



Requests of disclosure pursuant to Article 114, paragraph 5, of the Consolidated Law On Finance on indemnities in the case of early termination, succession planning and board evaluation and recommendations on individual disclosure of remuneration

Consultation Paper

18 January 2011

Comments to this Consultation Paper must be received by 7 February 2011 at the following address:

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Consob has issued a consultation on draft regulatory measures which include (i) requests pursuant to Article 114, paragraph 5, of the Consolidated Law on Finance on indemnities in the case of early termination, succession planning for executive directors and board evaluation; (ii) recommendations on individual disclosure of remuneration for directors and officers.

The intervention aims at ensuring a proper disclosure on some specific aspects in the wider area of good corporate governance. The measure is temporary as it covers areas which will be more systematically addressed by Consob in implementing the new legislative provisions on remuneration approved by the Italian Government in December 2010.

The requested information has to be included in the “Report on corporate governance and ownership structures” (as for the requests on indemnities in the case of early termination, succession planning and board evaluation) and in the Notes to the financial statements closed from 2010.12.31 onwards (as for the recommendation on the implementation of the transparency rules on individual remuneration under Article 78 Issuers Regulation).

The main contents of the intervention are the following:

- recommendation on the transparency of remuneration paid: issuers are invited to better implement the transparency rules on remuneration paid (Article 78 of Issuers Regulation). In particular, it is recommended to use Model 1 in full and to indicate separately the different elements of “Emoluments for the office” and “Other remuneration”;
- agreements which envisage indemnities in the case of early termination: issuers are required to disclose detailed information (also of quantitative nature) on the existence and on the main characteristics of these agreements, whose *disclosure* is currently required under Article 123-*bis*, paragraph 1, *i*), of the Consolidated Law on Finance;
- succession planning: issuers are required to disclose detailed information on the existence, if any, of plans in case of replacement of executive directors and on their main

characteristics. No disclosure on succession planning is currently envisaged by the law nor by self-regulation;

- board evaluation: issuers are required to disclose detailed information on the adoption of such a practice, on the methods used and on its results. The Italian corporate governance code currently recommends that listed companies undertake on an annual basis the board evaluation and ensure to the market a proper disclosure.

The need to promptly intervene on the first three areas mentioned above comes from the results of some analyses performed by Consob, which highlight that the information listed companies currently disclose is frequently incomplete, generic, and difficult to compare. With reference to succession planning, Consob believes that it is a key corporate information. Consequently, it is important to ensure that the market is provided with an adequate disclosure on its existence and main characteristics.

Finally, in view of the impact assessment analysis performed, the Commission has decided to direct the requests on board evaluation and succession planning only to issuers belonging to the FtseMib Index. These are 38 large-size firms, for which the disclosure of information on these matters seems to be most relevant for investors. Indeed, either board evaluation and succession planning are important features of corporate governance, especially in big companies where board functions are more structured and executive directors are often professional managers.

Comments to this Consultation Paper, available at www.consob.it, must be received by 2011.02.07. The comments received will be disclosed to the public at the end of the consultation period, unless specific non-disclosure requirements apply.

A translation of the recommendation and of the requests follows.

1. Recommendation on information disclosed ex Article 78 of Issuer Regulation

With regard to Model 1 of Annex 3C of Consob Regulation no. 11971 (“Issuers Regulation”), Issuers of listed shares as defined by article 65, paragraph 1, c), of Issuers Regulation, are recommended to disclose:

- a. information on the remuneration paid using Model 1 in full, also specifying the elements of the remuneration which have not been paid;**
- b. in the relevant columns or in *ad hoc* footnotes, information on the different items which are part of “Emoluments for the office” and “Other remuneration”, also taking into account the specific elements indicated by Model 1. With reference to “Emoluments for the office”, issuers are recommended to disclose separately also the remuneration paid to directors for their participation to any committee.**

2. Requests pursuant to Article 114, paragraph 5, of the Consolidated Law on Finance on agreements which envisage indemnities in the case of early termination

Pursuant to Article 114, paragraph 5, of the Consolidated Law on Finance, Issuers of listed shares as defined by article 65, paragraph 1, c), of Consob Regulation no. 11971 (“Issuer Regulation”), shall disclose in the “Report on corporate governance and ownership structures”:

- a) the existence of the agreements referred to in Article 123-*bis*, paragraph 1, i), of the Consolidated Law on Finance. In case these agreements do not exist, issuers shall disclose this circumstance;
- b) the amount of the indemnity in favor of each director, member of the control body or supervisory council, specifying:
 - b.1) the content of the agreement, focusing in particular on the way the indemnity is determined;
 - b.2) the value of the indemnity that would have been paid if the termination had occurred at the end of the financial year (2010.12.31 for companies whose financial year coincides with the solar year);
- c) a description of the effects generated by the termination of the employment relationship on the assignments made according to the schemes based on financial instruments;
- d) the events in which the right accrues;
- e) the existence, if any, of agreements which envisage the assignment or the retention of non monetary benefits in case of termination (so-called “*post-retirement perks*”) or the stipulation of *ad hoc* post-retirement consulting contracts.

3. Requests pursuant to Article 114, paragraph 5, of the Consolidated Law on Finance on succession planning

Pursuant to Article 114, paragraph 5, of the Consolidated Law on Finance, Italian issuers of listed shares included in the FTSE MIB Index shall disclose in the “Report on corporate governance and ownership structures”:

- a) the existence, if any, of a formal process for executives replacement, specifying whether a procedure for the succession of executive directors is in place in the event of an unforeseeable vacancy;**
- b) the bodies, committees or persons involved in the set-up of the succession plan and their role;**
- c) the procedure and timing for the revision, if any, of the succession plan.**

4. *Requests pursuant to Article 114, paragraph 5, of the Consolidated Law on Finance on board evaluation*

Pursuant to Article 114, paragraph 5, of the Consolidated Law on Finance, Italian issuers of listed shares included in the FTSE MIB Index shall disclose in the “Report on corporate governance and ownership structures”:

- a) whether the board of directors has undertaken in the previous year an evaluation of its own size, composition and performance and of that of its committees. If not, the reasons why the board evaluation has not been undertaken;**
- b) the persons and bodies leading the evaluation process;**
- c) whether the evaluation process has covered the size and composition of the board and its committees and, if so, which particular items;**
- d) whether the evaluation process has covered the performance of the board and its committees and, if so, which particular items;**
- e) whether the effectiveness of the steps, if any, taken as a result of the evaluation undertaken in the previous year has been evaluated;**
- f) whether the evaluation processes performed by other companies has been taken into account as a benchmark;**
- g) the tools used to collect each director’s opinion;**
- h) the strengths and weaknesses that emerged from the board evaluation;**

- i)* whether the results of the board evaluation and, if any, the steps taken as a result of it have been discussed by the board of directors.**

This translation of the Consultation Paper was prepared for information purposes only. It is not intended to be nor does it constitute an official version of the text. For all legal purposes reference should be made to the complete Italian Consultation Paper.