

**TOWARDS AN EU REGIME ON TRANSPARENCY OBLIGATIONS FOR ISSUERS WHOSE
SECURITIES ARE ADMITTED TO TRADING ON A REGULATED MARKET**
*Second Consultation by the Services of the Internal Market Directorate-
General of the European Commission*

UNICE COMMENTS

I. GENERAL COMMENTS

UNICE has taken note of the Commission's second consultative document on regular reporting and transparency obligations of publicly traded companies. UNICE would like to refer to its response to the first consultation adopted on 16 October 2001 (attached for ease of reference).

This second consultation focuses on particular aspects, such as quarterly financial reporting and disclosure breakdown of voting rights and capital. UNICE has analysed the Commission's consultative document and appreciates this opportunity to voice the following comments on specific aspects of it.

II. SPECIFIC COMMENTS

PERIODIC REPORT

i) Annual financial reporting

The document provides that the issuer *disclose* its annual financial report to the public as soon as possible, but at the latest three months after the expiry of each financial year. It then requires that the *published* annual financial report remains available for at least three years as from the date of publication.

It is not clear whether the "disclosure " of the annual report is considered to be different from its "publication".

The precise meaning of "annual financial report" should be specified: whether it refers to the report approved by the shareholders' general meeting or to the draft approved by the board of directors to be submitted for approval to the shareholders.

In the first case, the time limit provided is far too short to be met, especially for companies with widespread activities all over the world, also considering that, according to the document, audited report submitted by the person responsible for auditing the financial statements is to be included in the annual financial report.

ii) Quarterly Financial Reporting

The document aims at increasing the frequency of interim financial reporting for equity issuers and replacing the half-yearly reporting (provided for in articles 70 to 77 of the Directive 2001/34/EC) by quarterly reporting with a publication deadline of two months.

According to the document, upgrading the regular reporting requirements ensures a constant flow of information from issuers to the market and, therefore, better protection for investors at Community level.

The intention of improving market transparency is commendable; however, the suggested provision cannot be supported.

As already pointed out in our response to the first consultation, UNICE is of the opinion that interim reporting between half-year and full-year figures should be a voluntary matter for companies.

In any case, a quarterly financial report should comprise only that information whose disclosure is relevant for the market (i.e. indebtedness, net financial position, gross margin, revenue), and it is therefore to be distinguished from the set of audited financial statements required for a full financial year. The content of the quarterly financial report should be related to its goal, that is to disclose to the market information available to the company and to prevent a false market occurring in its traded securities.

Its content should be related to the time limit for its publication, that is 60 days. Therefore, UNICE is strongly against any review of interim reports by the official auditor.

According to the document, the issuer is exempted from publishing a quarterly financial report for the last quarter of a financial year where the annual financial report has been published within two months after the expiry of that financial year.

Here again it is necessary to define the precise meaning of "annual financial report". If it is to be referred to the report approved by the shareholders' general meeting, the time limit for publication is so short as to hinder any exemption from the publication of the fourth interim report.

INFORMATION ON MAJOR HOLDINGS

UNICE disagrees with the proposal that "the issuer who has received the notification referred to above must in turn disclose it to the public as soon as possible, but not more than five calendar days after the receipt of that notification" (page 18, point 17). Disclosure to the public should be relied on the competent Authority.

PUBLICATION OF INFORMATION IN ELECTRONIC FORM

UNICE welcomes publication of information in electronic form, provided that this is, at least during an initial period, an optional, and not mandatory, means of publishing information; furthermore, in case of publication in electronic form, no other requirement should be requested.

RIGHTS AND TREATMENT OF SHAREHOLDERS

On page 12 and 13 of the Annex (point b) requirements are envisaged for rights and treatment of shareholders (for example a requirement for proxy forms is introduced) and debt securities holders. UNICE is of the opinion that this is not the right place and time to cover these matters. These aspects should be covered by the issue of cross-border voting, for which the High Level Group of Company Law Experts has a mandate.

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**COMMISSION CONSULTATION ON REGULAR
REPORTING AND TRANSPARENCY OBLIGATIONS OF
PUBLICLY TRADED COMPANIES**

UNICE COMMENTS

I. GENERAL COMMENTS

UNICE has taken note of the Commission consultative document on regular reporting and transparency obligations of publicly traded companies. It welcomes this open consultation, carried out in accordance with the recommendations of the Lamfalussy report. UNICE supports EU efforts to build an integrated EU capital market by enhancing the quality and the comparability of financial statements by publicly traded companies.

UNICE has analysed the Commission consultative comments and appreciates this opportunity to voice the following comments on specific aspects of it.

II. ANSWER TO SELECTED QUESTIONS

CONSOLIDATION OF ALL DISCLOSURE REQUIREMENTS

UNICE welcomes the Commission proposal to consolidate disclosure provisions in order to provide users with comprehensive EU legislation in this field and to remove contradictory regulations.

For the sake of efficient harmonisation, any consolidated text in this field has to be precise enough in its definitions not to leave Member States too much room for manoeuvre when implementing their obligations.

UNICE notes that disclosure requirements for price-sensitive information are included in both the proposals for a directive on the "single prospectus" and on "market abuse". It suggests that a general comprehensive approach is adopted in this field prior to adoption of piecemeal and different requirements in the above-mentioned proposed directives.

SCOPE OF APPLICATION

UNICE finds it important for investors to ensure an appropriate level of transparency obligations for issuers. However, it is necessary to find the right balance of obligations between types of securities and types of issuers. This is particularly important in relation to the specific question of the Commission on a new reporting obligation for debt securities issued by companies whose shares are not listed.

Many bond issues, in particular the international bond market, are listed in the official stock exchanges to comply basically with internal guidelines of investors, even if they are not traded on a regulated

market (for example, Eurobonds are mainly traded OTC). It would be inappropriate to require that those types of issues comply with regular reporting obligations.

It is especially important to take into account the particularities of SMEs in order to ensure that they do not have to comply with requirements which are as strict as those that to be applied to bigger companies.

It is also necessary to take into consideration new market developments where securities are admitted to trading not only on the official stock exchange but also on other alternative trading platforms, which are also considered a "regulated market". In particular in the latter case, securities may be admitted to trading on a "regulated market" without the knowledge or consent of the issuer. It will be necessary to clarify who will be responsible for continuing obligations in this context.

Therefore UNICE believes that the new text should make a clear differentiation between disclosure requirements according to the type of securities (shares or debt securities); this would be consistent with the approach followed by the recently adopted codified Directive 2001/34 on the admission of securities to official stock exchange listing and on information to be published on those securities.

To conclude, UNICE is of the firm opinion that harmonisation of the disclosure rules for shares on the one hand, and for debt instruments on the other hand, and the ensuing increase of administrative burden for companies that issue only listed debt instruments, needs additional justification. It should be taken into account that shares and debt instruments have an entirely different risk profile and that therefore investors in debt instruments need a different level of disclosure from investors in shares. Harmonisation should not be pursued for its own sake.

A NEW QUARTERLY FREQUENCY FOR REGULAR REPORTING

UNICE is of the opinion that interim reporting between half-year and full-year figures should be a voluntary matter for companies, not necessarily on a quarterly basis, but on such occasions when it is appropriate to inform the market about information available to the company and to prevent a false market occurring in its traded securities, i.e. a trading update rather than formal quarterly reporting.

A trading update is often provided voluntarily prior to a closed period before the publication of full-or half-year figures.

ENHANCED EUROPEAN DISCLOSURE STANDARDS

In case of interim financial statements, UNICE favours a condensed set of consolidated financial statements rather than a complete set of audited consolidated financial statements, as required for a full financial year.

Many companies in Europe already prepare their interim and annual financial consolidated statements in accordance with either International Accounting Standards (IAS) or US Generally Accepted Accounting Principles (GAAP).

A NEW TIME LIMIT FOR THE PUBLICATION OF QUARTERLY AND ANNUAL FINANCIAL REPORTS

UNICE is against the Commission proposal of limited review of interim reports by the official auditor. This would be too costly for issuers and would not give a proportional added value to the quality and transparency of the information provided.

This would be particularly burdensome for SMEs. Only in rare cases are limited reviews of interim financial statements required by securities market regulators around the world.

UNICE cannot agree with the timing proposed for the publication of the annual report (within 60 days of the end of the financial year). This is too short a period for companies to meet, especially for companies with widespread activities all over the world. Apart from a time-consuming consolidation process, the auditor of the parent company has to receive audit reports from the local auditors of the foreign subsidiaries. Their final audit can only commence after the preparation of the local financial statements.

UPGRADING THE AD-HOC DISCLOSURE REQUIREMENTS

UNICE disagrees with the proposal that *“The issuer must inform the public without delay of all new information which is not of public knowledge and necessary to enable investors to make an informed assessment of its assets and liabilities, financial position, profit and losses, prospects and rights attaching to its securities, which may lead to substantial movements in the prices of its securities”*.

The proposed formulation is too vague and leaves too much room for a subjective appraisal of public information requirements. The proposed text puts more emphasis on quantity than quality of information.

In addition, the proposed text would enlarge the ad-hoc disclosure obligations on price-sensitive information (art. 68 of Directive 2001/34); whereby companies shall inform the public of “any major new developments in its sphere of activity which are not public knowledge and which may, by virtue of their effect on its assets and liabilities or financial position or on the general course of its business, lead to substantial movements in the prices of its shares”.

Last but not least, the proposed text is not coordinated with the definition of “inside information”, the basis for a disclosure obligation according to the proposal for a directive on “market abuse”, nor with the definition of “material information” used in the proposal for a directive on the “single prospectus”.

As indicated above, UNICE is of the opinion that price-sensitive information should be dealt in a comprehensive way and not on a piecemeal approach as it is the case today. In this context, it suggests deletion of the provisions concerning ad-hoc information contained in the proposals for a directive on “market abuse” and in the proposal for a directive on the “single prospectus” and adoption of a new set of clear rules in the field, based on the requirements of article 68 of Directive 2001/34.

UNICE would like the current exemption regime from ad-hoc disclosure to be maintained, as well as the provision for exemptions in cases of potential prejudice of the issuers’ legitimate interests, provided that the definitions are based on uniform criteria.

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AN INDEPENDENT ADMINISTRATIVE AUTHORITY

In general UNICE appreciates the proposal of one single authority for each Member State, but the proposal to allow the competent authority to require additional information is too general and gives too much discretion to the authority. UNICE does not agree with the proposal for on-site inspections.

IMPLEMENTING MEASURES

In providing for the implementing measures to be adopted by the Commission, assisted by the Securities Committee, it should be ensured that the delegation of powers deals only with technical adaptations and that a previous consultation on the measures is issued in advance. The implementing measures should not modify the principle of the directive.

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