid down by law.
2. Paragraph 1 shall not, however, preclude the competent authorities of the various Member States from exchanging information as provided for in this Directive. Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or previously employed by the competent authorities receiving the information are subject.
3. A competent authority which receives confidential information pursuant to paragraph 2 may use it solely for the performance of its duties.

#### **Article 15**

Member States shall provide for appropriate sanctions in cases where the natural persons or legal entities and the companies referred to in Article 1 (1) do not comply with the provisions of this Directive.

#### **Article 16**

1. The Contact Committee set up by Article 20 of Directive 79/279/EEC shall also have as its function:
  - (a) to permit regular consultations on any practical problems which arise from the application of this Directive and on which exchanges of view are deemed useful;
  - (b) to facilitate consultations between the Member States on the stricter or additional requirements which they may lay down in accordance with Article 3, so that the requirements imposed in all the Member States may be brought into line, in accordance with Article 54 (3) (g) of the Treaty;
  - (c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive.

#### **Article 17**

1. Member States shall take the measures necessary for them to comply with this Directive before 1 January 1991. They shall forthwith inform the Commission thereof.
2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field governed by this Directive.

#### **Article 18**

This Directive is addressed to the Member States.

Done at Brussels, 12 December 1988.

For the Council

The President

P. ROUMELIOTIS

(1) OJ No C 351, 31. 12. 1985, p. 35, and  
OJ No C 255, 25. 9. 1987, p. 6.

(2) OJ No C 125, 11. 5. 1987, p. 144, and  
OJ No C 309, 5. 12. 1988.

(3) OJ No C 263, 20. 10. 1986, p. 1.

(4) OJ No L 66, 16. 3. 1979, p. 21.

(5) OJ No L 62, 5. 3. 1982, p. 22.

(1) OJ No L 193, 18. 7. 1983, p. 1.

**End of the document**

## Appendix 2. Rules on disclosure of information about acquisition of a block of shares

Approved by Resolution 2 of the Lithuanian  
Securities Commission of January 31, 1997

### General Part

1. The legal basis for these Rules on Disclosure of Information about Acquisition of a Block of Shares (further - Rules) is Article 9 of the Law on Public Trading in Securities of the Republic of Lithuania.
2. These Rules regulate the order of disclosure and contents of information required in case of acquisition or disposal of a block of shares.
3. A natural or legal person who, acting independently or in concert with other persons, acquires shares of an accountable issuer registered in the Republic of Lithuania which award him in excess of 1/10, 1/5, 1/2, or 2/3 of votes must, within 15 days from the moment the relevant limit is exceeded, inform the Securities Commission and the issuer about the total number of its shares belonging to him. The provisions shall also apply in cases where the specified limits are exceeded in the diminishing order.
4. Persons to whom the information disclosure requirements set out in paragraph 3 hereof are applicable must also at the same time furnish data on the securities held by them, entitling them to vote in future and (or) hold securities of the issuer. The following securities shall be deemed as granting the right to vote in future and (or) hold securities of the issuer: convertible bonds, convertible preference shares or other securities which, when realised, will award him the right to vote at a general meeting of shareholders.
5. Voting rights held by a natural person or legal entity subject to requirements of par. 3 of these Rules shall be the following:
  - 5.1 voting rights attaching to the shares owned by that person or entity by right of property which are lodged as security, except where the pledge agreement provides for transfer of the voting rights to the holder of the security, in which case they shall be regarded as the latter's voting rights;
  - 5.2 voting rights which the person has the right to exercise at his own discretion acting as a proxy of another person;
  - 5.3 voting rights attaching to the shares owned by an undertaking controlled by that person or entity;
  - 5.4 voting rights attaching to the shares owned by another person with whom that person or entity has concluded a written agreement to pursue common policy towards the management of the issuer;
  - 5.5 voting rights attaching to the shares owned by a third party under a written agreement concluded with that person or entity providing for the transfer of the voting rights in question;
  - 5.6 in case the person is the manager of the issuer, voting rights attaching to the shares owned by all other managers of the issuer;
  - 5.7 voting rights attaching to the shares owned by spouses, parents and children, brothers and sisters.
6. Each person referred to in paragraph 3 of these Rules shall, within 15 days from the moment the relevant limit is exceeded, disclose the information indicated in paragraphs 3, 4, and 5:
  - 6.1 according to the Form of Disclosure about Acquisition of a Block of Shares provided in Annex 1 if the specified limit is exceeded in the increasing order;
  - 6.2 according to the Form of Disclosure about Disposal of a Block of Shares provided in Annex 2 if the specified limit is exceeded in the diminishing order.

### Order of Filling in and Submitting Forms of Disclosure about Acquisition and Disposal of a Block of Shares

7. A person disclosing the fact that the relevant limits specified in paragraph 3 of these Rules are exceeded shall fill in the forms referred to in paragraphs 6.1 and 6.2 in accordance with the following requirements:
  - 7.1 in item 3 of the Forms:
    - 7.1.1 column 3 of the Table shall contain the number of shares owned by persons acting in concert which, pursuant to paragraphs 5.2 - 5.7, are considered to be granting voting rights to the reporting person;
    - 7.1.2 columns 4 and 5 of the Table shall contain the percentage of the voting rights the reporting person owned at general meetings of shareholders of the issuer (voting rights attaching to the shares owned personally and voting rights attaching to shares owned by persons acting in concert) before the relevant limit was exceeded and the percentage held on the day of filling in the Form of Disclosure.
  - 7.2 in item 4 of the Forms:
    - 7.2.1 letter X shall be used to mark the item corresponding to the votes which the reporting person owns according to the symbols specified in paragraph 7.2.2; next item shall set out the percentage of the voting rights attached to this person at a general meeting of shareholders of the issuer according to the specified symbol;
    - 7.2.2 voting rights at general meetings of shareholders of the issuer shall be attached to the reporting person pursuant to the requirements of paragraph 5 of these Rules and shall correspond to the following symbols in the Tables of the Form of Disclosure:
      - paragraph 5.1 NT;

- paragraph 5.2 IG;
- paragraph 5.3 KS;
- paragraph 5.4 VK;
- paragraph 5.5 PA;
- paragraph 5.6 EV;
- paragraph 5.7 SB.

7.2.3 A person acting in concert with other persons shall attach a list of these persons in the Annex to the Form of Disclosure specifying the first and last names (names of enterprises), addresses (office addresses), personal codes (codes of the enterprise register), the number of shares owned and the percentage of voting rights attaching to them.

7.3 in item 5 of the Forms:

7.3.1 the data shall be submitted only concerning securities which grant the right to acquire voting shares in the future and which the said person owns;

7.3.2 while listing the conditions for acquisition of voting rights the following information shall be provided: terms and conditions of conversion of convertible bonds (ratio of conversion into voting shares, conditions of additional payment, etc.), terms of realisation of derivatives and conditions for acquisition of shares for them;

7.3.3 where the reporting person holds shares the voting rights attaching to which cannot be realised (unpaid, shares which have lost the voting right, etc.), he shall enter data about them as about securities which grant the voting right in the future. While listing the conditions for acquisition of voting rights the following information shall be provided: in case of unpaid shares - terms of payment; in case of shares which have lost the voting right - the term of reestablishment of the voting right.

7.4 in item 6 of the Forms:

7.4.1 the reason the reporting person has exceeded the relevant limit indicating the corresponding letters in the Form:

- 7.4.1.1 payment of dividend in shares DA;
- 7.4.1.2 additional shares assigned at increase of the authorised capital from company assets IDBL;
- 7.4.1.3 increase of the authorised capital from supplementary contributions IDPI;
- 7.4.1.4 acquisition of shares at a stock exchange IB;
- 7.4.1.5 sales of shares at a stock exchange PB;
- 7.4.1.6 purchase of shares from shareholders on OTC INB;
- 7.4.1.7 sales of shares on OTC PNB;
- 7.4.1.8 realisation of the right to acquire the voting right or voting shares BTD;
- 7.4.1.9 granting the voting right to the reporting person to vote at his discretion under a proxy BTI;
- 7.4.1.10 granting another person the right to vote at his discretion under a proxy made by the reporting person BTN;
- 7.4.1.11 shares acquired as a donation DOV;
- 7.4.1.12 inherited shares PAV;
- 7.4.1.13 annulment of shares AN;
- 7.4.1.14 other reasons for exceeding the limits to be declared KP.

7.4.2 where the declared limit is exceeded because of several reasons, the reporting person shall disclose the one which effected the acquisition or disposal of the largest number of votes.

7.4.3 where the limit specified in paragraph 3 of these Rules is exceeded because of other reasons, they shall be disclosed in the annex to the Form of Disclosure.

8. A reporting person shall, within 15 days from the moment the relevant limit is exceeded, disclose the information according to the annexed Forms of these Rules to:

- 8.1 the Securities Commission - 2 copies of the form;
- 8.2 the accountable issuer - 1 copy of the form;
- 8.3 the stock exchange on the trading lists of which securities of the accountable issuer are listed - 1 copy of the form.

9. The Forms shall be typed and mailed by a registered letter or delivered personally.

10. A person who is required to notify that the relevant limit specified in paragraph 3 is exceeded can make an agreement with an intermediary of public trading in securities concerning disclosure of this information in the procedure prescribed by par. 7 - 9 of these Rules.

11. The agreement between the person and the intermediary of public trading in securities shall provide for:

- 11.1 the order and terms under which the intermediary of public trading in securities shall receive information from the person who is required to notify that the relevant limit is exceeded;

11.2 liability of the intermediary of public trading in securities in case:

11.2.1 the person loses the right to vote at general meetings of shareholders of the issuer in the order prescribed by law or decisions of the meetings are revoked in the court procedure;

11.2.2 other sanctions set forth in the laws of the Republic of Lithuania for disclosure of false or misleading information or failure to disclose it in the order prescribed by these Rules are applied to the person who is required to notify that the established limit is exceeded.

### The Procedure of Informing the Public about Acquisition of a Block of Securities

12. The Securities Commission upon the receipt of the notice concerning the excess of the established limit shall, within 8 days, publish information concerning the total number of voting shares and /or votes of the accountable issuer held by a person making the declaration in the official gazette 'Valstybės Žinios' and inform at least to one news agency.

13. The National Stock Exchange of Lithuania, upon receipt of the notice that the relevant limit specified in par. 3 is exceeded shall, no later than on the following working day, announce the total number of voting shares and /or votes of the accountable issuer held by a person making the declaration through the information system of the exchange and in the nearest bulletin of the stock exchange.

#### Annex 1 to Rules on Disclosure of Information about Acquisition of a Block of Shares

##### DISCLOSURE ABOUT ACQUISITION OF A BLOCK OF SHARES

1. \_\_\_\_\_

(Name of the accountable issuer, code of the register, address)

2. \_\_\_\_\_

(Name, personal code, address, telephone number of the person or name,

code of register, type of enterprise, office address of the enterprise which has acquired a block of securities)

3. Data about acquisition of shares of an accountable issuer

Type and Class of shares, code of securities	Number of shares owned	shares owned shares owned by persons acting in concert	Number of voting rights held before acquisition of a block of shares	Number of voting rights held on the day of filling the form	Day on which the limit was exceeded
1	2	3	4	5	6

4. Number of voting rights held by the person making a declaration (see par.7.2)

NT	%	IG	%	KS	%	VK	%	PA	%	EV	%	SB	%

5. Data about securities held which grant the right to vote and/or own shares of the issuer in the future

Type and class of securities	Number of securities held	Conditions for acquisition of the voting right (term and conditions for converting and realisation of the right to acquire voting shares)

6. Reasons for exceeding the limit (enter)

7. Upon signing this notice I confirm that the information disclosed is full and accurate and that I am aware of the sanctions for disclosure of misleading information set forth in the Law on Public Trading in Securities of the Republic of Lithuania and the Code of Administrative Violations of the Republic of Lithuania.

(Signature of the person making a declaration about the acquisition of a block of shares (first and last name and signature of the head of administration), date of filling-in the Form)

#### Annex 2 to Rules on Disclosure of Information about Acquisition of a Block of Shares

##### DISCLOSURE ABOUT DISPOSAL OF A BLOCK OF SHARES

1. \_\_\_\_\_

(Name of the accountable issuer, code of the register, address)

2. \_\_\_\_\_

(Name, personal code, address, telephone number of the person or name,

\_\_\_\_\_  
code of register, type of enterprise, office address of the enterprise which has disposed of a block of securities)

3. Data about disposal of shares of an accountable issuer

Type and class of shares, code of securities	Number of shares owned	shares held shares owned by persons acting in concert	Number of voting rights held before disposal of a block of shares	Number of voting rights held on the day of filling the form	Day on which the limit was exceeded
1	2	3	4	5	6

4. Number of voting rights held by the person making a declaration (see par.7.2)

NT	%	IG	%	KS	%	VK	%	PA	%	EV	%	SB	%

5. Data about securities held which grant the right to vote and/or own shares of the issuer in the future

Type and class of securities	Number of securities held	Conditions for acquisition of the voting right (term and conditions for converting and realisation of the right to acquire voting shares)

6. Reasons for exceeding the limit (enter)

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7. Upon signing this notice I confirm that the information disclosed is full and accurate and that I am aware of the sanctions for disclosure of misleading information set forth in the Law on Public Trading in Securities of the Republic of Lithuania and the Code of Administrative Violations of the Republic of Lithuania.

(Signature of the person making a declaration about the acquisition of a block of shares (first and last name and signature of the head of administration), date of filling-in the Form)