

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council amending 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 and Commission Directive 2007/14/EC’

COM(2011) 683 final — 2011/0307 (COD)

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On 30 November and 15 November 2011 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Articles 50 and 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council amending 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 and Commission Directive 2007/14/EC

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The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 1 February 2012.

At its 478th plenary session, held on 22 and 23 February (meeting of 22 February), the European Economic and Social Committee adopted the following opinion by 232 votes to 3 with 11 abstentions.

1. Summary and conclusions

1.1 The proposal to revise the Transparency Directive is part of a broader package of measures that form a Commission initiative aimed at improving access to capital for small and medium-sized enterprises (SMEs). It also demonstrates a concern to restore investor confidence and to ensure the market is provided with proper-quality information. The proposal under consideration is based on the recommendations made in an independent report drawn up by the Mazars consultancy, on a hearing with the stakeholders and their comments, on the Commission report of May 2010 and on an assessment of the impact of each of the options put forward. The EESC consequently agrees with its aims and content, but feels obliged to state a number of points for consideration.

1.2 The proposed changes, designed to make the market more attractive to small and medium-sized issuers, will apply universally. The most significant impact of the simplification might be felt not so much by the real targets of the changes but rather by the major corporations operating on the market. Few people see the requirements of the Transparency Directive as a barrier to the entry onto the market of small and medium-sized issuers, which means that this simplification will not necessarily be a critical factor in these decisions or that it will have a significant impact on making the market attractive to SMEs. Nevertheless, given that this simplification, according to the stakeholders, does not undermine market credibility or investor protection, it will have an economic impact which, while potentially greater for larger companies, will ultimately also have some effect on SMEs. It will therefore be substantial for the type of company that is most representative of Europe’s business fabric.

1.3 Since as long ago as 2004, the publication of quarterly reports has been a hotly-debated issue with a number of opponents, and one that the EESC recommended should be

approached with caution. The disadvantages of making publication mandatory, which were pointed out at the time, have been confirmed (including an increase in the quantity of information but not in its quality, high financial and opportunity costs, the adoption of a short-term approach prompted by a need to deliver results to the market at the expense of a more strategic, long-term vision. The pressure to secure short-term results can even be considered to be one of the factors underlying the current crisis, with the financial sector coming under pressure every quarter to post results that are always better than the preceding ones. Because no threat is posed to the required and desired transparency, since the disclosure of important information is guaranteed through compliance with the Prospectus and Market Abuse directives, the EESC supports the suspension of mandatory publication. This will ensure that it is the market that decides on the amount of information that is needed.

1.4 Some have highlighted the complexity of the reports’ narrative content as a major source of opportunity costs and also of other costs arising from the sub-contracting of specialists in the field. While there is no guarantee that a substantial benefit in terms of cost reduction would result from the European Securities and Markets Authority (ESMA) producing these templates, the initiative could lead to some savings for SMEs, which would no longer have to hire external bodies to draw up such content. Lastly, it is worth pointing out that it is difficult for templates to provide for all potential situations, which could result in some of the information provided being simplified and even in other important information not being disclosed because it is not covered by the template.

1.5 Broadening the definition of financial instruments subject to notification demonstrates the concern to update rules on market innovation and thus to follow developments closely. This change brings the Transparency Directive into line with measures already adopted in the United Kingdom and

Portugal and with those currently in the pipeline in other countries in the EU and elsewhere in the world. There was also a legislative initiative in this field in France, but it proved to be inadequate. While there may be some justification for the fear that the market could be "flooded" with unnecessary information, experience in countries whose rules already require this type of notification disproves this fear and many stakeholders suggest learning from the UK's experience in this domain.

1.6 With regard to establishing the European information mechanism, the EESC wishes to draw attention to the fact that integrating existing national databases could be problematic, given the incompatibilities between the technologies they use. Although a number of stakeholders advocate setting up this mechanism, mainly in relation to information for investors and analysts, the cost/benefit ratio of setting it up and maintaining it does need to be assessed. Nevertheless, this is an important measure, which will help further develop the single market.

1.7 As regards the new wording of Article 6 of the Directive, concerning the mandatory requirement to disclose information on payments to governments, the EESC calls for the scope of this provision to be widened. The importance of disclosing payments by issuers active in the extractive or logging industries is undeniable, but the scope of this article could be more ambitious and cover the granting to private entities of concessions which are of public interest, such as the operation of transport, telecommunications, energy and gambling networks, either by simply granting such concessions or by establishing public-private partnerships. Any such transaction with public authorities should be disclosed, on a country- and project-specific basis. Because the aim of this measure is to hold governments accountable for the use of the revenues they collect, the amounts paid out in connection with a country's other infrastructure and resource exploitation activities, over and above those now covered by this directive, must not be dismissed.

1.8 Where sanctions are concerned, the EESC argues that, in addition to setting upper limits for the planned sanctions, minimum thresholds should also be set, to ensure that no wrongdoer goes unpunished and that sanctions are dissuasive and actually penalise illegal behaviour, whilst at the same time harmonising practices among Member States.

1.9 Bearing the current framework in mind, it is unlikely that there will be a sudden rise in demand, but it is worth simply pointing out that the proposal to simplify the rules of the Transparency Directive, in conjunction with others planned to make the market more attractive, could lead to an increase in transactions, whose impact on the operation of the market has not yet been taken into consideration. At the same time, the higher profile given to SMEs and the more attractive market for investors could highlight the shortcomings in current consumer education, preventing them from understanding the information available and thus from taking informed decisions.

2. Background to the proposal

2.1 Pursuant to Article 33 of the Transparency Directive (Directive 2004/109/EC⁽¹⁾), the Commission presented an

information report on the Directive's implementation during the years it was in force. The report concludes by emphasising the importance most stakeholders attach to the Directive's requirements for the proper and efficient operation of the market.

2.2 The current proposal to amend the Directive is presented in a manner that takes account of the Commission's political priority to improve the regulatory framework for small and medium-sized issuers and their access to capital. It also aims to make the obligations applicable to listed SMEs more proportionate, whilst guaranteeing the same level of investor protection. In addition, the review of the Transparency Directive aims to secure the transparency of economic acquisitions in companies, investor confidence and an increased focus on long-term results thereby ensuring financial stability. Moreover, efforts to improve access to regulatory information at Union level seek to increase the functional integration of European securities markets and ensure better cross-border visibility for the small and medium-sized listed companies.

2.3 It is worth pointing out that this proposal for an amendment is based on an independent study carried out by the Mazars consultancy, with the aim of providing quantitative and qualitative evidence to support the report presented by the Commission to the European Parliament and the Council, in accordance with Article 33 of the Directive on its implementation. Account has also been taken of reports published by the European Securities and Markets Authority (ESMA) and by the European Securities Markets Expert Group (ESME).

2.4 Two areas are highlighted as requiring improvement: because its approach is based on minimum harmonisation, the Directive enables the Member States to adopt more restrictive measures that make implementation more difficult and increase costs; furthermore, no softer measures are being put forward for SMEs. In our view, these factors discourage SMEs from joining the market. There is a need for clarification of some of the definitions contained in the Directive, as well as for greater consistency and clarify in the use of certain terms with similar meanings. Lastly, the report highlights that it is necessary to make improvements to the rules on notification.

2.5 The impact of the various options put forward were assessed, leading to the following decisions:

2.5.1 In order to allow for greater flexibility regarding the frequency and timing of publication of periodical financial information, in particular for SMEs, the option is to abolish the obligation to present quarterly financial reports for all listed companies. While the aim is to simplify matters for SMEs, the solution put forward involves making no distinction between companies covered by the measure, in order not to give rise to double standards, which could confuse investors. It is hoped that this measure will lead to lower costs and a greater focus on longer-term results, by removing the pressure of having to submit quarterly results. Investor protection will not suffer, since the provisions of the Prospectus and Market Abuse

⁽¹⁾ OJ L 390, 31.12.2004, p. 38-57; EESC opinion: OJ C 80, 30.3.2004, p. 128.

Directives remain mandatory, ensuring that information on important events and/or facts that could affect the price of securities are disclosed to the market.

2.5.2 In order to simplify the narrative content of SMEs' financial reports, the solution that is adopted would once again involve applying the option to all companies and would require ESMA to draw up non-binding templates for these documents. It is also hoped that, in addition to lowering costs, a degree of comparability in investor information will be introduced and that SMEs' cross-border visibility will be improved.

2.5.3 In order to eliminate the gaps in requirements for notification concerning major holdings of voting rights, it is proposed that the system be broadened to cover all instruments of similar effect to share holdings and entitlements to acquire shares.

2.5.4 In order to eliminate divergences in notification requirements for major share holdings, the option would be to require the aggregation of holdings of shares with those of financial instruments giving access to shares, including cash derivatives.

2.6 The main changes made, with a view either to facilitating SMEs' access to the market or to clarifying the text of the Directive are as follows:

2.6.1 A default home Member State is established for third-country issuers that have not chosen their home Member State within three months.

2.6.2 The requirement to publish interim management statements and/or quarterly reports is abolished.

2.6.3 The definition of financial instruments subject to notification is broadened.

2.6.4 Holdings of shares and holdings of financial instruments are aggregated, for the purpose of notifying major share holdings. Nevertheless, Member States will still be allowed to set lower thresholds for notification of substantial share holdings than provided for in the Directive, taking account of the specific characteristics of each market and when necessary for ensuring transparency in this area.

2.6.5 Power is delegated to the Commission to adopt regulatory technical standards drawn up by ESMA, concerning technical requirements for access to regulatory information at EU level, in order to streamline access to financial information, thus obviating the need to consult 27 different national databases. The aim is to create a European mechanism for regulatory information.

2.6.6 A requirement is established to disclose payments to governments at the individual or consolidated level of a company in every case where the exploitation of natural resources is concerned.

2.6.7 The sanctioning powers of the competent authorities are enhanced, with sanctions or measures imposed for any breach of rules being made subject to publication.

3. Issues raised by the proposal

3.1 One of the aims of this revision of the Transparency Directive is to help make regulated markets more attractive to small and medium-sized issuers, which is of crucial importance if the market is to develop and grow. The proposed changes to the directive therefore represent a positive initiative, making it possible to simplify certain procedures without jeopardising the quality of the information which is essential to investors' decision-making and market analysts' assessments. These simplifications will undoubtedly have a positive impact on the costs of all listed companies, but could have a greater effect on SMEs.

3.2 Despite the simplifications, this is and will remain a sector whose rules and jargon are hard for consumers to understand. Although it is not easy to provide widespread training for the public in this area, consumer protection is extremely important, as it helps prevent consumers from being misled by technical jargon, through education and information provided by both the supervisory authorities and government. This should therefore be one area to consider in future measures.

3.3 To make it easier to interpret information and to make information more easily comparable, the narrative content templates provided for in the proposal could prove useful. While producing templates is a complex matter and there is a danger that content could be over-simplified and not all situations envisaged, using them could lead to lower costs, especially for SMEs. These templates could even make it easier for consumers to interpret data.

3.4 It is worth emphasising the need to abolish the obligation to publish quarterly reports. Combating the short-termist approach that holds sway on the market, for which this measure is largely responsible, is of crucial importance to sustainable market development. Only a long-term view can foster innovation, which is a fundamental factor for sustainable and inclusive growth, both of which are priorities under the Europe 2020 Strategy.

3.5 Broadening the definition of instruments subject to notification requirements is a key point in the changes to the Transparency Directive. Financial innovation has led to the creation of new types of instruments for which a framework needs to be provided where transparency is concerned. It is hoped that these changes will plug the gaps in notification requirements concerning major holdings of voting rights and major share holdings and thus ensure that investors do not set up silent partnerships or announce major share holdings to the market without prior warning, as has already occurred.

3.6 The aim of creating the single European information storage mechanism for regulated information at Union level is

an ambitious one and should be pursued. This would undoubtedly be a valuable tool for deepening the single market. Account would just need to be taken of the cost/benefit ratio of setting up and maintaining this type of instrument.

3.7 The Transparency Directive will now cover payments made by issuers in the extractive industries to governments in the countries where they operate. This Commission proposal is innovative and seeks to demonstrate the financial impact that a company's activity has on the host country, thereby increasing transparency. The EESC firmly believes that the directive could be even more ambitious by extending this mandatory disclosure to sums paid out in connection with other public interest activities for which private entities have been granted a concession. Such sums can be considerable, especially for concessions in the transport, telecommunications, energy and even gambling sectors.

3.8 This proposal also revises the system of sanctions, bolstering the powers of the competent authorities to include a number of instruments such as the right to suspend voting rights and publish sanctions. It should be emphasised that,

although upper limits are set for financial penalties, this is not done for minimum levels. Setting such limits could provide a further substantial deterrent.

3.9 Simplifying the rules and consequently making the market more attractive, as is the intention, could lead to an increase in the number of transactions; it is not known what the impact might be on normal operations, either on stock exchanges or regulatory bodies, which it is hoped will be able to cope with a sudden increase in the number of transactions.

3.10 Whilst this matter is not directly related to the Transparency Directive, the EESC wishes to take the opportunity to highlight one of the major obstacles to expanding the market – the high charges imposed by stock exchanges. In fact, not only the costs incurred when a company becomes listed, but also the annual costs associated with remaining on the market – both of which are considerable – are viewed by companies as a disincentive to becoming listed. Consequently, any action in this field could be extremely useful to companies taking such a decision.

Brussels, 22 February 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON
