

EUROPEANISSUERS' COMMENTS ON THE TRANSPARENCY DIRECTIVE REVIEW

30 August 2010

EuropeanIssuers welcomes the Consultation by the Commission on the Review of the Transparency Directive (hereinafter TD) and has the following comments:

A – General Comments

Need for a more strategic view of corporate reporting

Companies do not view the TD in isolation but rather as part of their overall reporting responsibilities. Before responding to some of the consultation questions therefore, we believe that there is a need to take a more strategic look at corporate reporting and the relative place for the TD in terms of what should sit within IFRS, what within company law both at EU and national level, and what within securities law. Only once you have the strategic picture of what it is that you want to achieve from corporate reporting can you then decide on the best mechanism to deliver the outcomes, whether that be the TD or other regulation.

As a very general observation, companies' experience is that securities law tends to treat companies as a product and to be designed around the needs of the financial intermediaries, whereas company law tends to be better designed to suit companies' needs and to focus more on company-shareholder communications around the long-term future of the company.

While it may make sense for the prospectus directive to be part of securities law, we believe that there is therefore a question as to whether the content of the annual report should be part of securities law at all or whether it should be left to IFRS and company law.

In addition, EuropeanIssuers believes that the burden on smaller listed companies is mainly the resourcing in terms of management time to maintain all the obligations imposed by the TD rather than a cash cost. As such there should be some type of proportionate regime for smaller listed issuers but this requires further thought. We therefore support a more **holistic review of the burdens on small and mid-caps**.

We believe that there is a case for an overall examination of what is appropriate and beneficial in terms of the regulatory approach for primary markets, rather than examining measures in each specific Financial Services Directive. This might consider whether we actually need a single EU capital market or whether EU legislation should not recognise that there are and should be different EU capital markets which provide choice to companies, allowing them to list on smaller markets and then migrate as they grow. While all listed companies need finance, they have different needs at different stages of their development. What is appropriate to a

multinational, well established company is not necessarily so to a smaller company just coming to the market.

The markets should allow entrepreneurial companies to raise capital at their level and to grow and become the larger companies of the future. Second tier equity markets may therefore provide smaller companies with access to public equity at an earlier stage than would otherwise be the case. Overall, both issuers and investors should have the choice between different markets with differing regulatory intensity. From our point of view these markets could be: (1) exchange regulated markets with a light-touch regime, (2) regulated markets (where the minimum standards could be lowered to a small extent and/or made more flexible), (3) “premium” segments within the regulated markets which may include regulatory add-ons that are defined by the stock exchanges.

Need for improved transparency of major holdings

The European Commission’s consultation discusses possible amendments of the notification system of major holdings and the more general issue of shareholder transparency. Both issues are of greatest interest for listed companies. Improved transparency with regard to instruments that can be used to build up a hidden ownership would help to enhance the reliability of major holding notifications, to close information asymmetries among market participants and thus would improve the integrity and efficiency of the capital market as well as the dialogue between issuers and their shareholders. Therefore, EuropeanIssuers supports most of the regulatory ideas behind the proposals in section II of the consultation document.

B - Section I - Attractiveness of regulated capital markets for small listed companies

Given our comments above, we have not responded in detail to these questions as we believe that there needs to be a more holistic review first. While we welcome the aim of the consultation as being to simplify the rules applicable to smaller listed companies, we do not believe that the approach taken to the questions is the right one. We would be happy to discuss this further with the Commission.

- 1. Do the Transparency Directive obligations for issuers (e.g. disclosure of annual and half-yearly financial reports, quarterly information etc.) impact on the decisions of small listed companies to be listed in or to exit regulated markets (e.g. do they act as an entry barrier)? Please provide evidence supporting your answers.**

See our answer to question 24 (b).

- 2. Which are the most important costs for small listed companies associated to compliance with the Transparency Directive (e.g. cost of preparing the accounts, auditing costs, legal costs, cost of making public the information etc.)? Please support your answer with quantitative data.**

Very few smaller listed companies have any idea of what costs are imposed by individual directives. What they see is the totality of the reporting requirements. Providing more flexible deadlines would be helpful, however.

- 3. What changes of the Transparency Directive will bring important reductions in costs for small listed companies? Please provide evidence in support of your answer (see also questions 7 and 8 if you are able to provide more detailed replies).**

See our general comments.

- 4. How does the visibility problem materialise (e.g. lower attention of analysts, lower investment levels, lower trading etc.) for (objectively) well performing small companies? Please provide evidence supporting your answer.**

See our general comments.

- 5. Are there, in your view, other cases reflecting low benefits for small listed companies resulting from disclosure obligations compared to larger listed companies?**

See our general comments.

- 6. What would be the optimal definition of a "small listed company" in the context of regular (i.e. after the admission to trading of the securities) transparency requirements? Please justify your replies**

- i) for issuers of shares, those companies with a market capitalisation below a certain threshold such as €100 Million¹, €250 Million² or other (please specify the threshold);**
- ii) for issuers of shares, those companies with a market capitalisation below a certain percentage (e.g. 60%) of the average capitalisation of a company in the regulated market where the company is admitted to trading (please specify the percentage);**
- iii) for issuers of shares, those companies with a market capitalisation below a certain percentage (e.g. 60%) of the average capitalisation of a company in the regulated market(s) of the home Member State of the company (please specify the percentage);**
- iv) for issuers of debt securities only, those companies having outstanding debt securities below a certain threshold (please specify the threshold);**
- v) for issuers of debt securities only, those companies having a turnover below a certain threshold (please specify the threshold)**
- vi) other.**

As for a definition of smaller issuers we believe that it is difficult to use market capitalisation as a criterion because it does not necessarily indicate the size of the business which is fluctuating. It is a notion which should be debated at EU level.

- 7. Potential diminution of cost for small listed companies if changes to the Transparency Directive were to be adopted**

¹ See the definition of "*company with reduced market capitalisation*" in the context of the on-going review of the Prospectus Directive (for instance, in the Council's compromise text of February 4, 2010 <http://register.consilium.europa.eu/pdf/en/09/st17/st17451-re01.en09.pdf>).

² See the External Study (section 1 of the executive summary) which refers to a threshold of between 250 Million and 1000 Million euro.

7.1. If a differentiated regime for small listed companies is added to the Transparency Directive with a view to reduce the compliance costs of those companies, would it be desirable to prevent Member States/regulated markets from imposing in national law/listing rules more stringent or additional obligations on small listed companies?

See our general comments.

7.2. Do you think that an extension of the deadline for the publication of financial reports would imply a reduction in legal, auditing or other type of costs? Please provide evidence supporting your answers (e.g. how much the cost would be reduced depending on the extension of the deadline)?

See our answer to question 24 (b).

7.3. Do the various rules requiring the disclosure by listed companies of reports of narrative nature bring significant costs/operation complexity for small listed companies (e.g. legal, account preparation, auditing, other type of costs)? Please provide evidence in support of your answer.

No comment.

7.4. Would you see benefits from integrating in the Transparency Directive the disclosure obligations mentioned in question (8.3) which are currently in different directives? Please explain you reply (e.g. rules would be more clear, the Home Member States rules would clearly apply, etc).

No.

7.5. If the Transparency Directive provided for maximum harmonisation (no national add-ons) of the content of narrative reports referred to in question (7.3) for small listed companies, would this imply a reduction in legal, auditing or other type of costs? Please provide evidence supporting your answers.

It seems unlikely that Member States would wish to give up their powers at national level. On that basis, it seems unlikely that there would be any cost reductions at EU level.

7.6. In case you think maximum harmonisation regarding the content of narrative reports referred to in question (7.5) is desirable, what do you think would be the best way? Please provide reasons on your reply.

- i) non-mandatory ready-to-use templates regarding these narrative disclosures (which could be prepared for instance by CESR/ESMA);**
- ii) more detailed rules in European law, either in the Transparency Directive or in delegated acts adopted by the Commission;**
- iii) a combination of both.**

None of the above. We do not consider that any of these options are likely to lead to a reduction of costs. See also our introductory comments on the need to consider whether securities law is the appropriate place for such disclosures.

7.7. Concerning question (7.6), could you provide a specific reply regarding the disclosure of environmental and social data requested in Article 46(1)(b) of the Fourth Company Law?

As above.

8. Diminution of cost for small listed companies vs. diminution of transparency to the market.

8.1 Is it possible to apply lighter transparency obligations for small listed companies without a corresponding significant diminution of transparency provided to the market? Please provide evidence supporting your answer.

Yes. Various segments and markets have different reporting requirements.

Provided that this is clear to investors, we believe that more flexible requirements are desirable. See our earlier comments on the need for different EU capital markets providing choice to companies.

8.2 If the obligation to disclose quarterly financial information was waived for small listed companies, would this result in an unreasonable diminution of transparency? Please provide evidence supporting your answer.

No – if investors demand the information then companies will publish it anyway. If they do not demand the information then there is no point in obliging the company to produce it. See our answer to question 21 (a) regarding interim management statements.

9. Addressing the lower visibility of smaller listed companies

9.1 Do you think that measures at EU level (including possible changes to the Transparency Directive) can help solving the lower visibility of smaller listed companies?

(i) Yes (see next question)

(ii) No, it is a structural problem or a market feature (e.g. size matters etc.) which EU measures will not be able to solve (please explain).

Not for the time being. There may be things that the EU could do but first there should be set up a high level group to look at possible ideas in more detail and a few roundtables with experts could be held also. We would be happy to participate.

9.2 What type of measures at EU level could help solving the visibility problem of small listed companies?

- i) The Transparency Directive should contain differentiated rules for small listed companies regarding timing and/or methods for the disclosure and dissemination of information (please explain);
- ii) there are rules in other EU directives (e.g. prudential requirements) and/or national law (e.g. tax law) which discourage financial analysts and intermediaries' interests in small listed companies which should be modified (please explain)
- iii) financial analysts and intermediaries should get incentives to interest themselves in small listed companies (please explain);
- iv) other (please explain).

See our general comments.

9.3 Do you think that the development of an EU database storing regulated information on all issuers of securities in the EU will facilitate research and create interest/result in greater attention in small listed companies by financial analysts, financial intermediaries and investors? Please explain.

See our answer to question 21 (b)

10. Do you have any other views on regular transparency requirements which could make regulated markets more attractive to small listed companies?

See our general comments

C - Section II- Information about holdings of voting rights

We believe that the current system for the notification of major thresholds is problematic in the sense that it is costly to both investors and to companies and that transparency is still lacking.

11. Would disclosure of holdings of cash-settled derivatives be beneficial to the market?

Yes.

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

12.1 Should holdings be aggregated?

12.2 If such disclosure should be done independently of voting rights, which threshold should be applied?

We have differing views in membership on whether this should be aggregated which tend to follow national lines as indicated in Annex 7 of the Commission Staff's working document.

The majority of our members tend to believe that the main purpose of disclosure should be to uncover attempts at building up hidden ownership. For this reason cash-settled

positions and other practices (such as securities lending and borrowing, repurchase agreements) that may be or are de facto used to secretly accumulate voting rights in Article 13 of the TD should be disclosed.

However, those members who do not support aggregation believe that it is difficult to distinguish between the cases when cash settled derivatives are used for potential influence in a company and when these instruments are used for purely financial or hedging purposes.

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?

Before responding to this it is necessary to ask another question: what are the legal consequences for general meetings of a different owner at the record date and at the date of the general meeting: is it intended that the new owner be entitled to vote? If so, how can the company verify the identity of the shareholder?

Empty voting as a consequence of trading shares between record date and GM date, is only one of the circumstances that result in the separation of the entitlement to vote at GM from the economic exposure normally attached to shares. In addition to trading between record and voting dates, empty voting can be accomplished through a variety of instruments including stock lending and hedging economic exposure.

It should be noted that empty voting with shares traded between record date and GM date may in particular take place in jurisdictions where the record date has been set well ahead of the GM date. Where, on the other hand, the record date is close to the GM date, even resulting in ownership transfer coinciding with the GM date, empty voting is less likely to occur. Consideration could therefore be given to reducing the record date in the Shareholder Rights Directive.

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 may be of some help in preventing empty voting practices. We understand that this is an issue that needs to be carefully evaluated. Our preliminary view is that we would not be in a favour of a total ban on empty voting. A system that allowed improved transparency would benefit issuers and the market. A good starting point for discussions would be the proposal of the European Corporate Governance Forum of February 2010 whereby a borrower of shares should notify the issuer before the general meeting when he does not have the full financial interest and if he intends to exercise the voting rights on the shares. An additional rule that shares of an issuer may only be lent by that issuer if the lending contract stipulates these shares will not be voted on by the borrower would be advisable. Fuller consultation would be necessary.

Requiring, as a matter of principle, greater transparency would be most welcome, but this must be considered in the broader framework of all circumstances resulting in empty voting, including for instance, stock lending and hedging techniques. As

previously stated in our position paper on short selling³, we would like to see the Commission consider better disclosure of stock lending, including more consistent use of definitions. Transparency should provide a picture of the interests that a shareholder actually owns and of interests held as the result of a temporary transfer, information about the identity of the lender and the duration of the temporary exchange, disclosure of voting agreements between lenders and borrowers. This would help to reveal the short-term intentions of parties with respect to draft resolutions tabled at the meeting. We note, for example, that information on stock lending is made available on a daily basis in Spain and we wonder whether it might not be more consistent with the principle of a single market if similar information could be made available across the EU.

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

If a specific disclosure obligation were imposed regarding the transfer of voting rights independently of the shares between the record date and the general meeting date it would be preferable in the interests of transparency if this were an immediate disclosure obligation.

However, an alternative suggestion may be to reduce the time between the record date and the general meeting.

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

We believe that the most effective way to ensure that the investment process becomes more transparent is to request investors to disclose their actual voting policies. In this way the underlying beneficiaries and the holding company would be aware of the principles of stewardship that the investor has adopted and the investor would have the flexibility it needs in the capital markets.

However, institutional investors and voting agents have a loyalty duty towards their clients and beneficial owners. Any voting policy needs to be established on the grounds of these obligations and, in any case, must serve the purpose of maximising the benefit for the beneficial owners. Even incentives to further a long-term interest of investors in their investee companies must operate within the limits of this purpose.

16. If investors were required to disclose to the market which their intentions are with regard to their investment, would such disclosure be useful? Which should be the minimum threshold triggering such disclosure? What should such disclosure consist in (*please justify your reply*).

³ EuropeanIssuers' [Response](#) of 9 July to the Commission's [Consultation](#) on Short Selling dated 14 June.

It would be helpful to the markets if investors were required to disclose to the market what their intentions are with regard to their investment but only if the shareholding is substantial/significant. This obligation that already exists at least in some Member States, needs to be carefully designed, so that it would not be too burdensome for investors while at the same time providing reliable insights in the intentions of major shareholders.

Our preferred solution would be to have an EU requirement for shareholder identification. If companies were enabled to see who their shareholders are then they would be better able to judge whether to seek additional information on the intentions of those investors whom they do not know. For more detail, see our answer to question 24 (a).

17. Should holdings of shares and voting rights¹⁸ be aggregated with holdings of financial instruments giving unconditional access to voting rights¹⁹ for the purposes of calculating the relevant thresholds that trigger the notification obligation? *Please justify your reply.*

We strongly believe that instruments of similar economic effect to holding shares and entitlements to acquire shares should be aggregated with shares or entitlements to acquire for the calculation of the notification threshold. Additionally, there should be a specific mention of the type of instruments that are used by the holder to build his position.

Our reasoning is that instruments of similar economic effect should be treated the same way to prevent circumvention, to give a full picture of the ownership structure and for administrative reasons. This is the simplest way to get an overall picture of an investor's position. We acknowledge that there are increased costs for cross-border investors resulting from the insufficiently harmonised requirements of the existing Directive due to the minimum harmonisation approach adopted on implementation.

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

We would support more clarity around the rules on acting in concert, possibly by means of publication of examples of what would be considered acceptable behaviour. This should facilitate collective engagement by shareholders. Moreover, this exercise should also consider the definition in the Takeover Bids Directive.

D - Section III - Ineffective application of the Directive because of diverging national measures and/or unclear obligations in the Directive

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.

We would like to see more uniform EU rules regarding the notification of major holdings of voting rights, but only on condition that the existing shareholder identification rules which exist in national laws in addition to the TD requirements should be exempted or that a new EU-wide rule on shareholder identification be introduced. However, we agree that it does not make sense that shareholders may currently be forced to disclose different information on their holdings due to different regulatory interpretations and to incur considerable costs in monitoring those interpretations.

There may also be a case for excluding the notification of holdings in a takeover situation from maximum harmonisation.

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?

In the event that it is concluded that there should not be a shareholder identification rule at EU level then we believe that Member States should be given the option to adopt more stringent requirements than those of the TD regarding the notification of major holdings of voting rights.

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.

No. We do not believe that it would be desirable to set up a uniform EU regime regarding issuers' disclosures, namely:

- a) Interim Management Statements (IMS): We believe it is not desirable to set up a uniform EU regime concerning Interim Management Statements as set out in Article 6(1) of the TD (and more generally, in Articles 4 to 8 of the TD). Further harmonisation of the content and presentation of reports would not be relevant. The current provisions of the TD, which are shared and uniform across the EU, are sufficient, as they leave companies the necessary flexibility to determine the content of their interim management statements, e.g.: whether or not they publish quarterly financial statements, numerical data, business-sector indicators, the pertinent data to publish, etc.

A "one-size-fits-all" solution is not good: directly applicable EU regulation could only jeopardize the necessary flexibility. Companies, including large ones, remain strongly opposed to mandating quarterly financial statements/reports, quarterly earnings figures and related indication, as well as quarterly numerical data. We believe that any such requirement could contribute to a short-term vision of their performance and be contrary to the most welcome objective of establishing incentives for a longer-term vision. Finally, we believe it is sufficient to require in IMS an explanation of "*material events*" that have taken place during the relevant period and an indication of their impact on the financial position. It would be inappropriate, as suggested in the

Commission staff working document and in the External Study⁴, to replace the terms “material events” by the terms “important events” which are used for half-yearly reports only. The level of details required in IMS should be lower than in half-yearly financial reports, as the objective with IMS is to give an indication of the overall trend of companies’ activities and of the events that are likely to have a significant effect on the prices of the securities issued.

- b) Officially Appointed Mechanisms (OASMs): the Commission⁵ raises the question as to whether OASMs, as currently designed, are able to fulfil the role of « gate » to historical financial information on listed companies at European level and considers a more centralised storage system than those currently used by stakeholders or the network that is being put in place.

Based on our own members’ views, we would disagree with the statement in the Commission staff working document and in the External Study that “a majority of issuers of shares are in favour of an EU central storage mechanism, in particular recently listed companies”. We equally disagree that “within issuers of shares, top and recently listed companies are the most supportive of the creation of a system similar to EDGAR in the EU” and that “an EU storage mechanism is particularly supported” by stakeholders in countries like France, Germany and Italy⁶;

We believe that there is no market demand for another model than that currently used by stakeholders or than the current model (“Model C”). In order to facilitate access to stored information, companies are in favour of a model with a single interface between a website containing a central list of all EU listed companies with a hyperlink to the relevant national officially appointed storage mechanism (OASM).

We are strongly opposed to a more centralised storage system, whose costs/drawbacks regarding the quality of information provided would largely outweigh hypothetical benefits. Companies, in particular those that have experienced the US system EDGAR/IDEA, believe that it lacks flexibility. In addition, they are concerned that this may imply the mandatory use of XBRL, which they oppose. In their view, that system is not a good example for Europe and would not be relevant to European issuers. We will respond separately on the use of XBRL.

- c) Dissemination of regulated information: Issuers either wish to disseminate regulated information themselves (e.g. through their own websites) or may wish to continue to use the services of data disseminators, if the provisions of the TD remain unchanged (article 21 § 1: fast access on a non-discriminatory basis; effective dissemination throughout the Community).

We will respond separately on this point to CESR’s consultation on pan-European access to financial information disclosed by listed companies. We would also support the further development of the network of European Business Registers.

⁴ Annex 6 § 6.2. of the staff working document and External Study § 1.4.3.

⁵ Section 3 § 16 of the Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM (2010) 243 final, 27.5.2010.

⁶ Commission staff working document – Annex 15 § 15.25., 15.26. and 15.42.

22. Could you please explain in what way national rules implementing the Directive result in different methods for aggregating holdings of voting rights for the purposes of calculating whether the relevant thresholds are triggered?

No comment – we believe that the investors are better placed to reply.

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

According to the Commission staff working document⁷, the text of the Directive is not clear as regards whether the reports to be disclosed within the Directive deadline are those approved by the board or by the general meeting. However, according to Article 4(4) of the TD, the management report shall be drawn up in accordance with the Company Law Directives. Those directives are of minimum harmonisation: Member States may require additional information and the accounts and annual reports are published as laid down by the laws of each Member State⁸. Therefore it is clear that the annual reports to be disclosed within the four month deadline cannot be those approved by the general meeting. This could be made more explicit in the TD to avoid any such confusion.

On the other hand, we do not believe that clarification of the rules in the TD is needed as regards IMS (please see our response to question 21).

E - Section IV- Any other comments

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

a) Shareholder Identification: We agree that the rules on disclosure of holdings are inadequate. We support a shareholder identification system such as exists in the UK or France, which enables the company to seek information on the holders of its shares. This would reduce the costs incurred by companies currently in paying intermediaries to get hold of this information. In addition to the benefits listed in the staff working document, this could facilitate the effective operation of the comply or explain regime for corporate governance codes in Europe if such information were also to be available to other shareholders to enable them to exercise their collective stewardship responsibilities. For example, shareholders can purchase this information in the UK from data vendors. Such a system is also required in order to judge whether stewardship codes are working effectively – if you do not know who the major investors in European companies are, how can you judge whether they are exercising their responsibilities as long-term investors effectively?

⁷ Annex 6 § 6.2.

⁸ Fourth Council Directive Article 47(1) and Seventh Council Directive Article 38(1).

- b) Half yearly reports: The deadline for publication of half-yearly reports is one of the TD provisions that raises implementation issues in many cases, including for large companies: the deadline for preparing and publishing financial statements is short, especially when they are subject to a limited review or an audit. As all half-yearly reports are published around the same date, it is often difficult to obtain a satisfactory coverage by financial analysts and investors, even for large companies. For companies, including large ones, that have their financial statements audited or reviewed by their statutory auditors, the publication deadline for the half-yearly report should be extended to two months and a half (or eleven weeks), instead of two months under the current TD.
- c) Interim management statements (IMS): We do not support the statement in the report from the Commission⁹ and the Commission staff working document¹⁰ whereas “there is market demand for more detailed rules regarding the content of interim management statements (IMS). We note that the Commission says that “issuers (...) expressed a desire of a more detailed definition of the content of the IMS (Article 6.1) to ensure more predictability and comparability”¹¹, whereas, according to the Mazars report, the demand for guidance appears to come from non-EU as opposed to EU issuers, where “the overall knowledge and understanding of the obligations of the Directive is low”¹² anyway. EuropeanIssuers does not see a need to change, detail or clarify the existing requirements in the TD as regards IMS. Those requirements are sufficiently clear and leave companies the necessary flexibility to adapt their financial communication to the specificities of their business sector and model, to the needs of stakeholders and to the companies’ characteristics (for instance, size, activities, location, competitors, etc.).
- d) Corporate Governance Statements (CGS): EU law 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 Statement. The issue has been raised as to whether the disclosure of non-financial information should be integrated into the TD regime in order to simplify the existing requirements, at least in relation to smaller listed companies. The Commission staff working document¹³ suggests that “obligations for listed companies could be made simpler if the content of the annual financial report was subject to maximum harmonisation regulation at EU level”, e.g. for CGS.

We disagree. Company law as well as corporate governance differ widely across the European Union. Also, internal control and risk management systems are adapted to the companies’ specific organisations and characteristics (size, location, activities, operations, needs, resources, etc.) resulting in different reporting practices.

⁹ § 11 of the Report.

¹⁰ Section 2.2. § 21.

¹¹ Mazars study (2009), section 2.6.5.

¹² Mazars Report Executive Summary – 7: Impact of the Directive on the attractiveness of the Single Market

¹³ Section 2.1. § 17.

The diversity of legal environments and of companies precludes the harmonisation of the content of corporate governance-related disclosures, including the CGS through integration into the TD. Any provision on corporate governance or corporate governance-related disclosures should not be dealt with in the TD, but through vehicles/tools that are more relevant to such matters such as specific recommendations.

- e) Disclosure of Environmental, Social and Governance (ESG) data: According to the Commission's report¹⁴, the TD could be an appropriate vehicle to integrate such disclosures alongside financial reporting obligations of listed companies, and, with regard to those companies, to address some of the perceived short-comings of current ESG disclosure rules and practice. The Commission staff working document indicates that an International Connected Reporting Committee (ICRC) is due to be established by the end of 2010, to oversee the development of a connected and integrated reporting model that covers financial and sustainability information.

As indicated in our general remarks, we are not convinced that securities law as opposed to company law is the appropriate place for disclosure requirements in the annual report.

In any event, ESG disclosures are inherently different (essentially "non-monetary" information) and require very different resources and processes. The management report may not be subject to the same publication deadline as the annual report and reducing the publication deadline could lead to deteriorate the quality of these disclosures.

ESG disclosures are in large part specific to industries and companies and are not standardised. Internationally and nationally, many initiatives are underway to develop relevant cross-sector indicators that could make some information internationally comparable. The diversity of national systems, the heterogeneity of concepts and definitions used and the difficulty quantifying ESG information make this work particularly difficult and consolidation of this information often impractical.

- f) Liability regime: We disagree with the statement in the Mazars report that harmonisation of liability would be beneficial.

EuropeanIssuers was set up to represent the interests of publicly traded companies in Europe, which are subject to complex rules on issues such as shareholder rights, corporate governance and reporting and market regulations. Our members include both national associations and companies from all sectors in 14 European countries, where there are some 9.200 such companies with a combined market value of some € 5.000 billion.

EuropeanIssuers' ultimate goal is to achieve well functioning European financial markets which serve the interests of their users, together with good corporate governance and responsible share ownership. More information can be found at www.europeanissuers.eu.

¹⁴ § 15.Executive summary – 2: The disclosure of periodic information