

Consultation document

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

**Important note**

This document is a working document of DG Internal Market and Services of the European Commission, for the purposes of obtaining views of interested parties.

It does not purport to represent or pre-judge the views of the European Commission and or formal proposals of the European Commission regarding the matters covered in the consultation paper.

This public consultation document aims at having valuable insights, quantitative and qualitative evidence, on impacts, costs and benefits stemming from Directive 2004/109/EC (the Transparency Directive) obligations and or from possible additional transparency requirements. It aims also to have views on possible changes to the Transparency Directive obligations.

You are invited to comment on the ideas presented in this paper. The questions are only an indication of the issues that the European Commission may address in the context of the modernisation of Directive 2004/109/EC and they do not represent any final policy position.

This consultation paper contains questions regarding simplification and administrative burden reduction of obligations. For this reason, we would welcome in particular the views of small businesses, investors and consumers.

As well as responding to the specific questions, we also ask you to describe any alternative approaches you think would achieve the objectives outlined in the paper.

Your comments should help the services of the European Commission to develop proposals to modernise Directive 2004/109/EC.

We are keen to fully understand and assess the financial and other impacts of our ideas and any alternative approaches. Therefore, we ask you to comment on compliance costs, impacts on competition and other impacts, costs and benefits. These elements will be taken into account for the preparation of any final policy position.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

You can send your contributions until 23 August 2010 to:  
[markt-f2-transparency@ec.europa.eu](mailto:markt-f2-transparency@ec.europa.eu)

**Completing the questionnaire**

The questionnaire is composed of **4 parts addressing different issues**:

- **I.** Questions 1 to 10 concerning the attractiveness of regulated capital markets for smaller listed companies;
- **II.** Questions 11 to 18 on information about holdings of voting rights;
- **III.** Questions 19 to 23 on ineffective application of the Directive because of diverging national measures and/or unclear obligations in the Directive;
- **IV.** Question 24 on other issues.

Respondents may choose to reply to the full questionnaire or only to part of it.

For the purposes of completing this questionnaire, it is suggested to also consult the following **background information**:

- The External Study on the application of the Transparency Directive, prepared by Mazars in 2009 (hereinafter, the External Study);
- The Commission Report on the application of the Transparency Directive of May 2009 (hereinafter, the Commission Report);
- The Commission Staff Working Document of May 2009 (*The review of the operation of Directive 2004/109/EC: emerging issues*) which accompanies the Commission report (hereinafter, the Staff Working Document)

These documents are available at:

[http://ec.europa.eu/internal\\_market/securities/transparency/index\\_en.htm#application](http://ec.europa.eu/internal_market/securities/transparency/index_en.htm#application)

Before replying, please complete the following box with information on the respondent:

<b><u>Information about the respondent</u></b>
Name of respondent organisation/company/natural person:
Contact person and function:
Country:
Field of activity of respondent (e.g. issuer of securities, investor, financial intermediary, financial analyst, national authority, other)
If issuer of securities, please state the company size (e.g. (i) issuers of shares with a market capitalisation below €100 Million; (ii) issuer of shares with a market capitalisation between €100 Million and €250 Million; (iii) issuers of shares with a market capitalisation over €250 Million; (iv) issuer of debt securities only; (v) other)

## I. Attractiveness of regulated capital markets for small listed companies.

The transparency obligations for issuers under the Transparency Directive (TD) apply to all issuers of securities, irrespective of their size<sup>1</sup>. Thus, in absolute terms, costs associated with regular transparency obligations (e.g. accounting, auditing, legal etc.) are comparable for all types of companies. The impact is, however, more important for small companies in relative terms.

Additionally, the perception is that small listed companies do not benefit from that level of transparency in the same manner as large listed companies. In particular, recent research shows that a visibility problem exists for small listed companies, resulting in lower attention by investors and information intermediaries (analysts) and in turn in lower investment levels and lower level of trading in their securities<sup>2</sup>. As a result, regulated markets could become less attractive for small listed companies.

You are invited to consult section 2.1 of the Staff Working Document in relation to this issue.

The following questions aim at gathering evidence (i.e. valuable insights, quantitative and qualitative evidence on impacts, costs and benefits) stemming from the Transparency Directive obligations and or from possible changes to those obligations.

In particular, questions 1 to 6 aim at framing the issue in general terms. Questions 7 to 9 are of more detailed nature and look into possible options to address the perceived problem. Question 10 is a catch-all question allowing you to provide additional comments.

### **The issue: attractiveness of regulated markets for small listed companies and the Transparency Directive**

- 1. Impact of the Transparency Directive on the attractiveness of regulated markets for small listed companies.** Do the Transparency Directive obligations for issuers (e.g. disclosure of annual and half-yearly financial reports, quarterly information etc.)<sup>3</sup> 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.*

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<sup>1</sup> Transparency obligations are however waived, for issuers of debt securities only, in the case of high value denominated debt securities – the rationale being that such high value denominated securities are generally acquired by large well-informed professional investors in wholesale markets. See article 8(1)(b) and recital 15.

<sup>2</sup> See the report prepared by Mr Demarigny in 2010 on "An EU listing small business act", available at: <http://www.eurocapitalmarkets.org/node/446>.

<sup>3</sup> Note that this question refers to the obligations applying once the securities admitted to trading and therefore it is not addressing the prospectus.

2. **Costs for smaller listed companies.** 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.*
3. **Potential diminution of cost for small listed companies.** 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).*
4. **The lower visibility of smaller listed companies.** 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.*
5. **Other cases reflecting low benefits.** Are there, in your view, other cases reflecting low benefits for small listed companies resulting from disclosure obligations compared to larger listed companies?

**Possible options to address in the Transparency Directive the problems related to small listed companies**

6. **Definition of a small listed company.** 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 Million<sup>4</sup>, €250 Million<sup>5</sup> 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.
7. **Potential diminution of cost for small listed companies if changes to the Transparency Directive were to be adopted**
  - 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

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<sup>4</sup> 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>).

<sup>5</sup> See the External Study (section 1 of the executive summary) which refers to a threshold of between 250 Million and 1000 Millions euros.

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?

- 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)?
- 7.3. Do the various rules requiring the disclosure by listed companies of reports of narrative nature<sup>6</sup> 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.*
- 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).*
- 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.*
- 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
- 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<sup>7</sup>?

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<sup>6</sup> Those narrative reports (see Annex to this questionnaire for the legislative references) are:

- the annual management report (Article 4(5) TD), which refers to Article 46 of the Fourth Company Law Directive or to Article 36 of the Seventh Company Law Directive, and integrates disclosure obligations relating to environmental and social data;
- the corporate governance statement as referred to in Article 46a of the Fourth Company Law Directive and Article 36(2) of the Seventh Company Law Directive, to be included in the annual management report;
- the information requested in Article 10 of the Takeover bids Directive, to be included in the annual management report;
- the disclosure on remuneration of directors (provided it is not integrated in the corporate governance statement)
  
- the interim management report (Article 5(5) TD); and
  
- the interim management statement (Article 6(1) TD);

<sup>7</sup> See Annex to the questionnaire for the text of Article 46(1)(b).

**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.*

8.2. If the obligation to disclose quarterly financial information<sup>8</sup> was waived for small listed companies, would this result in an unreasonable diminution of transparency? *Please provide evidence supporting your answer.*

**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 an structural problem or a market feature (e.g. size matters etc.) which EU measures will not be able to solve (*please explain*).

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*).

9.3. Do you think that the development of an EU database<sup>9</sup> 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.*

**Other views regarding small listed companies.**

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

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<sup>8</sup> Either quarterly financial reports or interim management statements as referred to in Article 6 TD.

<sup>9</sup> It could be a single EU database (such as an improved version of the ECB centralised securities database) or a network of national databases (i.e. the national officially appointed mechanisms referred to in Article 22 TD) allowing for multi-country searches.

## II. Information about holdings of voting rights.

The Commission Report on the operation of the Transparency Directive shows that the rules of the Directive do not guarantee issuers and investors to be in full knowledge of relevant information around major holdings of voting rights, essentially because of: (a) areas not covered by the Directive (e.g. holdings of cash-settled derivatives; movement of shares after the record date but before the shareholder meeting; intentions with holdings) and (b) insufficient transparency levels (e.g. no aggregation of holdings of shares with those of financial instruments giving access to shares; different thresholds triggering the disclosure obligations etc.). This may result in information asymmetries regarding corporate ownership and misalignment of investors' intentions and long-term interest of firms (e.g. leading to risk of short-termism and/or of firm underperformance in the long term). As a result, the price formation mechanism may be inefficient and the level of investors' confidence is suboptimal.

You are invited to consult section 2.4 of the Staff Working Document in relation to these issues.

The following questions aim at gathering evidence (i.e. valuable insights, quantitative and qualitative evidence on impacts, costs and benefits) stemming from the Transparency Directive obligations and or from possible changes to those obligations.

### **Disclosure of holdings of cash-settled derivatives.**

Disclosure of cash-settled financial instruments is not required by the Transparency Directive, despite the fact that they may be used with a view to acquire control of voting rights<sup>10</sup>. Some Member States have already reacted to this risk by introducing legislation requiring disclosure of holdings of voting rights. Supervisors (CESR) and market experts are calling for an EU regime in this area. Market participants would also be favourable to the introduction of disclosure obligations regarding cash-settled financial instruments. The External Study also recommends requiring disclosure of cash-settled equity swaps or similar financial products.

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 Kingdom<sup>11</sup> and/or in other jurisdictions where cash-settled derivatives are disclosed (such as in Switzerland).

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<sup>10</sup> The so-called “hidden ownership” problem (use of equity derivatives to conceal economic ownership of shares).

<sup>11</sup> A disclosure regime on holdings of cash-settled derivatives was introduced in 2009 in the UK.

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<sup>12</sup> and/or of financial instruments giving unconditional access to voting rights<sup>13</sup> for the purposes of calculating whether the threshold triggering the disclosure obligation is reached or crossed?
  - 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).

**Transparency of holdings of voting rights after the record date in advance of the general meeting of shareholders (the question of empty voting)**

There are calls to reduce the risk of “empty voting”<sup>14</sup> resulting, in particular, from the use of securities lending schemes. This problem is also connected to the so-called “record date capture” issue<sup>15</sup>. The External Study shows a large stakeholder support to introduce measures to prevent “empty voting” and suggest limiting empty voting practices. The study describes different ways to address this problem: from the request for more transparency to the restriction or even the prohibition of empty voting.

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.
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.

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<sup>12</sup> See Articles 9 and 10 TD.

<sup>13</sup> See Article 13 TD.

<sup>14</sup> “Empty voting” is the reverse situation to “hidden ownership”: the exercise of voting power without corresponding economic interest.

<sup>15</sup> The situation in which the investor identified as shareholder on the record date sells his shares between such date and the date of the general meeting, but remains legally entitled to vote although it has no longer an economic interest in the issuer. If the selling transaction takes place two/three days before the general meeting, the market will not necessarily be informed of such transaction before the general meeting.



## **Intentions with holdings or voting policies disclosure.**

Calls are being made to enhance the disclosure requirements for significant holdings of voting rights. In some Member States, large investors are already requested to disclose their intentions as regards their holdings and how they financed their acquisition. According to the External Study, there is some support for extending such obligations across EU countries. At the same time, it should be noted that such enhanced transparency requirements may also have adverse consequences, in particular in the market for corporate control. In any event, the External Study concludes by recommending the introduction of enhanced disclosure requirements for significant holdings.

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.

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 anti-takeover 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.

### **Aggregation of holdings and voting rights.**

The question at stake is whether investors must aggregate their holdings of voting rights (within the meaning of Articles 9 and 10 TD) with their holdings of financial instruments (within the meaning of Article 13 TD) for the purposes of evaluating whether the relevant thresholds referred to in Article 9 TD are reached or crossed and therefore the notification obligation triggered.

Member States have taken different views when implementing the Directive into national law. A few of them (AT, BG, CY, ES, LU<sup>16</sup>, IT and PL) consider that Article 13 enacts a notification obligation which is independent of that of Article 9: in other terms, the notification obligation is triggered independently. On the contrary, in 19 Member States (BE, DE<sup>17</sup>, DK, EE, EL, FI, FR, HU, IE, LT, MT, NL, PT, SE, SI, SK and UK), as well as in Norway and Iceland, investors must aggregate their holdings of voting rights with their holdings of financial instruments (within the sense of Article 13) for the purposes of evaluating whether the relevant threshold referred to in Article 9 is reached or crossed.

Therefore, the existing regime lacks consistency regarding the conditions for triggering the disclosure obligations. It is noted that already in 2003, the Commission proposed the aggregation of financial instruments with voting rights for the purposes of triggering the notification obligation.

17. Should holdings of shares and voting rights<sup>18</sup> be aggregated with holdings of financial instruments giving unconditional access to voting rights<sup>19</sup> for the purposes of calculating the relevant thresholds that trigger the notification obligation? *Please justify your reply.*

### **Other cases of insufficient transparency regarding corporate ownership.**

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

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<sup>16</sup> In the case of LU, it is a mixed situation: the threshold is triggered independently, but if the notification obligation arises, the notifying party should disclose its holdings in relation to both voting rights and financial instruments irrespective of which of the two categories triggered the threshold)

<sup>17</sup> DE changed in 2008 its initial legislation transposing the Directive on this point, so as to require aggregation.

<sup>18</sup> Articles 9 and 10 TD.

<sup>19</sup> Article 13 TD.

### III. Ineffective application of the Directive because of diverging national measures and/or unclear obligations in the Directive

More stringent and additional rules at national level as well as provisions in the Directive allowing for derogations/discretion at national level results in an insufficient harmonisation level, which does not correspond to the general objective to achieve a single rule book in the area of financial services.

You are invited to consult section 2.3 of the Staff Working Document in relation to the question of maximum harmonisation.

Additionally, open-ended or unclear rules in the Directive also contribute to this phenomenon because of the insufficient legal clarity. The review of the operation of the Transparency Directive shows that some of its requirements are not always clear, leading to uncertainty as regards those obligations. For instance, CESR regularly publishes interpretative documents, in a "questions-and-answers" format, regarding the Directive obligations. The External Study also identified some requirements that would benefit from further clarity. As a result, some technical adjustments to the text of the Directive would possibly be beneficial with a view to clarifying its obligations.

You are invited to consult section 2.8 of the Staff Working Document in relation to the question of unclear rules.

The consequence of the lack of harmonisation and of unclear rules is that compliance costs are higher for investors and issuers and that disclosed information may not always be comparable. As a result, markets are segmented and investor confidence may diminish.

#### **Uniform EU Regime or maximum harmonisation: major holdings of voting rights.**

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.*
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<sup>20</sup>?

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<sup>20</sup> For instance, if the Transparency Directive was to reduce its initial disclosure threshold from 5% to 3%, should the Member States that have set a 2% threshold be required to raise it to 3%?

**Uniform EU Regime or maximum harmonisation: disclosure by issuers.**

21. Would it be desirable to set up a uniform EU regime (e.g. by a directly applicable EU Regulation) regarding issuers' disclosures<sup>21</sup>? *Please justify your reply by describing legal/other obstacles to such uniform EU regime*<sup>22</sup>.

**Divergent rules: calculation of holdings.**

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.*

**Unclear rules**

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

IV. Any other comments

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

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<sup>21</sup> Articles 4 to 8 TD.

<sup>22</sup> Please see questions 8.5 and 8.6.

<sup>23</sup> See section 2.8 and Annex 6 to the Staff Working Document.

### **Article 4(5) of the Transparency Directive (2004/109/EC)**

5. The management report shall be drawn up in accordance with Article 46 of Directive 78/660/EEC and, if the issuer is required to prepare consolidated accounts, in accordance with Article 36 of Directive 83/349/EEC.

### **Article 46 of the Fourth Company Law Directive (78/660/EEC): management report**

#### SECTION 9

#### Contents of the annual report

#### Article 46

1. (a) The annual report shall include at least a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that it faces.

The review shall be a balanced and comprehensive analysis of the development and performance of the company's business and of its position, consistent with the size and complexity of the business;

(b) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters;

(c) In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.

2. The report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the company's likely future development;

(c) activities in the field of research and development;

(d) the information concerning acquisitions of own shares prescribed by Article 22 (2) of Directive 77/91/EEC.

(e) the existence of branches of the company;

(f) in relation to the company's use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss,

— the company's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used, and

— the company's exposure to price risk, credit risk, liquidity risk and cash flow risk.

3. Member States may waive the obligation on companies covered by Article 11 to prepare annual reports, provided that the information referred to in Article 22 (2) of Directive 77/91/EEC concerning the acquisition by a company of its own shares is given in the notes to their accounts.

4. Member States may choose to exempt companies covered by Article 27 from the obligation in paragraph 1(b) above in so far as it relates to non-financial information.

## **Article 36 of the Seventh Company Law Directive (83/349/EEC): management report**

The consolidated annual report

### Article 36

1. The consolidated annual report shall include at least a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

The review shall be a balanced and comprehensive analysis of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business. To the extent necessary for an understanding of such development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.

In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.

2. In respect of those undertakings, the report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the likely future development of those undertakings taken as a whole;

(c) the activities of those undertakings taken as whole in the field of research and development;

(d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may require or permit the disclosure of these particulars in the notes on the accounts;

(e) in relation to the use by the undertakings of financial instruments and, where material for the assessment of assets, liabilities, financial position and profit or loss,

— the financial risk management objectives and policies of the undertakings, including their policies for hedging each major type of forecasted transaction for which hedge accounting is used, and

— the exposure to price risk, credit risk, liquidity risk and cash flow risk;

(f) a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts, where an undertaking has its securities admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. In the event that the consolidated annual report and the annual report are presented as a single report, this information must be included in the section of the report containing the corporate governance statement as provided for by Article 46a of Directive 78/660/EEC.

If a Member State permits the information required by paragraph 1 of Article 46a of Directive 78/660/EEC to be set out in a separate report published together with the annual report in the manner prescribed by Article 47 of that Directive, the information provided under the first subparagraph shall also form part of that separate report. Article 37(1), second subparagraph of this Directive shall apply.

3. Where a consolidated annual report is required in addition to an annual report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole.

## **Article 46a of the Fourth Company Law Directive (78/660/EEC): corporate governance statement**

### Article 46a

1. A company whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (1) shall include a corporate governance statement in its annual report. That statement shall be included as a specific section of the annual report and shall contain at least the following information:

(a) a reference to:

(i) the corporate governance code to which the company is subject,

and/or

(ii) the corporate governance code which the company may have voluntarily decided to apply,

and/or

(iii) all relevant information about the corporate governance practices applied beyond the requirements under national law.

Where points (i) and (ii) apply, the company shall also indicate where the relevant texts are publicly available; where point (iii) applies, the company shall make its corporate governance practices publicly available;

(b) to the extent to which a company, in accordance with national law, departs from a corporate governance code referred to under points (a)(i) or (ii), an explanation by the company as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to under points (a)(i) or (ii), it shall explain its reasons for doing so;

(c) a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;

(d) the information required by Article 10(1), points (c), (d), (f), (h) and (i) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (1), where the company is subject to that Directive;

(e) unless the information is already fully provided for in national laws or regulations, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised;

(f) the composition and operation of the administrative, management and supervisory bodies and their committees.

2. Member States may permit the information required by this Article to be set out in a separate report published together with the annual report in the manner set out in Article 47 or by means of a reference in the annual report where such document is publicly available on the company's website. In the event of a separate report, the corporate governance statement may contain a reference to the annual report where the information required in paragraph 1, point (d) is made available. Article 51(1), second subparagraph shall apply to the provisions of paragraph 1, points (c) and (d) of this Article. For the remaining information, the statutory auditor shall check that the corporate governance statement has been produced.

3. Member States may exempt companies which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of Article 4(1), point (14) of Directive 2004/39/EC, from the application of the provisions of paragraph 1, points (a), (b), (e) and (f), unless such companies have issued shares which are traded in a multilateral trading facility, within the meaning of Article 4(1), point (15) of Directive 2004/39/EC.

## **Article 10 of the Takeover bids Directive (2004/25/EC)**

### Article 10

Information on companies as referred to in Article 1(1)

1. Member States shall ensure that companies as referred to in Article 1(1) publish detailed information on the following:

(a) the structure of their capital, including securities which are not admitted to trading on a regulated market in a Member State, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;

(b) any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities, without prejudice to Article 46 of Directive 2001/34/EC;

(c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) within the meaning of Article 85 of Directive 2001/34/EC;

(d) the holders of any securities with special control rights and a description of those rights;

(e) the system of control of any employee share scheme where the control rights are not exercised directly by the employees;

(f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities;

(g) any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and/or voting rights within the meaning of Directive 2001/34/EC;

(h) the rules governing the appointment and replacement of board members and the amendment of the articles of association;

(i) the powers of board members, and in particular the power to issue or buy back shares;

(j) any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;

(k) any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid.

2. The information referred to in paragraph 1 shall be published in the company's annual report as provided for in Article 46 of Directive 78/660/EEC(13) and Article 36 of Directive 83/349/EEC(14).

3. Member States shall ensure, in the case of companies the securities of which are admitted to trading on a regulated market in a Member State, that the board presents an explanatory report to the annual general meeting of shareholders on the matters referred to in paragraph 1.