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Ref.: CMA/HvD/LF/SR

Dear Claire,

**Re: EC Consultation on Modernisation of the Directive 2004/109/EC (transparency requirements for listed companies)**

- (1) FEE (the Federation of European Accountants) is pleased to provide you below with its comments on the EC Consultation document on the Modernisation of the Directive 2004/109/EC - transparency requirements for listed companies (the "consultation").
- (2) We welcome the review of the Transparency Directive at a time when it is crucial to assess the effectiveness and efficiency of the current requirements to improve markets' efficiency, increase investors' confidence and protection and deliver on the EU's commitment to better regulation.
- (3) Our detailed comments on specific questions of the questionnaire are included as an Appendix to this letter. We have limited our comments to Part I addressing Questions 1 to 10 (concerning the attractiveness of regulated capital markets for smaller listed companies), which we believe are closest to our professional expertise. In addition, we would like to provide you below with some general comments which we hope you will find helpful.

**Better regulation**

- (4) We welcome this consultation as an element of the EC better regulation strategy. Overall, we support the objectives of better regulation and the simplification of administrative burdens that are instrumental in the provision of a dynamic, integrated, open and transparent market that allocates resources efficiently, fosters sustainable development and provides opportunities for all.
- (5) An impact assessment should include an in depth analysis of investors' reaction to the proposed measures. There is a paradox in the consultation which at the same time asks for suggestions to increase the visibility of smaller listed companies and proposes measures reducing transparency in order to save costs. One should remember that, in the final analysis, the investor decides in view of the confidence that can be placed in the issuer, based on available information. Therefore, the position of the investors community is paramount in deciding whether a simplified regime for smaller listed companies could work.

### **Opportunities for burden reduction**

- (6) In analysing what compliance requirements of the Transparency Directive can be categorised as “burdens” or “costs”, the public policy objectives and their benefits should be duly taken into account. In addition, alternative ways of meeting legitimate public policy objectives, such as investors’ protection, should be investigated.
- (7) In our experience, the minimum obligations as regards financial reporting by issuers with equity securities traded on EU regulated markets seem to operate reasonably well. The cost of compliance and its effects, as well as that of possible alternatives, would have to be further evaluated to justify the cost of legislative change.
- (8) The key areas where the Transparency Directive initially increased the financial reporting obligations were to:
  - Reduce the reporting deadlines to three months, from six months, for annual reports and to two months, from three months, for half-yearly reports; and
  - Introduce a requirement for some form of “quarterly reporting” albeit limited to an interim management statement rather than full financial reporting.

It is interesting to note that it is in these areas that most concerns have been expressed.

- (9) Whilst the impact of these changes may have had a greater impact on “smaller” listed entities by virtue of their scale, we would be concerned that any reduction in transparency would be seen as a backwards step by the investment community.
- (10) In addition, the Transparency Directive should contribute to facilitating access to standardised financial information and to the development of a single set of rules in support of the European internal market.
- (11) If the requirements of the Transparency Directive follow a principles-based approach, their application can be tailored to the size of the company. This can result in possible cost savings for small listed companies.
- (12) We understand that keeping a relevant flow of quarterly information is important for investors. A removal of the quarterly information obligation for small listed companies could undermine their credibility vis-à-vis the investor community. It should be avoided that the reductions in administrative burdens are offset by a decrease of smaller companies’ competitiveness and visibility. Therefore, the views and needs of investors on this matter should prevail.

### **Definition of a small listed company**

- (13) Regarding the definition of a small listed company, it is unclear how the proposed thresholds would work in practice given the volatility of the capital markets. In addition, it is difficult to understand the impact that these thresholds would have in practice.
- (14) Furthermore, the thresholds do not capture certain considerations (such as the company’s risk profile) that may be important in the context of the Transparency Directive requirements.

## ESG disclosures

- (15) FEE believes that there is a clear business case, as well as a wider social imperative, for organisations of all kinds and all sizes, to ensure that their information systems embrace performance indicators which reflect the urgent challenge of sustainability. In several papers<sup>1</sup>, FEE has shown that sustainability also provides significant opportunities to smaller entities.
- (16) Disclosures may include disclosures on strategy, key business challenges and responses, governance and responsibilities, and risk management. Companies can then build on such disclosures. A “comply or explain” approach could be applied. In a phased approach that could be further investigated, mandatory reporting should primarily apply to listed companies in a first step and large companies as a second step.

FEE's ID number on the European Commission's Register of Interest Representatives is 4713568401-18<sup>2</sup>.

For further information on this letter, please contact Leyre Fuertes, Project Manager ([Leyre.Fuertes@fee.be](mailto:Leyre.Fuertes@fee.be)).

Yours sincerely,



Hans van Damme  
President

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<sup>1</sup> Policy Statement – Shaping a Sustainable Economy, July 2009;  
7 key objectives for 5 decisive years – The contribution of the European accountancy profession, September 2009;  
Policy Statement – Small and sustainable: opportunities for SMEs, January 2010;  
FEE Position on ESG Disclosure – FEE Contribution to EC ESG Disclosure Workshop of 25 February 2010;  
FEE Paper – Swedish accounting firms help SMEs to strengthen their business and adopt sustainable business practices, at the same time!, March 2010.

<sup>2</sup> FEE is the Fédération des Experts comptables Européens (Federation of European Accountants). It represents 43 professional institutes of accountants and auditors from 32 European countries, including all of the 27 European Union (EU) Member States. In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 500.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent and sustainable European economy.

FEE's objectives are:

- To promote and advance the interests of the European accountancy profession in the broadest sense recognising the public interest in the work of the profession;
- To work towards the enhancement, harmonisation and liberalisation of the practice and regulation of accountancy, statutory audit and financial reporting in Europe in both the public and private sector, taking account of developments at a worldwide level and, where necessary, promoting and defending specific European interests;
- To promote co-operation among the professional accountancy bodies in Europe in relation to issues of common interest in both the public and private sector;
- To identify developments that may have an impact on the practice of accountancy, statutory audit and financial reporting at an early stage, to advise Member Bodies of such developments and, in conjunction with Member Bodies, to seek to influence the outcome;
- To be the sole representative and consultative organisation of the European accountancy profession in relation to the EU institutions;
- To represent the European accountancy profession at the international level.

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

**Question 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.) 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)?**

- (17) We do not believe that the Transparency Directive obligations result in a barrier to entry to Europe's regulated markets.
- (18) Regarding the interim management statement, we believe that the existing Directive requirement provides issuers with sufficient flexibility to tailor the reporting according to their circumstances. To eliminate this requirement would reduce transparency, which remains a necessary condition for supporting investment in all listed entities, whatever their size.

**Question 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.)?**

- (19) As detailed in our covering letter, the key areas where the Transparency Directive initially increased the financial reporting obligations were to:
- Reduce the reporting deadlines to three months, from six months, for annual reports and to two months, from three months, for half-yearly reports; and
  - Introduce a requirement for some form of "quarterly reporting" albeit limited to an interim management statement rather than full financial reporting.

**Question 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?**

- (20) There may be a concern that any changes bringing important reductions in costs for small listed companies are likely to have a significant impact on the level of transparency and visibility which, in our view, would have an adverse impact on investors' interest in such companies.
- (21) In addition to employing a principles based approach to allow cost savings for small listed companies, an area of focus could be streamlining disclosures and facilitating the requirements for all companies regardless of size, e.g. deadline extensions.
- (22) This could also result in costs reductions for small listed companies while maintaining a single level of regulation in the market for the investors' benefit and the same level of transparency for all companies. In this exercise, we should guarantee an acceptable minimum level of regulation.

#### **Question 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?**

- (23) We agree that there is some evidence that particularly at the half-year there is a visibility problem arising from the significant simultaneously issuance of reporting for 30 June half-year ends in the last week in August. We note that a number of commentators observed at the time that the Transparency Directive was first being drafted that the two month half-yearly reporting deadline would potentially create problems.
- (24) However, if an extension to the half-yearly reporting deadline is considered, we believe that this should be made available to all listed companies. Whilst we would expect the majority of larger listed companies to report within the current two month deadline an extension to say three months would, in our view, ease the current concentration of reporting to the benefit of investors in all listed companies.

#### **Question 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?**

- (25) We are not aware of such other cases.

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

#### **Question 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?**

- (26) Each of the proposed definitions has its own challenges. As noted in our covering letter, it is unclear how the proposed thresholds would work given the volatility of the capital markets and what their impact would be in practice. Furthermore, the thresholds do not capture certain considerations (such as the company's risk profile) that may be important in the context of the Transparency Directive requirements.
- (27) In addition, there may be concerns linked to the introduction of a differentiated regime, such as:
- the cost of change;
  - a negative impact on the necessary degree of legal certainty;
  - a potential increase in investors' confusion as to the different rules applying to different issuers and a reduction of comparability of information;
  - an increase in compliance cost for issuers at the boundary who would need to carefully manage the transition(s) as they step in and out of the differentiated regime.

- (28) Should there be a justified need for a definition of a small listed company in the context of regular transparency requirements, we would strongly encourage the use of the same definition as is being included in the amendment to the Prospectus Directive to introduce “a proportionate disclosure regime ... for the shares and offers by SMEs, and issuers with reduced market capitalisation”.
- (29) The revised Prospectus Directive defines a small listed company as “ ‘company with reduced market capitalisation’ means a company listed on a regulated market and having had an average market capitalisation of less than EUR 100,000,000 on the basis of end-year quotes during the last three calendar years”.

## **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 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?**

- (30) We do not believe that there is any evidence that the additional obligations imposed by national law or listing rules in member states should be precluded. Indeed, we are aware that in a number of member states where there are additional obligations there have been market consultations the result of which is that investors have made it clear that such additional obligations are important to them.

### **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)?**

- (31) We do not believe that an extension of the financial reporting deadlines would have any significant impact on the cost associated with producing the information concerned.
- (32) However, we do agree that some relaxation would be beneficial in the half-yearly reporting deadline where the current two month deadline leads to a concentration of disclosure for 30 June half-year ends in the last week of August each year to the detriment of investors in all listed companies.

### **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)?**

- (33) See our response to question 7.4.

### **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?**

- (34) We agree that there would be a benefit to all issuers from simplifying the existing raft of disclosure obligations. An exercise to integrate the requirements in one place should also tie in with the requirements for disclosure in a prospectus.

**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?**

- (35) A possible consequence of seeking to pursue maximum harmonisation could be the levelling up to the most onerous requirements across the EU which would have the effect of increasing the cost to those issuers in member states where a lower level currently applies.

**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?**

- 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

- (36) See our response to Question 7.5.

**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?**

- (37) Concerning the disclosure of environmental and social data requested in Article (1)(b) of the Fourth Company Law, facilitating non-mandatory ready-to-use templates regarding these narrative disclosures would be beneficial in the context of improving harmonisation. This would improve comparability and consistency of the disclosures and help set up best practice guidelines.

**Question 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?**

- (38) As explained in our covering letter, reductions in administrative burdens should not be offset by an equivalent or superior reduction in smaller companies' competitiveness and visibility. Therefore, the views and needs of investors on this matter should prevail.
- (39) In our view, any changes that would bring important reductions in costs for small listed companies are likely to have a significant impact on the level of transparency and visibility which, in our view, would have an adverse impact on investors' interest in such companies. See further expanded in our response to Question 3.

**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?**

- (40) As the current requirement for financial information to be made available on the first and third quarters is limited to an interim management statement the requirements for which can be met in little more than a page of text, we believe that eliminating this requirement would result in an unreasonable diminution of transparency, whilst hardly reducing any cost.
- (41) It is our view that investor interest is encouraged by enhanced disclosure and to reduce disclosure would lead to less visibility for smaller listed companies.

**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.**

- (42) As highlighted in our covering letter, the position of the investors community is paramount in deciding whether a simplified regime for smaller listed companies could work. An impact assessment should include an in depth analysis of investors' reaction to the proposed measures.

**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;**
- 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**
- iii) financial analysts and intermediaries should get incentives to interest themselves in small listed companies;**
- iv) other.**

- (43) See our response to Question 9.1.

**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?**

- (44) Having information accessible from a single portal might be of some benefit although this need not be a single "Edgar style" database. The interconnection of regulatory depositories would represent a cost saving.

**Other views regarding small listed companies.**

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

- (45) We have no additional comments at this stage.