

Market transparency, ownership concentration and
harmonisation of law in some East European accession
countries: a critical note

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Mikael Olsson, SITE and BFMG

Julia Alasheyeva, SSE Riga

Abstract

After some ten years of economic, political and legal reform in central and eastern Europe it is apparent that much remains to be done, not least to safeguard the substantial progress that indeed has been made. 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 four functions commonly associated with a functioning capital market, namely: *(i)* to establish share prices, and thereby an evaluation of company performance; *(ii)* to provide risk capital for companies; *(iii)* to encourage risk-taking and investment by spreading the risk; and also, *(iv)*, to correct managerial failure through a market for corporate control.²

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 paper, however, illustrates that progress has been very uneven and that there are a lot of problems connected to this process of legal transposition.

The paper 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 implemented in the four accession countries in question, i.e. the Slovak Republic, Estonia, Latvia and Lithuania. The results point to a serious reluctance and/or inability to incorporate the large holdings directive into national legislation. The reluctance to implement such legislation, which would bring a greater transparency to the existing capital markets, is analysed in the context of the corporate governance structures that resulted from the privatisation process.³

The paper is structured as follows: Section one introduces the questions and problems. In the section key indicators such as market capitalisation, liquidity and price developments are used to highlight the problems related to capital market development. Section two presents the Large Holdings Directive, the implementation of which could offer at least a partial solution to the current problems facing the capital market. Section three gives an overview of the (non)-implementation in the countries in question and the available data on ownership of listed companies. Section four analyses some of this data, attempting to trace differences and similarities between countries and markets. Section five concludes with an analysis of the possible explanations for the high degree of ownership concentration and, in relation to this, the very differing results with regard to establishing the legislative environment conducive for a securities market development.

JEL Classification: G32, G34, G38, K22, P52

¹ Earlier versions of this paper have been presented and discussed at workshops.

² Cf. Mayer (1994), p. 179.

³ Cf. Olsson (1999).

‘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.⁴

This “renewed” interest in the role of institutions is partly a result of the general upswing for the field of “law and economics” and the revival of institutional economics in general which is connected to the works of Douglass C. North, partly a consequence of the fact that in many countries the initial reform efforts failed in delivering the desired results. For example, privatisation did not result in dramatically increasing productivity nor even in the imposition of hard budget constraints. 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 has started membership negotiations with a number of countries. This, in turn, is a process that covers a vast spectrum of issues and also one that poses a challenge on many different levels.

An area of particular interest with regard to institution-building has become the capital market. It has by now become apparent that the capital market 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 capital market, namely: (i) to establish share prices, and thereby an evaluation of company performance; (ii) to provide risk capital for companies; (iii) to encourage risk-taking and investment by spreading the risk; and also, (iv), to correct managerial failure through a market

⁴ Cf. EBRD (1999).

for corporate control.⁵ This failure of the capital market to attract and generate new funds for the companies is particularly worrying as many of the formerly state-owned enterprises (SOE's) are in dire need of restructuring and the therewith connected investments.

Indeed stock markets were relatively quickly established in most transition economies, often seen as important symbols of the transition to capitalism. The exact timing and structure, however, varied and was closely connected to the scheme chosen for privatisation of the large enterprises. Mass privatisation with vouchers has, for example, in many cases been connected to the development of wide although thin markets.⁶ Among the countries studied in this paper, Slovakia and Lithuania illustrate the former development. In the Slovak case the voucher privatisation programme resulted in more than 500 tradable equity issues being put on the market overnight in early 1993, resulting in a high demand for organisations and institutions to co-ordinate trade. However, as has been shown the actual regulation (institutions) of the work at these organised markets (organisations) was to lag behind.

Already in 1991 the Bratislava Stock Exchange (Burza cennych papierov v Bratislave, BCPB) was established, and trading commenced on 6 April 1993. A few months later, in September 1993, trading began also at the Lithuanian stock exchange (National Stock Exchange of Lithuania, NSEL), although there in a more modest 22 issues from 19 different issuers. In Riga and Tallinn it took some time longer before exchanges started operating. At the Riga Stock Exchange (RSE) trading commenced in July 1995,⁷ and in Estonia, finally, trading at the Tallinn Stock Exchange (TSE) began on 31 May 1996, then with 11 securities listed.

Looking at the development at the exchanges through three key indicators of capital market development, however, it becomes apparent that these markets have a long way to go.⁸ With regard to market capitalisation as a per cent of GDP, a measure which in transforming economies also indicates the extent of privatisation (in more mature economies it would only indicate to what extent equity historically has been used to mobilise capital), one sees that relatively high levels were reached early on, although much depending on the type of privatisation that was opted for.⁹ As for two other key indicators the developments in the four countries in question is more worrisome. Looking at the turnover ratio (market turnover as a

⁵ Cf. Mayer (1994), p. 179.

⁶ Cf. discussion in Olsson (1999), Chs. V & VII.

⁷ It should be noted that during 1995 trade was only conducted in 17 equity issues (end-year) and with a minuscule total equity turnover of below 20,000 USD.

⁸ For a discussion of the respective measures and their implications, cf. EBRD (1995), p. 165 ff.

percentage of total market capitalisation), which is a relevant indicator of market liquidity, it is apparent that the markets indeed are thin. As can be seen in Table 1, turnover, in general, equals only a small fraction of the total market capitalisation of the public issues; in 1999 there was no market of the ones studied with a higher turnover ratio than 15.7 per cent. The only market that early came to show an acceptable liquidity is the Estonian one in 1997 and 1998; although the market still has not recovered after the crash and the consecutive restructuring of portfolios. A second indicator of liquidity, namely the value of shares traded as a per cent of GDP, which gives an indication of to what extent liquidity is available on an economy-wide basis, gives no reason for comfort. Also here it is only the Estonian market that has reached any significant levels.

Table 1. Key indicators with regard to market performance 1993-1999

Indicator	1993	1994	1995	1996	1997	1998	1999	2000
<i>Market capitalisation, % of GDP</i>								
Slovakia (nominal)	25.4	22.1	30.6	32.0	28.1	20.2	18.5	17.5
adj. figure (excl. non-traded issues)							5.8	6.6
Estonia				16.7	24.6	9.4	37.1	35.8
Latvia			0.2	3.0	6.1	10.9	13.2	15.1
Lithuania	0.6	2.5	6.3	15.9	22.7	27.5	29.8	27.2
<i>Turnover ratio, % of mkt. cap.</i>								
Slovakia (nominal)	0.1	5.6	15.6	45.2	44.9	24.5	13.4	16.2
adj. figure (excl. non-traded issues)							43.1	42.6
Estonia				26.0	138.1	188.9	14.9	16.9
Latvia			0.2	8.3	24.7	12.9	4.9	25.7
Lithuania	1.7	15.7	9.8	3.8	11.0	7.5	9.7	6.6
<i>Value traded, % of GDP</i>								
Slovakia	0.02	1.2	4.8	14.4	12.6	5.0	2.5	2.8
Estonia				4.3	33.9	17.8	5.5	6.0
Latvia			.0004	0.2	1.5	1.4	0.6	3.2
Lithuania	0.01	0.4	0.6	0.6	2.5	2.1	2.9	1.8

Sources: National securities markets statistics; national statistics; own computations

In this context it is important to seek the answers to *why* these markets do not function. A working hypothesis here is that these markets must 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 is thus important to gain deeper insight into the actual structure of markets, the information generated by markets and the general status of corporate governance – both with regard to the formal rules and regulations and with regard to the actual pattern of ownership and control that has developed. It can, for example, be assumed that improvements

⁹ Corresponding figures for some of the other transforming economies in the region were in 1996 35.2, 6.6 and 12.4 per cent for the Czech Republic, Poland and Hungary, respectively. The figure for the Swedish market in

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 which 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 the Large Holdings 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 the directive, and the data generated by it (or its approximation), thus lies at the core of this paper.

This rest of this paper thus proceeds as follows. In Section two is introduced the implications of the European Union directive 88/627/EEC (the so-called Large Holdings Directive). In Section 3 follows an analysis of to what extent this legislation has been implemented in the various countries; in connection with this comes a discussion of the general state of disclosure, i.e. of what alternative sources and mechanisms for information distribution regarding ownership and control that are in place. Section 4 then summarises and presents some of the data on ownership concentration that has been gathered in a comparative analysis, looking both at changes over time and differences between markets. Section 5, finally, concludes with a discussion of the implications of the preliminary findings, both in terms of the possible causes for the current state-of-affairs and the possible implications for the research and policy community.

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

the same year was 96.9 per cent. See, Olsson (1999), Table 16, p. 153.

Large Holdings Directive), 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).¹⁰ 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’.¹¹ This task was seen as increasingly necessary with the furthured integration of national capital 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 the Baltic States and Slovakia 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 picture of corporate control. Also, given the size of the markets it is likely that some type of integration/co-operation will be necessary to maintain the competitiveness and attractiveness of the market in question – making it even more crucial that some type of harmonisation takes place. For example, the markets in the Baltic States are already partners in the *Norex* alliance on co-operation which in addition includes Sweden, Denmark, Norway, and Iceland.¹²

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 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

¹⁰ 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.

¹¹ On the argumentation for adopting the directive, see Commission of the European Communities (1985).

¹² Cf. Clausen et al. (2000), p. 6.

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.¹³

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 27.5 per cent.

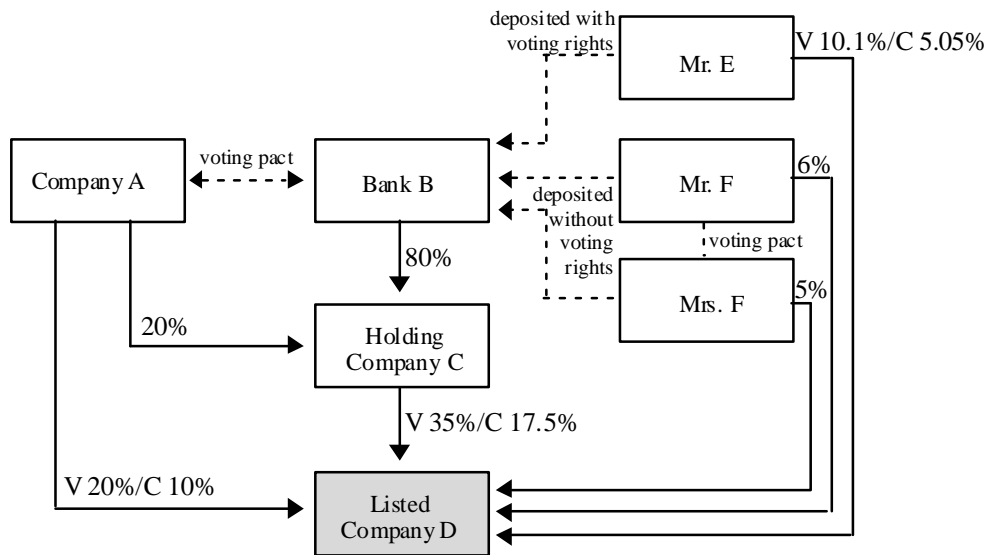
The implications of the Large Holdings Directive is nevertheless that it would be the voting power that would be disclosed (it is optional for countries to make also the disclosure of capital stakes mandatory). Disclosure of voting power rather than capital stakes would thus increase the “ownership concentration” in the sense that 65.1 per cent of the votes are held by the two aforementioned investors in addition to the one individual investor exceeding the supposed reporting threshold of 10 per cent. In 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 stake is 35 per cent.

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. In our example this

¹³ 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

means that 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 controls Holding Company C together with Company A (through a voting pact); the total extent of their votes in Company D is 55 per cent. In addition the bank controls the block 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. Thus, with the introduction (and enforcement) of the Large Holdings Directive the picture of Company D changes from being one where there 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.¹⁴ This is indeed important information for a potential investor.

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.

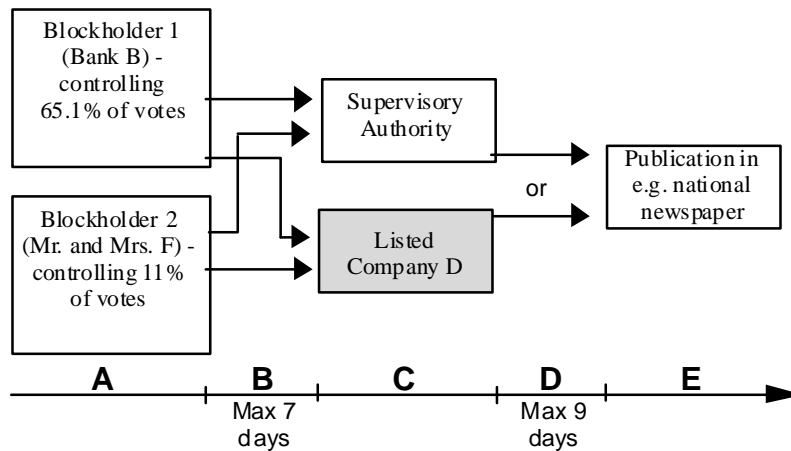
The reporting procedure that follows is illustrated in Figure 2, where we retain the same agents as in the example above. Here we see that once any of the two blockholders either

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.”

¹⁴ 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.

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 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.¹⁵

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



Thus, ideally, once the directive has been implemented by member states of the European Union, as well as the accession countries, it will be possible to trace various types of control structures (e.g. pyramidal holdings; blocks held through proxy voting etc.) which otherwise would have remained hidden for the normal investor. In terms of research the adoption and implementation of the directive would also allow for the construction of a truly comparative

¹⁵ 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

dataset which could be used to study both the concentration of control (votes) and the degree of separation of ownership (capital) and control.

3. National transpositions of the directive in the Baltic States and Slovakia

As has become apparent during research, the implementation of the directive has met with resistance and delays. In the four countries in question it is so far only one where the directive has been implemented in the way intended and thus resulted in data on blockholdings being available, namely Lithuania. In Lithuania the directive was adopted through the *Rules on Disclosure of acquisition of a block of shares*. Referral to these rules appears in Article 9 of the Securities Act. Being referred to in the Securities Act implies that the rules apply to all Joint-Stock Companies whose securities are public, a figure that totals more than one thousand companies. The rules outline the types of concert action that is targeted by the rules and include a standardised form that needs to be filled out in case of crossing one of the thresholds in the process of acquisition or disposal of shares directly by a shareholder or by means of concert action. The sanctions for non-disclosure include suspension of the voting rights for two years. These sanctions, evidently, are not applicable in case of disposal. Also, the route to avoiding the sanctions is disposing of the shares that cannot be voted under sanctions and buying them back reporting the purchase accordingly.

The information on blockholdings 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. Apart from the size of the block, the type of the concert action is disclosed according to the seven definitions of reportable concert action in the aforementioned rules. The resulting information flow from the shareholder to the general public via supervisory bodies and the issuer is depicted in the flowchart shown in the Appendix A. In addition to this, data on blockholdings is available in cumulative form from the SMC in computer readable format (Excel-files). One shortcoming in comparison with the directive is that there was established no initial date at which all blockholdings had to be reported, hence there is no blockholding data available on companies where no significant

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].

acquisitions/disposals of shares have yet occurred.¹⁶ This problem is to some extent alleviated by the fact that data is at least available on direct ownership of capital.

The central data source for such information on direct ownership of capital is the annual (semi-annual for listed companies) reports that are submitted to the NSEL and the SMC. NSEL provides such cumulative data on capital stakes for a fee. In addition to such cumulative reports also the changes in direct ownership of capital are reported to the SMC and the NSEL in accordance with the regulations on disclosure of material events; such data is made public by the latter within 24 hours.¹⁷

Also in Latvia the directive has been implemented, at least on paper. The Latvian Joint Stock Companies are regulated by two laws with regard to governance and ownership disclosure, the law “On Joint Stock Companies” and the law “On Securities”. The Large Holdings Directive is there nominally transposed as part of the latter, and thus applies to all shares in public circulation, currently some 120 companies.¹⁸ While the first transposition of the law was entirely nominal, the recent amendments (June 2000) to the law “On Securities” alleviated some of the problems with the transposition of the directive. Now the text of the directive is transposed correctly, although with a lower level of detail in the reporting procedure than in Lithuania.¹⁹ The initially very vague definition of concert action was replaced with a listing of different possible types of concert action that need to be reported. The list also states that when adding up the voting rights to be reported, ‘voting rights acquired in any other indirect way’ must be added.²⁰ However, the reality is far from what the

¹⁶ Another potential shortcoming is that it is not the issuer (being the one with full information on the outstanding shares/votes) who is obliged to inform the public.

¹⁷ Companies also may disclose stock information via press releases, news agencies.

¹⁸ In Latvia the law “On Joint Stock Companies” permits for JSCs to choose either a closed or open form; the latter has been chosen by approximately 120 public joint stock companies.

¹⁹ There is no set notification form, nor any clear classification of the type of the concert action to be stated when reporting.

²⁰ Wording 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:

1. voting rights acquired by third persons in their name but acting as investor’s agents;
2. voting rights acquired by investor’s subsidiaries;
3. voting rights acquired by third persons under a written agreement, concluded with the investor on lasting or systematic joint activities with regard to management of the Issuer;
4. voting rights acquired by third persons under a written agreement, concluded with the investor on temporary transfer of voting rights for a remuneration;
5. voting rights which are arising from shares transferred to a person and which the person is authorised to use at its own discretion without need to receive a specific order from the investor;
6. voting rights ensured by shares owned by the investor which serve as a security for the benefit of a third person. If this third person controls voting rights attaching to the pledged shares and announces a wish to exercise these rights, these voting rights shall be looked upon as voting rights of this third person;
7. voting rights acquired in any other indirect way.’

text of the law says. Firstly, it seems that in the way the law is interpreted, only written contracts between parties is considered a basis for concert action.²¹ Secondly, the actual voting stakes that are reported are not given by the ultimate controller of these voting rights, but either by the issuer or the owner of the direct stake (capital or voting), not the blockholder.

The reason for this state of affairs, according to the Securities Markets Commission (SMC), is the difficulty in enforcing the law upon shareholders rather than the issuers. According to our observations, the SMC does monitor and does identify the most obvious cases of unreported concert action and demands a clarification on part of the shareholders. However, this is something that happens on a case by case basis and is not systematic and cannot possibly cover all instances of concert action.

In practice this means that a very popular off-shore holding company mechanism allows concealing the actual owner of the company. The reported owner is the offshore, which is often wholly owned by a Latvian investor. However, the only stake reported is that of an anonymous holding company and not of the person or entity with whom lay the ultimate voting rights – and who can set up a number of similar off-shore holdings and thus avoid any mandatory take-over bids. See Appendix C for an illustration of the popular off-shore holding structure concerning one of the largest Latvian companies.

The resulting reporting flow is illustrated in detail in Appendix B. The ensuing public information, however, differs from that in Lithuania. Firstly, no blockholdings data is available on the regular basis. Secondly, information on direct stakes is not available in cumulative form, nor is there currently any electronic storage of the information.²² In cumulative form only data on capital stakes is available from the Depository and only for the most recent GSM for each Joint Stock Company.

In Slovakia a great deal of confusion about the directive prevails. Indeed there is a general awareness of the problems. In the *National Programme for the Adoption of the Acquis 2000*

²¹ Cf. Kupke and Stansbury (1999).

²² The changes in ownership are reported in paper format and are kept in paper files. The only source from which ownership information is available in cumulative form is the Latvian Central Depository (LCD). The reason is that LCD compiles lists of shareholders who have blocked their shares for the shareholder meeting. These need to be approved by the SMC and made public 3 days before the general shareholder meeting. This information is available for all public JSCs and is released to the company shareholders free of charge. However, only the most current information is available and the LCD does not keep a backlog of the previous shareholder lists. For the potential investor and/or analyst this means that the only source of information is through the commercial data-provider Lursoft which through agreements both with the Enterprise Register and the LCD is the sole provider

(NPAA) the following harsh albeit correct judgement of the country's capital market was given: '[t]he capital market in the Slovak Republic, which is only in the initial development stage, 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.'²³ It is also 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.'²⁴ However, with regard to the important Large Holdings Directive not much has been done, and there is no specific mentioning of it in the NPAA. The same lack of explicit mentioning characterises the *Conception of the Capital Market Development in the Slovak Republic*, which was an ambitious attempt from the Ministry of Finance to outline the necessary steps in order reform and revitalise the Slovak capital market.²⁵ Despite numerous references to other European Union directives (and deadlines for their implementation) the only indirect mentioning given to the issue of transparency with regard to ownership and control is that '[r]eporting duty of all entities should therefore be stipulated clearly...', and goes on saying that issuers 'should give to a supervisory body, at least annually, any information on important transactions with persons owning over 5% of interest in their registered capital or with persons acting in accordance with them.'²⁶ This is the only, albeit indirect, mentioning made to reporting duties relating to owners and their ownership, i.e. indeed a rather modest ambition. The Bratislava Stock Exchange, finally, even states 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.'²⁷ This is not true though.

It is true that the current reading of the Securities Act indeed states that if anyone acquires or disposed of shares 'in connection with voting rights that represent more than 5, 10, 20, 30, 50

both of data from both. With regard to ownership information they provide the most current lists of shareholders at a cost of 1.75 LVL (2.85 USD) per 10 shareholders.

²³ *National Programme for the Adoption of the Acquis Communautaire 2000*, Section 3.1.2.2.

²⁴ *National Programme for the Adoption of the Acquis Communautaire 2000*, Section 3.1.2.2.

²⁵ See, Ministry of Finance of the Slovak Republic (1999); the document was prepared by the Ministry of Finance as a background material for a Slovak Government session where it was presented by Minister of Finance, Brigita Schmögnerová. As mentioned the document is interesting and ambitious and sets deadlines for which directives should be implemented at what time and what other reform measures that should be initiated. However, as time has shown many of the ambitions have proven less successful than intended.

²⁶ Ministry of Finance of the Slovak Republic (1999), Section 3.5.

²⁷ 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 which changed this fact (see below).

or 65 per cent share [...] the person is obliged to notify in writing the centre [SCP] and the issuer [...] on the first working day following the day when these shares were acquired [or disposed of].’ Also, regarding information to the public the paragraph states that the SCP ‘shall arrange for an immediate publishing of these facts in the national periodical press that publishes stock information [i.e. *Hospodarske Noviny*].’²⁸ However, in practice the Slovak market remains as non-transparent as ever with regard to information on ownership and control. It is true that direct holdings have been monitored by the central depository (SCP) for a longer time and the first (small) step towards implementation was taken in 1995 when changes in the Securities Act obliged owners of securities to inform the SCP when surpassing one of the thresholds set out. These changes, however, fell far short of fulfilling the requirements set out in the Large Holdings Directive on most counts, if not all, crucial to the spirit of the directive, e.g. it was not about reporting voting rights, it did not apply to controlled undertakings, it did not require that the issuer be informed etc. In the summer of 1999, however, a minor step towards compliance was taken in that reporting as of 1 July was required for voting rights as opposed to the capital owned.²⁹ There were however no changes with regard to who – in terms of e.g. pyramidal holdings – that the reporting requirement applied to, i.e. voting blocks were (and are still) not reported.³⁰ The law, as written today, is thus not only “not in accord” with the Large Holdings Directive, it is in fact “superfluous” in that the information submitted to the SCP (and “checked” by them) is the information already in possession of the SCP – and thus information that could be made public regardless of any paragraph in the Securities Act and the ensuing reporting mechanism. Furthermore, the one and only way of dispersing this information to the public by the SCP is through the aforementioned regular advertisements in the business daily *Hospodarske Noviny*. Data on voting power is thus not available in cumulative form.

Estonia is yet another of the Accession Countries where the adoption of the Large Holdings Directive apparently has met with resistance and thus has been assigned a relatively low priority. In the current Securities Markets Act, initially adopted in 1993, (as amended up to and including February 2000) there are no provisions that cater for the generation of such information on the concentration of voting rights. However, for a long time there has been

²⁸ See Securities Act (Act No. 600/1992 Coll. of laws) para. 79a.

²⁹ See Securities Act (Act No. 600/1992 Coll. of laws) para. 79a. The amendment was in the National Programme for the Adoption of the Acquis Communautaire 2000, Section 3.1.2.2, described as intending to ‘improve the transparency of relations between securities holders, to enhance the protection of minority shareholders and to establish conditions for the operation of foreign securities traders in the Slovak Republic.’

work carried out on a totally revised Securities Market Act and 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 drafted and submitted to Parliament in the second quarter of 1999.³¹

Still in July 2000, though, officials at the Financial Services Department of the Ministry of Finance in a rather optimistic forecast stated that the draft law would be made public and circulated on 15 August; the officially stated ambition still being that the act should be in force as of 1 January 2001.³² Officials have, however, already been forced to review this optimistic forecast. In a recent public discussion it was said that the hope was to have the law taken to parliament by the end of year 2000. In less official discussions people connected to the work with the act are even less optimistic about the timetable – and officials working with bodies directly involved in the use of such an act (e.g. the TSE and the Estonian Central Depository for Securities, ECDS) are the least optimistic. The latter rather seem to believe that there will be at least another year before adoption of the act – claiming that it is better to “do it right” from the beginning. On the positive side can be noted that the current draft of the Securities Market Act (September 2000) indeed 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. Another positive step is 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 (currently both public and closed issues may be registered with the ECDS) – a figure which is set to increase with the adoption and implementation of the new law on the Central Register of Securities.³³ On the negative side can be noted that the draft fails to include some types of

³⁰ Unluckily there is no mentioning of any changes in the new Securities Act, which is due to come into effect on 1 January 2001.

³¹ Estonian NPAA 1999.

³² Interview July in Estonia, Finance Ministry.

³³ The new law on the Central Register of Securities has already been passed by Parliament and will enter 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. 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). Currently the ECDS is trying to estimate the number of public limited companies that will be registered by analysing the status of all companies of their legal form registered in the Commercial Register (there many more than 8,000 active public limited companies registered as of 1 January 1999), thus an estimate of how many of these companies that finally will be registered at the ECDS is not yet clear. However, representatives gave a very tentative figure of possibly as many as 2,000-2,500 public limited companies by the year 2003. It should be noted that also private limited companies may register their companies with the ECDS as a practical measure, leaving to the ECDS to keep track of possible changes in ownership etc. See, Kink (2000) [interview].

concert action mentioned in the directive and,³⁴ above all, that people involved in developing the new regulatory framework seem very pessimistic about the being able to get/enforce notifications that would reveal either the true extent of the voting-block in question or the identity of the actual blockholder. Part of the reason for this is that the working group which is drafting the new Securities Markets Act has yielded to the pressure of some interest groups and will thus allow nominee accounts – shielded from insight from the central authorities like the ECDS – something which will serve to reduce transparency in ownership and control.

The current state of disclosure is such that some minor parts of the Large Holdings Directive are reflected in the TSE Requirements for issuers, which with regard to the reporting of major holdings states 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.”³⁵ The problem with this disclosure regime is that the rules and regulations of the exchange are only binding between those two contracting parties, there is thus no legally binding requirement for any third party to abide by these rules. Thus, for these rules to become effective the TSE would need the backup of national legislation since it would give more enforcement power to the TSE; the TSE rules and regulations are not an adequate basis for legal disputes. The sanctions currently in place for non-reporting include fines to the issuer; however, as of yet the TSE has not punished anyone for the breaking of the ownership information disclosure rules.

To summarise it can be stated that the adoption of the Large Holdings Directive indeed has met with resistance and/or delays in the majority of countries studied. The extent and degree of implementation is summarised in Table 2.

³⁴ The responsibility for developing the detailed disclosure regulation will however rest either with the Ministry of Finance or the future unified supervisory authority. The law on the new unified capital market supervisory authority, incorporating the current Securities Market Supervision, the Insurance Supervision and the Banking Supervision of the National Bank, is due to go to Parliament by October 15. However, according to sources working with the matters this date sounds unlikely. According to their estimates a more realistic time-frame is that the act may be brought to Parliament and passed sometime in the first half of 2001, and perhaps the new authority may begin work later during the year. See, Kessler (2000) [interview].

³⁵ *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.

Table 2. The national transposition of the Large Holdings Directive (88/627) in four countries

Indicator	Slovakia	Estonia	Latvia	Lithuania
Transposition Date	Not transposed	Currently not transposed	30/10/1997, latest amendment 01/06/2000	31.01.1997, amended 01.05.1998
Through which national law was (will) the directive (be) transposed? (in case future plans are known)	N/A.	N/A.; will be transposed with the (eventual) adoption of the new Securities Market Act	Law "On Securities", articles 64, 65, 65.1	"Rules on Disclosure of acquisition of a block of shares", referred to in the law "On Securities", article 9
What are the reporting thresholds?	N/A.	5, 10, 20, 33.3, 50, 66.7 per cent	10, 25, 50, 75 per cent	10, 20, 25, 33.3, 50, 66.7, 75 per cent
Voting power or capital power?	N/A.	Voting	Voting	Voting
How much time may pass between crossing a threshold and reporting to the company?	N/A.	"Immediately"	7 days	7 days
Who notifies (will notify) the public: Article 10 (1)?	N/A.	Market organiser, e.g. the TSE	Securities Markets Commission	SMC and the NSEL if the Company is listed
Does the national law prescribe that "a company must also be informed in respect of the proportion of the capital held by a natural person or legal entity"; Article 4 (1)(3)?	N/A.	No.	No.	No.
Is the data currently collected according to the directive as transposed? If not, what are the deviations?	N/A.	N/A.	No. Data is collected from company, not the holder of the voting rights; blocks are not reported, reporting is done "on demand from the SMC", not on regular basis.	Yes.
In addition to the immediate distribution mentioned in the directive, does the competent authority distribute the notifications cumulatively?	N/A.	Not yet decided.	No.	Yes.
What are the sanctions for non-reporting mentioned in Article 15?	N/A.	Not yet decided.	Fines. On a legal entity in the amount of up to 200 minimum monthly salaries; on a natural person a fine in accordance with the Latvian Code of Administrative Violations. In case of repeated violations the SMC may prohibit the person from engaging in transactions with securities in public circulation for a time period of up to 3 years, or apply other sanctions provided for in legislative acts. (Article 67.3)	Loss of all votes attaching to the shares that were acquired in excess of the limit subject to declaration for two years from the moment the correct data is announced. 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).
How are these sanctions applied?	N/A.	N/A.	Upon decision of the SMC.	As decided by court.

Source: Database compiled from national sources, interviews etc.

With the above in mind it is apparent that the quantity, the quality and the type of data that is available differs widely among the four countries in question. The one common denominator is that data on direct ownership of capital is, in various forms, available. It should be noted that the research has not advanced far enough to be able to plot the equivalent of the capital stakes in terms of voting power (issuers may e.g. have issued dual class shares, they may have voting caps in their statutes, they may have latent voting power issued in the form of stock options or convertible bonds etc.). Despite these problems it is this kind of data that has been used for this initial survey. The characteristics of the data are summarised in Table 3.

Table 3. Data availability and sources

Indicator	Slovakia	Estonia	Latvia	Lithuania
What kind of data is available?	Direct Capital stakes	Direct Capital Stakes	Direct Capital Stakes	Direct Capital Stakes/Voting Stakes
Are the blockholdings reported/available?	No	No	No	Yes
Is data available cumulatively?	Yes	Yes	Yes	Yes
For which time period?	End-year data	End-year data	General Shareholder Meeting registry	General Shareholder meeting/Data on changes in voting stakes
Since which date?	1993 – (excluding 1994)	1994	Only most recent GSM	1998/1997
Data Source	Issuer	Depository	Depository	NSEL/Depository
Who distributes the data?	RM-Systém	ECDS	Lursoft	NSEL/Depository
Is the data free of charge?	No	Yes	No	No/Yes
Is the data available on the website?	No	Yes	No	No/No

Source: Database compiled from national sources, interviews etc.

Note: In Estonia the ownership data is free of charge and available on the website only for the *listed companies*, for all other companies whose shares are registered at the ECDS only persons with a so-called “legitimate interest” may access the ownership data (e.g. issuers can get the full list of the owners of the securities issued by them). In case that data about a specific company is made public, prior agreement with the investors has to be made. However, for investors holding more than the stipulated limit of ten per cent the information can be obtained from the list of shareholders that the company has to attach to the annual financial report submitted to the Commercial Register.

It is apparent that a critical issue in disclosing information on *direct stakes* is what kind of securities accounting system that has been developed in the respective markets. In all of the countries studied the securities accounting system differs to varying degrees. One can, for example, distinguish between countries that have adopted a one-tier or a two-tier accounting system, respectively. Another distinction can be made between those that have opted for full dematerialisation of securities and those that have not.³⁶ Together these are factors that are influential in determining what kind of ownership data that is made available. The differences between these markets in securities accounting are summarised in Table 4.

In Slovakia the Central Securities Register (Stredisko cennych papierov, SCP) is ideally set to provide such information. For example, there is a one-tier accounting system, allowing the SCP to see the ultimate owner of the respective stakes; there are bearer shares, i.e. all securities are dematerialised and kept in the books of the SCP; all issues must be registered with the SCP which has a monopoly with regard to the registration of ISIN-codes and the book-keeping of securities; the SCP is a state-controlled entity etc.³⁷ Taken together this means that the depository has the possibility to publish all relevant information on the ownership of direct stakes of capital, cumulatively as well as dynamically. This, however, is not done. Rather, the only data disclosed by the SCP is the above discussed data ensuing from owners reporting their direct voting stakes in accordance with paragraph 79a of the Securities Act. The one alternative data source for cumulative data is the commercial database released by the RM-System (one of the two organised markets in Bratislava). However, the data on capital ownership in this database is not based on primary sources, but rather on the reporting of the issuers themselves (something which is not fully enforced, resulting in missing data for a number of issues).

A different approach has been taken by the Estonian Central Depository for Securities (ECDS) which was established in 1994. There available data on ownership of all registered issues is made available free of charge, both cumulatively and for individual firms. Data is available from 1996 onwards. The data-problems in Estonia thus do not concern the willingness to disclose data but rather the limitations imposed by the current securities accounting system. Unlike in Slovakia the ECDS does not have a monopoly on registering securities – issuers have the choice of issuing bearer shares or registered shares – thus restricting data availability to the issues actually registered with the ECDS. Also, despite also having a one-tier model of registration, the use of nominee accounts (and foreign off-shore holdings) is more common in Estonia than in Slovakia. In addition, the use of such accounts is set to increase from 2001 when the regulations for ECDS are changing – thus further reducing transparency and data availability. However, the same changes in regulations will at

³⁶ A third relevant distinction with regard to share issues concerns to what extent different classes and types of shares have been allowed; this, however, is a field where comparison and analysis is yet to be undertaken by our group of researchers.

³⁷ There have however been some changes over time with regard to some of these factors. During the third Meciar government bearer shares were for example introduced (1995), a practice which was abolished with an amendment to the Securities Act in 1999. Also, there is currently a discussion concerning the need for establishing a two-tier system, albeit with provisions which make it possible to identify the individual owners – not least for tax purposes, cf. Ministry of Finance of the Slovak Republic (1999).

the same time increase transparency as more issues will be registered and bearer shares will be banned.³⁸

In Latvia the two-tier nominee account system which is operated by the Latvian Central Depository (LCD) does not allow the LCD to see or have access to the information on individual securities accounts of either legal or physical entities.³⁹ Hence, the only information on the securities holdings LCD has is on total bank nominee accounts. However, as the LCD also performs the function of drawing up the shareholder lists for public Joint Stock Companies, some data on ownership of direct stakes is available. Prior to the General Shareholder's Meetings (GSM) all shares that are to be voted on have to be "frozen" at the LCD by the shareholder. The LCD thus lists all these holdings into one list which then serves as a basis for the GSM in the sense that the ones listed have the right to vote with the number of shares/votes indicated in the list. LCD then stores the most recent lists for each company – data which then is made available to the public for a fee through the private company Lursoft which not only provides LCD-data but also Enterprise Register data.⁴⁰

In Lithuania, finally, the Central Depository has no role at all in ownership data collection and/or dissemination. The only role of the Lithuanian Central Depository, in contrast to the other countries, is in transaction settlement. Rather the National Stock Exchange of Lithuania (NSEL) is the organisation which is more involved in ownership information dissemination.

³⁸ According to the current legislation, every Estonian investor has to open the securities account at the ECDS in his own name. This means that the ECDS has the direct access to every security account. The right to open nominee accounts, which exists, is currently limited to non-residents holding a respective license. However, according to the new law on the ECDS, also Estonian professional market participants will be able to open such accounts starting from the beginning of next year. The new Law on the ECDS was passed by parliament in June 2000, and will enter into force from 1 January 2001. As one of the major changes to the current requirements, the new law states that all public limited liability companies must apply for the registry of their stock books at the ECDS by January 1, 2003. If they do not wish to do so, they are to reorganise into private limited liability companies (or be liquidated). Another change introduced by the new law is the abolishment of bearer shares for public limited liability companies. The public limited liability companies whose statutes allow for the issue of bearer shares must exchange the bearer shares for the registered shares, and apply for the registry of the change in the statutes at the Commercial Register by December 31, 2001 at the latest.

³⁹ The only exception is the Initial Register – a system of initial accounts where the voucher privatisation stakes are held. These accounts must be activated by transferring the shares to the bank accounts and remain "frozen" at the LCD before the owner of the securities makes the transfer. Currently around 30 per cent of all shares realised through privatisation remain in the Initial Register.

⁴⁰ Therefore, the main data source for direct stakes in Latvia is the LCD, which has the most recent GSM lists for all companies in Excel format. Other possible alternatives would be, for example, the Securities Markets Commission which is set to approve each list made by LCD; it checks whether the shareholders have the right to vote (have not violated any regulations, including those on reporting) and it may also ask the banks to disclose the names of the holders of the accounts in case it suspects concert action and/or unreported sales/acquisitions of shares. SMC also stores these lists in per company files, although only in paper format. The Riga Stock Exchange also receives the information on the direct stakes via (semi) annual reports, although neither they accumulate data on stakes. It does, however, report the direct stakes for the listed companies on their website. Finally, regarding voting blocks, the only source of information is the SMC, which stores the data in paper files sorted by company. However, this data is very fragmentary.

NSEL collects data for direct stakes for all companies from their (semi-) annual reports and makes it public in cumulative form (for a fee) or in per company form through the website (free).⁴¹

Table 4. Securities depository systems in Slovakia and the Baltic States

Indicator	Slovakia	Estonia	Latvia	Lithuania
One- or two-tier accounting system?	One-tier	One-tier	Two-tier	One-tier
Only dematerialised securities?	Yes	No	Yes	Yes
Monopoly-position for the depository?	Yes	No	Yes	Yes
OTC-trading through the depository?	No	Yes	Yes	N.A.

Source: Database compiled from national sources, interviews etc.

4. Ownership and control in the Baltic States and Slovakia

In this section we present some very preliminary results from the initial analysis of the data on ownership that has been gathered within the framework of the ECGN survey of ownership and control in accession countries. The purpose of the presentation is not to lay the ground for any far-reaching conclusions; rather the aim is to point to the areas where further research is warranted. The data used for the analysis consisted of the listed issues in the respective country. In Estonia the share issues traded on the Main List and Secondary List at the Tallinn Stock Exchange (TSE) have been included, a total of 22 issues.⁴² For Slovakia the issues included are those traded on the official list (13 issues) and the list of registered securities (31 issues) at end-1999, a total of 44 issues. For Latvia a total of 60 issues were targeted; the eight issues from the Official list, the 13 from the Second list and the 39 issues on the Free list. For Lithuania, finally, six issues from the Official list and 41 issues from the Current list i.e. a total of 47 issues, were targeted.

For the four countries in total this means that 173 issues were targeted. However, as previously has been discussed, data availability has varied among countries, resulting in the fact that the total amount of issues included in the actual statistical analysis was only 144. As can be seen in Table 5, data for the listed issues has been most readily available in Estonia

⁴¹ The Securities Markets Commission (SMC), however, functions in the same way as in Latvia, although with two important exceptions: (i) it gets full data on voting blocks and stakes which in Latvia is reported only by selected shareholders/issuers; and (ii) it has this data in a cumulative format from the moment the Large Holdings Directive was transposed (1997). Thus there are two sources of cumulative data, NSEL for direct stakes, and the SMC for voting blocks.

⁴² The two lists differ mainly with regard to requirements for capitalisation, diversification and track-record. With regard to market capitalisation the requirement is for 300 and 10 mn EEK for the Main List and Secondary List companies, respectively. With regard to diversification and track record the corresponding limits are 1000 (or 300 with min. 10,000 EEK worth of equity) and 100 investors and three and two years of audited financial reports, respectively. A basic requirement for both lists is that the issue is registered with the Central Depository, the Securities Commission and that one-quarter of the issue should be in public circulation.

where only one issue was missing and the least available in Latvia where only 72 per cent of the targeted issues were included in the final analysis. Further work will be required to fill these gaps.

Table 5. Ownership data availability (direct stakes) among listed issues, end-1999

Country	Targeted issues (no.)	Included issues (no.)	Included issues (%)
Slovakia	44	34	77.3%
Estonia	22	21	95.5%
Latvia	60	43	71.7%
Lithuania	47	46	97.9%
Total	173	144	83.2%

Source: Database based on national sources; own calculations

These preliminary analyses have focused on a narrow range of issues. Firstly we wanted to try to get an idea about the degree of ownership concentration that prevails. Secondly we wanted to find out whether there are any significant differences between countries and market segment in this respect. Thirdly we wished to see if it was possible to find any significant trends over time; this, however, has only been possible (so far) with regard to Slovakia and Estonia. Finally, we wanted to get an idea about what type of owners that dominate in the respective countries.

Ownership concentration. As can be seen from the data the level of ownership concentration is indeed very high. Looking at the *direct stakes* held by the largest, second largest and third largest individual owner at end-1999/early 2000 (Table 6), and comparing it with data on *blockholdings* in a number of European Union member states (Table 7), gives an impression of the degree of ownership concentration. Beginning with the most extreme example, Estonia, one sees that even the median largest direct stake is larger than any of the reported voting blocks among the countries in Table 7. As for the other countries the degree of ownership concentration is apparently very high.

Table 6. Size of the largest, 2nd largest, 3rd largest direct capital stake for the listed companies

Country	No of Co.'s	Median Largest	Median 2nd	Median 3rd	Cum. 1st-3rd
Slovakia	34	39.4	18.84	10.29	68.53
Latvia	43	51.26	7.68	4.8	63.74
Estonia	21	52.64	12.57	6.28	71.49
Lithuania	46	42.24	11.36	8.24	61.84

Source: Database compiled from national sources; own computations

Furthermore, if one looks at the median size of the second largest *direct stake* we find that these owners are on average considerably stronger than would be the holder of the second

largest *voting block* in the European Union member countries listed in Table 7. In this context it should once again be stressed that the data on the Baltic countries and Slovakia do not give a picture of the real control of firms – it is indeed possible that there in many cases is some type of implicit or explicit collusion between the holders of the larger stakes in a company. By way of illustration we have therefore calculated the cumulative stakes held by the three largest owners and can compare that with the size of the voting blocks. Although imprecise and certainly in many cases inappropriate it still gives an idea of the potential ownership concentration that could be found in case data on blockholdings was available. To draw any conclusions in that direction, however, further data collection is needed; even if figure on blockholdings cannot be found it is likely that our understanding of the real meaning of the reported direct stakes could be enhanced by means of case studies of individual companies and groups of companies.

Table 7. Size of the largest, 2nd largest, 3rd largest ultimate voting block for non-financial companies on an official market

Country	No of Co.'s	Median Largest	Median 2nd	Median 3rd	Cum. 1st-3rd
Austria	50	52	2.5	N/A.	54.5
Belgium	121	50.6	N/A.	N/A.	50.6
Germany	374	52.1	N/A.	N/A.	52.1
Spain	193	34.2	8.9	5.2	48.3
France	40	20	5.9	3.4	29.3
Italy	214	51	7.6	3	61.6
The Netherlands	137	43.5	N/A.	N/A.	43.5
United Kingdom	250	9.9	6.6	5.2	21.7

Source: Becht and Mayer (2000).

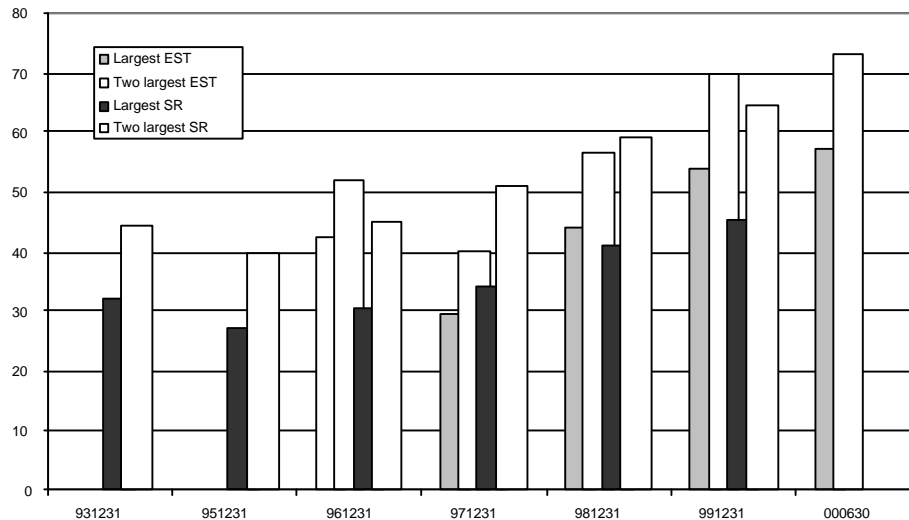
Differences among countries and/or market segment. As regards differences among countries this preliminary statistical analysis by means of analysis of variance (ANOVA) have shown no such statistically significant differences at the 5 per cent level; at the 10 per cent level we can see a tendency that ownership is indeed more concentrated to the largest individual owner in Estonia as compared to Slovakia. As for the second largest owner we do however those owners in Slovakia (.05), Lithuania (.05) and Estonia (.10) to have larger stakes than their Latvian counterparts. The same pattern repeats itself for the third and fourth largest owner. With regard to the fifth largest owner this type of analysis of variance has not been possible due to too small samples.

As for differences depending on upon which tier a specific company is listed we find no general pattern that is valid across all four countries. Looking at the individual countries, the one country where significant differences are traced is Latvia. For example, we do find that

the largest owner among companies on the Official List (1st tier) has a significantly (.05) smaller stake than the largest owner in a company listed on the Free list (3rd tier). Also, looking at the cumulative stake held by the two and three largest owners of direct stakes the same pattern repeats itself.

Ownership over time. Looking at the developments over time it is interesting to find that there has actually been a statistically significant trend towards increased ownership concentration over the period in question in both Estonia and Slovakia when looking at the stakes held by the largest and second largest owners (see Figure 3). In both countries there is initially a slight decrease in the level of ownership concentration in the first period following privatisation and the listing of the companies, after that however the trend is for a steady increase.

Figure 3. Ownership concentration over time: the per cent of capital held by the one and two largest owners in Estonia (EST) and Slovakia (SR), 1993-2000.



Source: Database compiled from national sources; own computations

Type of owners. An analysis of the type of owners show that in the region as a whole domestic owners dominate. However, it is clear that foreign ownership of listed issues is far more frequent in Lithuania and, above all, Estonia. In the latter foreign legal subjects dominate among the five largest owners, with the exception of the third largest direct stake holder where there is an equal number of domestic legal entities. In Lithuania foreign legal entities are approximately as frequent as domestic legal entities among the largest and second largest owners; among the third and fifth largest they dominate, only as the fourth largest owner does the count for domestic legal entities outnumber the foreign. In Slovakia and Latvia, though, domestic owners outnumber foreign owners by a large number. It can also be noted that only in Latvia do physical persons constitute a significant element among owners,

by far outnumbering legal entities among the fourth and fifth largest owners (and almost equal among the third largest owner).

Table 8. Relative frequency (%) of foreign legal owners in four countries

i	Slovakia	Estonia	Latvia	Lithuania
Largest	11.8	57.1	15.0	40.4
Second largest	6.9	61.1	11.9	40.0
Third largest	26.1	46.2	8.1	42.3
Fourth largest	6.7	50.0	15.1	33.3
Fifth largest	0.0	66.7	3.4	50.0

Source: Database compiled from national sources; own computations

5. Conclusions

An interesting question is why there has been such a reluctance to fully implement the Large Holdings Directive (88/627/EEC) when it apparently holds the promise of at least partially improving the situation on the capital market – an issue which policy makers at least officially put high on the agenda in all the countries concerned? 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 that has been voiced by representatives of the supervisory authorities in Estonia, Slovakia and to some extent Latvia, is that one views the problems of actually obtaining and verifying such data on control-structures as one of the reasons for not transposing the directive. Enforcement will indeed always be a problem, although it should not be used as an argument of 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 in fact 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.

Another reason, perhaps more plausible, is what has been aired by officials in Slovakia and Estonia during more informal conversations, namely that the reluctance is due to the fact that nobody (with an influence) is really interested in finding out/making public who controls what. In the case of Slovakia this latter argument has to be understood in the light of the privatisation policy pursued which was very corrupt and gave rise to complicated cross-holdings and industrial conglomerates controlled by individuals with close ties to the (Meciar)

government(s).⁴³ In Estonia officials have weathered similar possible explanations, pointing to that during the drafting of the new Securities Act it was the dominant market actors (i.e. banks) which pushed for allowing nominee-accounts to be set up also in the country – an effective way of making ownership and control more non-transparent. 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 capital market this should not be an argument – quite to the opposite.

To conclude it should be pointed out that indeed legal reforms are very difficult. In fact, one reason for the non-implementation could well be that there is a lack of understanding of the implications of the directive. 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, however, are enhanced when legal tradition gives that much of the regulations are formalised in primary law. In this context it would thus be beneficial – at least with regard to capital market regulation, which aims to regulate a quickly changing environment – if the primary laws were revised with an ambition to make them more general (and thus perhaps more long-lasting), instead leaving more of the detailed regulation either to secondary legislation (e.g. government decrees) or to appointed supervisory authorities (e.g. as in the case of Lithuania).

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 capital 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, ‘*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...*’⁴⁴

⁴³ Cf. Olsson (1999).

⁴⁴ Clausen et al. (2000), p. 6.

At the same time, however, one has to recognise the fact that at some markets, as a consequence of the privatisation schemes chosen, a large number of issues that currently are at least nominally public either “do not belong” on the market since they are too small and illiquid and/or “do not belong” on the market because the issuer in question has not put this issue on the market of his free will. The latter is for example reflected in the very low adherence to reporting requirements that is exhibited in the Slovak Republic where in 1997 only one-third (33%) of issuers of publicly tradable securities fulfilled their reporting obligations to the Ministry of Finance, half of them (50.8%) to the BCPB and some nine-tenths (90.3%) of them fulfilled it with regard to the alternative organised market, RM-System.⁴⁵ Thus, in combination with more stringent reporting standards it may be advisable to devise mechanisms for the orderly “delisting” of those issues that do not belong on the market. Such provisions, however, must clearly take into account the fact that many small shareholders from mass-privatisation still remain – it is thus of utmost importance that these do not get disappointed with the capital market one more time – the latter would indeed be counterproductive to enhancing the public confidence in capital markets.

As for the quantitative results provided in this paper there is little surprise to find that ownership is highly concentrated. The concentration of ownership was often a direct consequence of the privatisation policies deployed – and the vast majority of firms listed on the stock exchanges are direct/indirect heirs of formerly state-owned enterprises. In most countries a majority of the firms were indeed sold to strategic investors, and also in countries which used mass privatisation by means of vouchers (Slovakia and Lithuania) it was rather rule than exception to see a quick restructuring and concentration of ownership following privatisation.

What perhaps is somewhat surprising is the *high level* of ownership concentration and even more the *increase* in ownership concentration during the last years. The high level of ownership concentration could in itself probably be explained in terms of insecure property rights and high transaction costs. However, if this proposition is accepted one would also expect to see that the level is decreasing as the legal environment is improving – this has, however, apparently not been the case. Thus, either the legal environment has not improved in the same way with regard to capital market regulation as has previously been thought or there are other mechanisms at work which yet remain to be found and analysed. In this context it is interesting that the available data point to the fact that the division between ownership

⁴⁵ See, Ministry of Finance of the Slovak Republic (1999), Section 3.1.

(capital) and control (votes) in these four countries is smaller than in some of the EU ones. Having developed their company laws only recently, the transition countries managed to avoid the complexity of the historically developing variety of corporate forms and legal devices. Our speculation is that the difference between ownership and control does exist, but not through traditional legal mechanisms, but through pyramidal structures with varying legal forms, offshore ownership, and a lot of informal co-operation on part of owners and directors.

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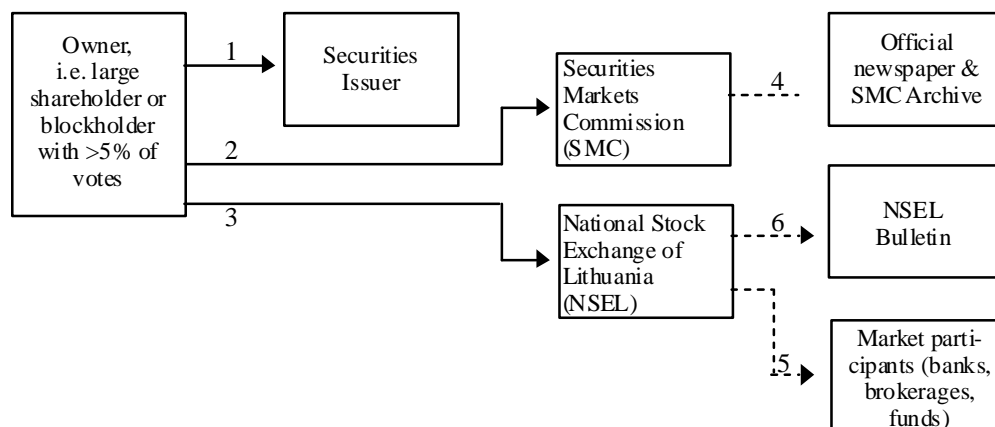
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Appendix A. Information flow in the voting stake disclosure process in Lithuania

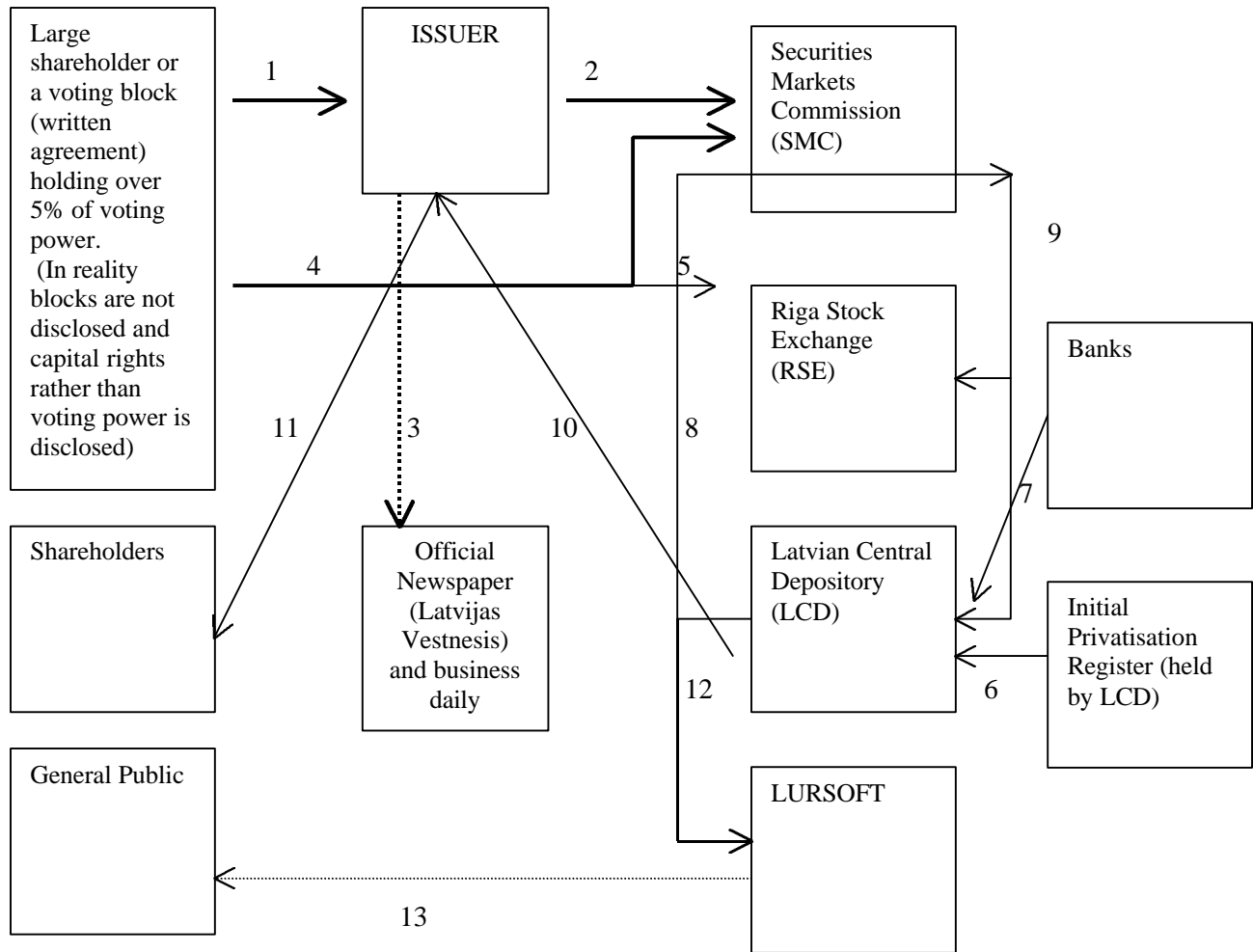


Legend

- 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 Share” (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.

Appendix B. Information flow in the capital and voting stake disclosure process in Latvia



Legend

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

1. The shareholder notifies the issuer within 7 days of crossing the threshold of 10, 25, 50, 75 per cent of *all votes in the GSM* (presumably with a 100 per cent quorum) or a over 5 per cent decrease of the stake.
2. Once notified, issuer has to notify the SMC if the ownership change is the one "...of which the issuer is or should be aware and which may influence investor's decision to purchase or sell issuer's securities or market price of these securities"(Regulations On Disclosure Of Issuer's Material Events, December 9, 1997)
3. The issuer has to publish a notification of an ownership change within 9 days since the receipt of the shareholder's notification in the official newspaper and in a central daily (or a regional daily if this is more appropriate).

4. The shareholder notifies the Securities Market Commission (along with the issuer – see 1.) within 7 days of crossing the threshold of 10, 25, 50, 75 per cent *of all votes in the GSM* (presumably with a 100 per cent quorum) or a over 5 per cent decrease of the stake. In case the threshold in question is 50 or 75, SMC has 5 days to authorise the purchase (disposal). SMC compiles, reviews and stores the information on ownership changes.
5. The issuer discloses the changes in ownership to Riga Stock Exchange if the issuer is listed and if the ownership change “...may influence investor's decision to purchase or sell issuer's securities or market price of these securities” “(Regulations On Disclosure Of Issuer's Material Events, December 9, 1997)
6. Latvian Central Depository draws up blocked share lists for the shareholder meetings. LCD also maintains the Initial Register listing the shareholders and their stakes as result of voucher privatisation. These accounts have never been transferred to the custodian banks and hence are inactive.
7. The two-tier system allows LCD to see only aggregate custodian bank holdings of shares for each issuer. For the GSM the custodian banks supply the information on the holdings of the shareholders which are blocking their shares for the GSM.
8. LCD draws up the list of shareholders and submits it to the SMC. SMC approves it and hence grants the voting rights at the GSM or deems voting for a particular shareholder illegal in which case no vote is granted.
9. Approved list of shareholders is filed with RSE (listed companies and ownership stakes over 5 per cent) and LCD.
10. The list is made available to the issuer
11. Issuer makes it available to the shareholder no less that three days in advance of the GSM.
12. LCD makes the list of the shareholders available to Lursoft in complete form.
13. List of shareholders and the stakes (per cent of capital) are available to the general public at a cost of USD 2.85 for every 10 shareholders (beginning with the largest) from the *approved list from the latest GSM*.

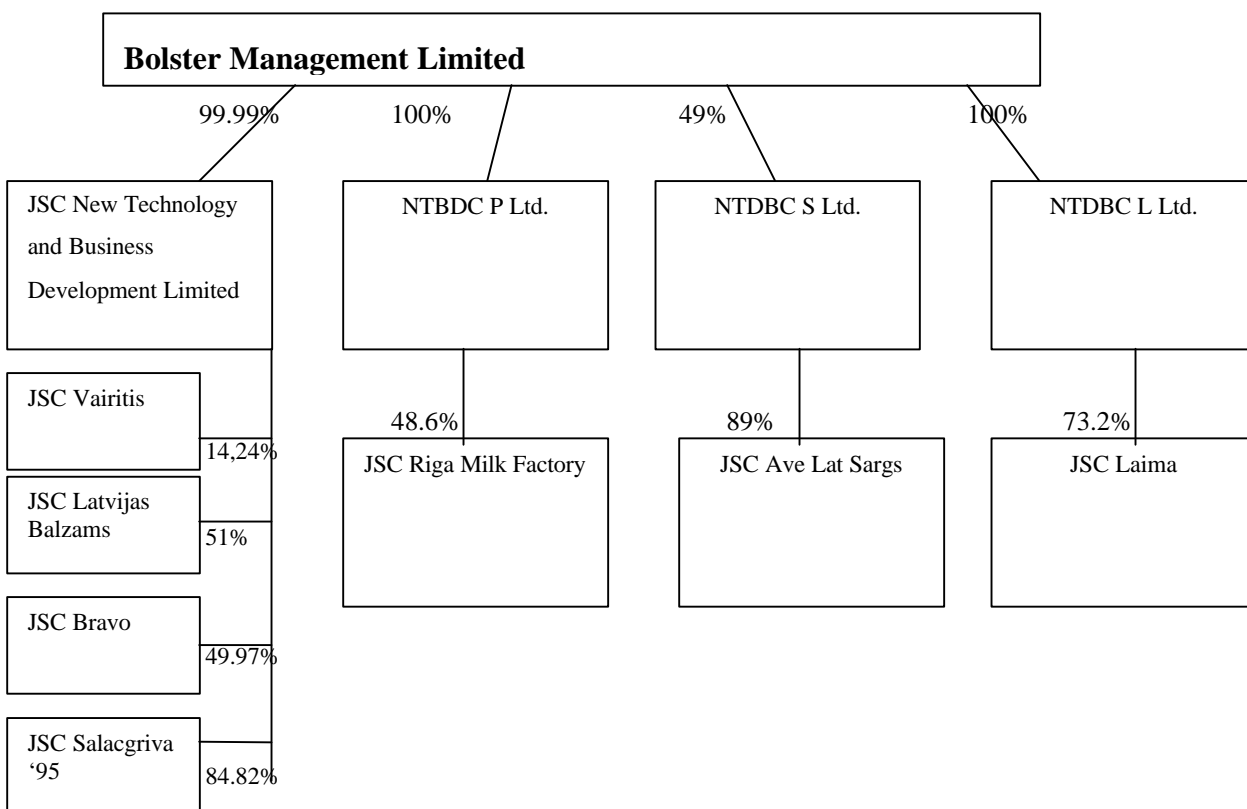
Appendix C. Off-shore holdings: the current structure of the Ave Lat Grupa

The very recent example is that of the restructuring of one of the largest holding companies in the food processing sector -Ave Lat Grupa. This holding company has been of a significant interest to the journalists, who often perform the function of what the SMC should do – informing the public of the ultimate control of the enterprises. Ave Lat Grupa has gone through several ownership changes – being under control of former Prime Minister Andris Skele, Prime minister at the time. Apparently, Skele’s shares were transferred to Bolster Management under a trust arrangement. The company itself was renamed into New Technology and Business Development Corporation (NTBDC).

In August this year, the company announced the following change: the company sold three of its holdings Ave Lat Sargs, Riga Milk Factory and Laima. The new owners of these three companies are three new unlisted companies NTBDC S, NTBDC P, and NTBDC L respectively. The owner of these new companies is the same (Bolster Management Limited) as the former Ave Lat Grupa – currently named NTBDC as mentioned above. Hence, through this sale, the ownership of the companies which previously were under control of Ave Lat (NTBDC) are now at the same “level” as the former holding company. It will now remain unclear who will own these companies, plus they need not file consolidated accounts and adjust their market behaviour (pricing policy). The current structure of the Ave Lat looks the following:

Ave Lat Grupa is a private Joint Stock Company. Hence, although governed by the law on “Joint Stock Companies”, it does not have to comply with the Transparency Directive. Hence, the presented here ownership information is the only picture the public can get.

However, with introduction of the new Commercial Code (arguably on January 1), the law “on securities” will be applicable to *all* JSC companies. In other words, the distinction between private and public companies will disappear. However, the reporting burden will still lie with the Bolster Management in case it has the voting power (as the current trust arrangement suggests).



Appendix D. Data on ownership

Table I. Ownership concentration in four countries among the five largest owners of listed companies

Indicator	Mean	Median	Std. Dev.	n	Min	Max.
Largest owner, average for the four countries	48.1	47.2	20.7	144.0	6.2	98.2
Estonia	53.2	52.6	18.4	21.0	21.3	91.4
Latvia	51.0	51.3	15.7	43.0	12.0	89.0
Lithuania	46.3	42.2	26.2	46.0	6.2	96.4
Slovakia	43.8	39.4	18.8	34.0	14.4	98.2
2nd largest owner, average for the four countries	14.6	12.5	9.9	123.0	1.0	61.3
Estonia	14.5	12.6	6.9	18.0	6.5	26.9
Latvia	9.6	7.7	6.6	42.0	1.0	27.0
Lithuania	16.9	11.3	13.7	34.0	5.0	61.3
Slovakia	19.1	18.8	6.7	29.0	6.0	30.0
3rd largest owner, average for the four countries	8.6	7.7	5.4	99.0	0.5	30.9
Estonia	8.6	6.2	4.1	13.0	5.1	19.0
Latvia	5.7	4.8	4.5	37.0	0.5	18.6
Lithuania	10.2	8.2	6.0	26.0	5.2	30.9
Slovakia	11.7	10.3	4.3	23.0	5.6	21.4
4th largest owner, average for the four countries	6.1	5.9	4.0	66.0	0.6	15.5
Estonia	8.7	8.7	2.2	6.0	5.7	11.8
Latvia	3.3	2.1	3.2	33.0	0.6	15.4
Lithuania	7.9	7.2	2.4	12.0	5.0	13.1
Slovakia	9.5	9.7	3.0	15.0	5.6	15.5
5th largest owner, average for the four countries	4.0	2.3	3.6	42.0	0.5	13.8
Estonia	N/A.	N/A.	N/A.	0.0	N/A.	N/A.
Latvia	2.2	1.2	2.5	29.0	0.5	13.1
Lithuania	8.7	8.2	2.7	7.0	5.2	13.8
Slovakia	7.0	6.7	1.5	6.0	5.6	9.8

Source: Database compiled from national sources; own computations