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**REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN
PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND
THE COMMITTEE OF THE REGIONS**

**Operation of 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**

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1. INTRODUCTION

1. This report reviews the operation of Directive 2004/109/EC¹ on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (hereinafter the "Transparency Directive"), in accordance with Article 33 of that Directive.
2. The Transparency Directive requires issuers of securities in regulated markets within the EU to ensure appropriate transparency for investors through the disclosure of regulated information and its dissemination to the public throughout the EU. Such information consists of financial reports, information on major holdings of voting rights and information disclosed pursuant to Article 6 of the Directive 2003/6/EC on insider dealing and market manipulation (market abuse)².
3. The objectives pursued by the Transparency Directive are important to financial markets and recognised by international standard setting bodies, such as IOSCO or the OECD. The current financial crisis demonstrates that the disclosure of accurate, comprehensive and timely information about securities issuers is essential in order to allow an informed assessment of their business performance and assets and consequently to build sustained investor confidence in capital markets.
4. This report describes the impact of the Transparency Directive and how it has been complied with (section 2); identifies the main issues emerging from the application of the Transparency Directive (section 3) and draws a number of conclusions (section 4). This report is completed by a Commission staff working paper which provides further detail on the issues described as well as on how information has been collected.

2. IMPACT OF AND COMPLIANCE WITH THE TRANSPARENCY DIRECTIVE

5. The External Study on the application of the Transparency Directive conducted on behalf of the Commission³ (hereinafter "the External Study") reflects that a strong

¹ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390 of 31.12.2004, p.38. See: www.ec.europa.eu/internal_market/securities/transparency/index_en.htm

² OJ L 96, 12.4.2003, p.16.

³ Mazars (December 2009), *Study on the application of selected obligations of directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose*

majority of the stakeholders who participated in the survey consider the Transparency Directive to be useful for the proper and efficient functioning of the market. Stakeholders generally consider that regulated information disclosed by issuers reaches investors, except perhaps for the case of information disclosed by smaller listed companies.

6. In terms of economic impacts of the Transparency Directive on financial markets, research conducted so far is not conclusive. It seems rather that the Transparency Directive is neutral: while perceived as a simplifying factor for primary market issuance, there is a lack of empirical evidence to back up this perception.
7. A review of issuers' practices shows that issuers generally comply with financial reporting obligations and that this is also the perception of stakeholders. Financial information disclosed is considered useful and sufficient for investment purposes. Also, the simplification of language requirements for disclosure of financial information introduced in 2004 has been particularly welcome.
8. The cost of compliance with the obligations of the Transparency Directive⁴ does not appear, *prima facie*, particularly high⁵. This is also the perception of issuers, although small and medium sized listed companies are more concerned about the cost of compliance. The introduction of the "Home Member State rule"⁶ as well as the simplification of the language regime for financial disclosures in 2004 should, in principle, have contributed to reducing issuers' costs. However, there are increased costs for cross-border investors resulting from the insufficiently harmonised requirements of the Transparency Directive.

3. THE REVIEW OF THE OPERATION OF THE DIRECTIVE: EMERGING ISSUES

9. A number of issues emerge from the review of the operation of the Transparency Directive (see the Commission staff working document accompanying this report for further detail).
10. First and foremost, the debate is raised as to whether the transparency rules should be specifically adapted to smaller listed companies with a view to maintaining and also increasing the attractiveness of regulated markets for this category of issuers⁷. While

securities are admitted to trading on a regulated market. Available at: http://ec.europa.eu/internal_market/company/ecgforum/index_en.htm

⁴ It should be noted that the bulk of the requirements on the content (e.g. accounting standards) of annual and half-yearly financial reports are not contained in the Transparency Directive.

⁵ See Europe Economics (2008), *Study on the cost of compliance with selected FSAP measures*. Available at: www.ec.europa.eu/internal_market/finances/actionplan/index_en.htm

⁶ According to the "Home Member State Rule" (cf. Article 3(1)), issuers are only subject to the obligations set out by their Home Member State (normally the one of incorporation) but not to those of the Host Member State. This "Home Member State Rule" should avoid the dual (or multiple) application of rules to issuers.

⁷ It should be underlined that there are alternative markets to the 'regulated markets' (within the meaning of the Transparency Directive) where issuers may have their securities traded. Those alternative markets qualify as multilateral trading facilities (MTFs) within the sense of Directive 2004/39/EC. The Transparency Directive rules do not apply to those alternative markets and according to the External Study, there is no stakeholder support for extending the application of this directive to those non-regulated markets. The Commission does not intend at this stage to propose extending the scope of the

the scope for simplification of the Transparency Directive rules for smaller listed companies, and therefore achieving savings, is limited, there are specific simplification measures which could be envisaged, without undermining investor protection, such as for instance: (i) providing for more flexible deadlines to the disclosure of financial reports; (ii) alleviating the obligation to publish quarterly financial information; (iii) harmonising the maximum content of reports; or (iv) facilitating cross border visibility of smaller listed companies towards potential investors and/or information intermediaries such as financial analysts⁸, therefore increasing their attractiveness.

11. Secondly, although the requirement to produce quarterly financial information introduced in 2004 by the Transparency Directive could contribute to a certain short-term vision of the issuers' performance by investors⁹, it is generally well perceived by market participants. Also, alleviating the obligation to disclose quarterly information would most likely only benefit smaller listed companies, since the large companies would presumably continue to publish quarterly information. On the contrary, there is market demand for more detailed rules regarding the content of interim management statements so as to facilitate issuers' compliance and to allow for predictability of the information to be disclosed.
12. Thirdly, the minimum harmonisation character of the Transparency Directive allows Member States to adopt more stringent requirements¹⁰. Thus the transposition of the Transparency Directive is relatively uneven as a result of different national regimes. More stringent national requirements, in particular regarding the notification of major holdings of voting rights, are perceived as problematic by stakeholders. This results in real and costly implementation problems. This raises the question as to whether the current regime (i.e. minimum harmonisation) is appropriate to achieve an effective level of harmonisation of transparency requirements in the EU.
13. Fourthly, it appears that the Transparency Directive's obligations need to be adapted to innovation in financial markets and increased transparency requirements should be introduced with regard to certain types of instruments. In particular, insufficient disclosure of stock lending practices seem to have increased the risk of "empty

Transparency Directive to MTFs. A more detailed explanation is proposed in the Commission staff working document attached to the present report.

⁸ See for instance, F. Demarigny, *An EU-Listing Small Business Act*, March 2010, available at: www.eurocapitalmarkets.org. According to this report, "on average, 93% of trading volumes on regulated markets are concentrated on 7% of the total number of companies listed in the EU".

⁹ Such short-term effect is at odds with recent Commission initiatives encouraging financial institutions and issuers to establish incentives for a longer-term vision. The European Commission has, for instance, recommended that remuneration of directors in issuers and financial institutions takes into account the long term behaviour of companies: see European Commission Recommendation 2009/384/EC of 30.4.2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22) and Commission Recommendation 2009/385/EC of 30.4.2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies (OJ L 120, 15.5.2009, p. 28).

¹⁰ The Commission staff examined the question of more stringent national requirements in 2008 and produced a specific document with detailed information on this matter, which should be regarded as a complement to this report. See Commission staff working document, *Report on more stringent national measures concerning 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*, SEC(2008)3033, 10.12.2008.

voting" and lack of disclosure regarding cash-settled derivatives has led to increased problem of "hidden ownership". Concerning the disclosure of information for corporate governance purposes, associations representing issuers in the EU are favourable to the introduction of mechanisms allowing issuers to identify the ultimate investor so as to be able to engage into real shareholders-issuers dialogue. Additionally, even when shareholders with major holdings of voting rights are well known, calls are being made to enhance the disclosure requirements for significant holdings. In some Member States, large investors are already requested to disclose their intentions as regards their holdings and how they financed their acquisition. The question of whether large (in particular institutional) investors should disclose their voting policies in listed companies is related to this issue too.

14. Fifthly, in addition to the disclosure of financial reports required by the Transparency Directive, EU law also requires (or, as appropriate, recommends) listed companies to make some periodic non-financial (but corporate governance-related) disclosures, generally in connection with the annual financial report, such as the so-called Corporate Governance Statement¹¹. The issue has been raised as to whether the disclosure of non-financial information should be integrated into the Transparency Directive regime in order to simplify the existing requirements.
15. A related issue concerns disclosure of Environmental, Social and Governance (ESG)¹² data made by listed companies. Some stakeholders (non-governmental organisations, some investor organisations) are regularly requesting to improve and strengthen European legislation regarding ESG disclosure. In their view, the Transparency Directive could be an appropriate vehicle to integrate such disclosures alongside financial reporting obligations of listed companies, and to address some of the perceived short-comings of current ESG disclosure rules and practice.
16. Sixthly, the progress towards the establishment of a pan-European system of storage of regulated information, with a view to facilitate investors' access to information, is slow¹³ and the impact of the Directive in this area has been insufficient: interested parties need to go through 27 different national databases and the electronic network interconnecting them is only at an initial stage with rather modest results so far. This raises the question as to whether the Directive storage mechanisms, as currently designed, are able to fulfil the role of "gate" to historical financial information on listed companies at pan-European level.

¹¹ Article 46a of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies, as amended by Directive 2006/46/EC (OJ L 224, 16.8.2006, p.1).

¹² There is neither a precise definition of ESG for regulatory purposes, nor a clear delineation of its scope. It appears nevertheless that ESG disclosures would fit within the larger debate on Corporate Social Responsibility (CSR). CSR has been defined by the Commission as "*a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.*" See *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility*, COM(2006) 136 final, 22.3.2006.

¹³ See the Commission Recommendation 2007/657/EC of 11 October 2007 on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/Ec of the European Parliament and of the Council, OJ L 267, 12.10.2007, p.16.

17. Finally, while there are no major compliance problems, the review of the operation of the Transparency Directive shows that some technical adjustments to the text of the Directive would be beneficial in the interest of improved clarity.

4. CONCLUSIONS

18. This review of the operation of the Transparency Directive shows that there are areas where the regime created by this Directive could be improved, notably in relation to the simplification of the rules applicable to smaller listed companies with a view to making capital markets more attractive to them. The cross-border visibility of smaller listed companies towards potential investors and analysts also needs to be improved with a view to ultimately achieve higher levels of trading on the securities of these smaller issuers. There are possible measures in the framework of the Transparency Directive which could contribute to this goal: e.g. providing for more flexible deadlines to the disclosure of financial reports by small issuers would enhance their visibility since they would no longer inform about their performance at the same time as large issuers; harmonising the maximum content and presentation of reports would facilitate reading and comparability by investors and analysts. In this context, the review of the operation of the Transparency Directive also shows that it would be desirable, in order to increase the visibility and attractiveness of smaller listed companies, to further facilitate access by potential investors and information intermediaries at a pan-European level to financial information disclosed by small issuers and stored in the officially appointed mechanisms for the storage of regulated information.
19. Additionally, the review of the operation of the Transparency Directive shows the need for greater convergence of the rules on the disclosure of major holdings of voting rights and of financial instruments giving access to voting rights (including cash-settled derivatives) as well as the opportunity to simplify the reporting requirements for issuers in the broader corporate governance context. In this connection, this report also identified the concerns of some stakeholders regarding the disclosure of environmental and social information.
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