Response to Commission consultation on the modernisation of the Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

Introduction.

EMISORES ESPAÑOLES is a Spanish Association created in November 2009, which main objectives include, among others, the following:

- The analysis and promotion of measures addressed to enhance the legal certainty with respect to the issue, negotiation, settlement, custody and register of quoted securities.

- Contribution to the development of high-level standards of corporate governance in listed companies.

- Promote the adoption of any kind of measures aimed at improving the communication between listed companies and their shareholders.

Notwithstanding its recent creation, EMISORES ESPAÑOLES has already brought together more than thirty Spanish listed companies representing a wide range of economic industries (construction, finance, energy, IT, media, etc…). In spite of our members coming from such different industries, our common interest lays in achieving both a smoother running of the markets and an improvement of the regulation applicable to listed companies.

On these grounds, EMISORES ESPAÑOLES welcomes Commission's proposal to modernize the Transparency Directive.

Thus we are very pleased to submit our approach on the issues addressed in this consultation document and we offer you our future cooperation in any matter which falls within our activities.

Please, find below our answers to the questions posed by the Commission.

PART I - Attractiveness of regulated capital markets for smaller listed companies. Questions 1 to 10.

Emisores Españoles (EE) recognized the European Commission´s efforts on regular transparency requirements which could make regulated markets more attractive to small listed companies, e.g. an extension of the deadline for the publication of financial reports or measures at EU level that can help solving the lower visibility of smaller listed companies.

Nevertheless, EE consider that are smaller listed companies the ones that are best placed to answer the questions of this Section.

PART II - Information about holdings of voting rights. Questions 11 to 18.

11. Would the disclosure of holdings of cash-settled derivatives be beneficial to the market? Please provide evidence supporting your answer (e.g. situations in which lack of disclosure of cash-settled derivatives produced negative results). Please report about your experience, if any, with the disclosure of cash-settled derivatives in the United Kingdom11 and/or in other jurisdictions where cash-settled derivatives are disclosed (such as in Switzerland).

Yes. EE considers that the disclousure of holdings of cash-settled derivatives will enhance the markets transparency and it may be relevant for all the market participants (listed companies, shareholders, investors, etc…) and regulators.

12. If the Transparency Directive was to require holders of cash-settled derivatives to disclose their positions,

12.1. should holdings of cash-settled derivatives be aggregated to holdings of voting rights and/or of financial instruments giving unconditional access to voting rights for the purposes of calculating whether the threshold triggering the disclosure obligation is reached or crossed?

Yes. In Spain the reporting on acquisition, assignment or execution of financial instruments over shares is compulsory irrespective of the reporting on holdings of voting rights.

In our opinion, it should be convenient they were aggregated to the investor´s final position since the deal is made, with a breakdown of global holding positions, stock options, derivatives and so forth.

12.2. and if such disclosure of cash-settled derivatives should be done independently of voting rights and of other financial instruments, which threshold should be applied? E.g. (i) the thresholds provided in Article 9(1) TD should be applied (5%, 10% etc); (ii) the lower/initial threshold for this kind of disclosure should

be significant and higher than the 5% foreseen in Article 9(1) TD (e.g. at least 10% or higher); (iii) other).

According to Spanish legislation, the thresholds for the disclosure of the acquisition of financial instruments assigning voting rights are the same as those corresponding to shares, i.e. 3%, 5%, 10% and so on.

Should the reporting obligations on derivatives be made independently of that on voting rights, EE consider that the thresholds for reporting should be the same as those to be established for voting rights, as it is provided in the Spanish legislation.

In our view, with the aim of avoiding unjustified differences on reporting obligations, a European harmonisation of the regulations on this subject is essential.

13. Would the establishment of a specific disclosure mechanism for holders of voting rights who do not hold shares between the record date and the shareholders meeting be useful/effective to prevent empty voting practices?

(i) yes (please explain);
(ii) no, only limiting/prohibiting empty voting practices would be effective.

In the in force Spanish laws no problem has been detected with regards to this matter since securities lending implies the holding of voting rights thereon. Therefore, there is no possibility that they might exercise voting rights without being shareholders.

Therefore, the establishment of specific disclosure mechanisms should take into account a previous and more detailed analysis.

14. If a specific disclosure obligation is imposed regarding the transfer of voting rights independently of the shares between the record date and the general meeting,

14.1. which threshold of voting rights should be applied in order to trigger the obligation? E.g. 0,5%, 1%, 2%, other.

14.2. which time-limit for the disclosure should be applied for this disclosure to be useful? E.g. immediate disclosure; no later than 1 day, other.

If specific disclosure mechanisms are established, the thresholds set forth in the Directive should be used.

15. Which is the best way to make the investment process more transparent (please justify your answer):

-i) requesting investors to disclose their future intentions with holdings;
-ii) requesting investors to disclose their actual voting policies;

-iii) both;
-iv) none;
-v) other.

EE oppose to requirements to disclose future intentions with holdings or their actual or future voting policies. The establishment of disclosure obligations about future plans to buy or sell could cause legal uncertainty an entail consequences that crash head on the legal requirements related to market abuse and takeover bids.

An investor should have liberty to decide at any time depending on the standing circumstances, their investment or divestment policies. We consider it is difficult and even counterproductive to establish disclosure obligations in this sense.

16. If investors were required to disclose to the market which their intentions are with regard to their investment,

16.1. would such disclosure be useful?

-i) this would be useful for issuers and other investors (e.g. more transparency) – please provide examples/justify your reply;
-ii) this would be negative to issuers and other investors (e.g. facilitate antitakeover defences) – please justify your reply.

16.2. which should be the minimum threshold triggering such disclosure? Please justify your reply.

-i) the thresholds provided in Article 9(1) TD should be applied (5%, 10% etc);
-ii) the lower/initial threshold should be significant and higher than the 5% foreseen in Article 9(1) TD (e.g. at least 10% or higher);
-iii) the information should only be requested only if certain threshold are crossed and provided that the investor is among the largest 3 investors in the issuer;
-iv) other.

16.3. should such disclosure consist in (please justify your reply):

-i) simple information on intentions (e.g. box ticking in a form: I intend to change/influence control of the issuer/I do not intend to change/influence control of the issuer);
-ii) more substantial information on intentions (e.g. narrative explanations on purpose of the acquisition including any plans or proposals of the investor for future purchases or sales of issuer's stock or for any changes in the issuer's management or board of directors etc.);
-iii) information on source and amount of funds used to acquire the securities;
-iv) arrangements to which the investor is a party relating to issuer's securities;
- v) other.

See the answer 15 above.

17. Should holdings of shares and voting rights be aggregated with holdings of financial instruments giving unconditional access to voting rights for the purposes of calculating the relevant thresholds that trigger the notification obligation? Please justify your reply.

Yes. It should be necessary in any case to clearly establish which financial instruments give unconditional access to voting rights, as it has been analyzed in the consultation to paper "CESR proposal to extend major shareholding notifications to instruments of similar economic effect to holding shares and entitlements to acquire shares".

18. Are there other cases of potentially insufficient transparency regarding corporate ownership? Please justify your reply.

Yes. It would be desirable more transparency regarding the treatment of securities lending. According to Spanish legislation there is an obligation to disclosure whenever any lender or borrower trespass the 3% and consecutives thresholds on an aggregated basis. We believe that it should be more transparency on securities lending so that the market has a better knowledge on them.

PART III - Ineffective application of the Directive because of diverging national measures and/or unclear obligations in the Directive. Questions 19 to 23.

19. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) for the notification of major holdings of voting rights? Please justify your reply by describing any legal obstacles (e.g. related to civil or company law) to such uniform EU regime.

In our opinion the differences of thresholds between EU members is not justified, and it would be desirable the strongest harmonisation of the EU regime for the notification of major holdings of voting rights.

In Spain the first threshold is 3%, while in other countries is 5%, and there are thresholds between 50% and 75% (60% and 70%) and over 75% while other EU members not. Those differences provide an unequal treatment.

20. If a fully uniform EU regime is not possible because of insurmountable legal barriers, should Member States be prevented from adopting more stringent requirements than those of the Transparency Directive regarding the notification of major holdings of voting rights?

Yes. If a fully uniform EU regime is not possible, and taking into account that Spain has a stricter regime that that establish in the Transparency Directive, it would be desirable to prevent Member States from adopting more stringent requirements.

21. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) regarding issuers' disclosures? Please justify your reply by describing legal/other obstacles to such uniform EU regime.

It would be desirable the strongest harmonisation of the EU regime regarding issuers disclosures, although EE have not detected problems with the current legal requirements.

22. Could you please explain in what way national rules implementing the Directive result in different methods for aggregating holdings of voting rights (and where applicable financial instruments) for the purposes of calculating whether the relevant thresholds triggering the notification obligation are reached or crossed by investors? Please justify your reply.

EE shares the concern of the European Commission about the necessity to utmost harmonize the methods for calculation of voting rights holdings. Besides the differences already explained on disclosure thresholds, we would like to remark the necessity to harmonize the extent of financial instruments to be considered, as well as the treatment of securities lending.

23. Could you provide evidence of cases where unclear rules in the Directive ought to be clarified? Please explain.

It would be advisable to clarify the extent on the notification and disclosure of major holdings through the chain of controlled undertakings through which voting rights are effectively held.

PART IV – Other comments. Questions 24 on other issues.

24. Do you have any other comments regarding the Transparency Directive?