

Transparency Directive Implementation

HM Treasury

RPC rating: **fit for purpose**

Description of proposal

The EU's Transparency Directive was amended in 2013 to harmonise further the EU regime on company transparency. The UK has already implemented some of the changes introduced by the Transparency Directive Amending Directive (TDAD). The Treasury's impact assessment covers the remaining provisions that need to be implemented. First, the notification and disclosure regimes for major holdings of shares, which set out how holdings should be aggregated to determine whether the holder meets a notification threshold, will be harmonised across the EU. Instruments that are equivalent to holding equity will also be included in the count towards notification thresholds. Second, the Treasury proposal is to transpose the requirements of the directive to align EU Member State sanction regimes.

Impacts of proposal

Major shareholding requirements

The major shareholding notification requirement in the TDAD sets out how holdings should be combined to determine if the shareholder meets a qualifying threshold for ownership of a listed company. It largely reflects existing UK requirements. The responsible regulator, the Financial Conduct Authority (FCA), intends to 'copy-out' the relevant provisions of the directive where possible, but does not expect this aspect of the proposal to have any significant impact on business.

The FCA has identified one change to its rules that is necessary to comply with the directive. At present, the UK regime exempts certain types of financial instruments that may not represent an 'economic interest' in the company. For example, individuals or entities holding a 'long' position in a derivative to meet the order for a 'short' position by a client are currently exempt. The directive does not provide for such an exemption, and the FCA intends to remove it and replace the relevant text using 'copy-out'.

The Treasury explains that this aspect of the proposal will impose two costs on business. First, a company that finds itself above the notification threshold under the new arrangements will need to disclose its position to the issuer of the shares and the regulator. Second, the issuer has to publish a notification to the market in response. The Treasury estimates that around 40 businesses make use of the current exemption. The Treasury explains that there were approximately 8,000 major holding announcements in 2014. By removing the exemption, the FCA estimates that the proposal will increase the number of disclosures by 10%. The Treasury's best estimate is that the proposal will cost business approximately £0.69 million each year.

Sanctions regime

The existing UK sanctions regime is largely aligned with the minimum requirements of the directive. The FCA has the relevant powers to impose fines and other sanctions on companies and major shareholders that fail to meet the required reporting and disclosure obligations. Consequently, changes to UK legislation are limited.

However, the definition of who, within a company or institution, can be sanctioned in the directive differs from existing UK requirements. The Treasury explains that it intends to amend existing domestic legislation to comply with the directive and that the technical changes will have no impact on UK businesses in practice.

The directive also requires the regulator to have the ability to suspend the voting rights of companies or major shareholders who violate their reporting and disclosure requirements, as part of a Member State's sanctions regime. The Treasury intends to amend legislation to allow the regulator to apply to a court to suspend voting rights for serious breaches of the directive. The Treasury explains that this aspect of the proposal will not have any impact on compliant businesses.

Quality of submission

The Treasury explains in its impact assessment that the majority of the provisions proposed in the directive bring the EU regime closer to the UK regime. The Treasury explains that these provisions require only minor rule changes and do not impose any significant cost on business. The Treasury has assessed correctly that costs incurred by the industry-funded FCA constitute a cost to business. However, the Treasury estimates that these minor changes will not impose significant costs on the FCA and ultimately business. This assessment appears reasonable given the evidence presented.

The proposal does not widen the scope of businesses that could be caught by the requirements of the directive and, therefore, sanctioned for non-compliance. However, the Treasury could make this clearer in its impact assessment and avoid the use of potentially ambiguous language (for example, the reference to avoiding "*unnecessarily extending the scope of the existing sanction regime*" on page 5 of the impact assessment).

The Treasury could explain in more detail the impact of revoking the existing exemption and the estimate of the cost to business – the impact assessment could include more information on how individual figures for the cost of an additional disclosure have been calculated. However, the RPC is able to validate the equivalent annual net costs as the Treasury's overall estimate is in line with those in previous similar impact assessments.

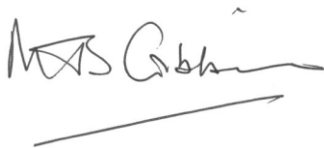
Initial departmental assessment

Classification	Out of scope (EU)
Equivalent annual net cost to business (EANCB)	£0.69 million

Business net present value	-£7.87 million
Societal net present value	-£7.87 million

RPC assessment

Classification	Out of scope (EU)
EANCB – RPC validated	£0.69 million (out of scope (EU))
Small and micro business assessment	Not required (European origin)



Michael Gibbons CBE, Chairman