

**DIRECTIVE 2004/109/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 15 December 2004****on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 44 and 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the European Central Bank <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) Efficient, transparent and integrated securities markets contribute to a genuine single market in the Community and foster growth and job creation by better allocation of capital and by reducing costs. The disclosure of accurate, comprehensive and timely information about security issuers builds sustained investor confidence and allows an informed assessment of their business performance and assets. This enhances both investor protection and market efficiency.
- (2) To that end, security issuers should ensure appropriate transparency for investors through a regular flow of information. To the same end, shareholders, or natural persons or legal entities holding voting rights or financial instruments that result in an entitlement to acquire existing shares with voting rights, should also inform issuers of the acquisition of or other changes in major holdings in companies so that the latter are in a position to keep the public informed.
- (3) The Commission Communication of 11 May 1999, entitled 'Implementing the framework for financial markets: Action Plan', identifies a series of actions that are needed in order to complete the single market for financial services. The Lisbon European Council of March 2000 calls for the implementation of that Action Plan by 2005. The Action Plan stresses the need to draw up a Directive upgrading transparency requirements. That need was confirmed by the Barcelona European Council of March 2002.
- (4) This Directive should be compatible with the tasks and duties conferred upon the European System of Central Banks (ESCB) and the Member States' central banks by

the Treaty and the Statute of the European System of Central Banks and of the European Central Bank; particular attention in this regard needs to be given to the Member States' central banks whose shares are currently admitted to trading on a regulated market, in order to guarantee the pursuit of primary Community law objectives.

- (5) Greater harmonisation of provisions of national law on periodic and ongoing information requirements for security issuers should lead to a high level of investor protection throughout the Community. However, this Directive does not affect existing Community legislation on units issued by collective investment undertakings other than the closed-end type, or on units acquired or disposed of in such undertakings.
- (6) Supervision of an issuer of shares, or of debt securities the denomination per unit of which is less than EUR 1 000, for the purposes of this Directive, would be best effected by the Member State in which the issuer has its registered office. In that respect, it is vital to ensure consistency with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading. <sup>(4)</sup> Along the same lines, some flexibility should be introduced allowing third country issuers and Community companies issuing only securities other than those mentioned above a choice of home Member State.
- (7) A high level of investor protection throughout the Community would enable barriers to the admission of securities to regulated markets situated or operating within a Member State to be removed. Member States other than the home Member State should no longer be allowed to restrict admission of securities to their regulated markets by imposing more stringent requirements on periodic and ongoing information about issuers whose securities are admitted to trading on a regulated market.
- (8) The removal of barriers on the basis of the home Member State principle under this Directive should not affect areas not covered by this Directive, such as rights of shareholders to intervene in the management of an issuer. Nor should it affect the home Member State's right to request the issuer to publish, in addition, parts of or all regulated information through newspapers.

<sup>(1)</sup> OJ C 80, 30.3.2004, p. 128.

<sup>(2)</sup> OJ C 242, 9.10.2003, p. 6.

<sup>(3)</sup> Opinion of the European Parliament of 30 March 2004 (not yet published in the Official Journal) and Council Decision of 2 December 2004.

<sup>(4)</sup> OJ L 345, 31.12.2003, p. 64.

- (9) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards<sup>(1)</sup> has already paved the way for a convergence of financial reporting standards throughout the Community for issuers whose securities are admitted to trading on a regulated market and who are required to prepare consolidated accounts. Thus, a specific regime for security issuers beyond the general system for all companies, as laid down in the Company Law Directives, is already established. This Directive builds on this approach with regard to annual and interim financial reporting, including the principle of providing a true and fair view of an issuer's assets, liabilities, financial position and profit or loss. A condensed set of financial statements, as part of a half-yearly financial report, also represents a sufficient basis for giving such a true and fair view of the first six months of an issuer's financial year.
- (10) An annual financial report should ensure information over the years once the issuer's securities have been admitted to a regulated market. Making it easier to compare annual financial reports is only of use to investors in securities markets if they can be sure that this information will be published within a certain time after the end of the financial year. As regards debt securities admitted to trading on a regulated market prior to 1 January 2005 and issued by issuers incorporated in a third country, the home Member State may under certain conditions allow issuers not to prepare annual financial reports in accordance with the standards required under this Directive.
- (11) This Directive introduces more comprehensive half-yearly financial reports for issuers of shares admitted to trading on a regulated market. This should allow investors to make a more informed assessment of the issuer's situation.
- (12) A home Member State may provide for exemptions from half-yearly reporting by issuers of debt securities in the case of:
- credit institutions acting as small-size issuers of debt securities, or
  - issuers already existing on the date of the entry into force of this Directive who exclusively issue debt securities unconditionally and irrevocably guaranteed by the home Member State or by one of its regional or local authorities, or
  - during a transitional period of ten years, only in respect of those debt securities admitted to trading on a regulated market prior to 1 January 2005
- which may be purchased by professional investors only. If such an exemption is given by the home Member State, it may not be extended in respect of any debt securities admitted to a regulated market thereafter.
- (13) The European Parliament and the Council welcome the Commission's commitment rapidly to consider enhancing the transparency of the remuneration policies, total remuneration paid, including any contingent or deferred compensation, and benefits in kind granted to each member of administrative, management or supervisory bodies under its Action Plan for 'Modernising Company Law and Enhancing Corporate Governance in the European Union' of 21 May 2003 and the Commission's intention to make a Recommendation on this topic in the near future.
- (14) The home Member State should encourage issuers whose shares are admitted to trading on a regulated market and whose principal activities lie in the extractive industry to disclose payments to governments in their annual financial report. The home Member State should also encourage an increase in the transparency of such payments within the framework established at various international financial fora.
- (15) This Directive will also make half-yearly reporting mandatory for issuers of only debt securities on regulated markets. Exemptions should only be provided for wholesale markets on the basis of a denomination per unit starting at EUR 50 000, as under Directive 2003/71/EC. Where debt securities are issued in another currency, exemptions should only be possible where the denomination per unit in such a currency is, at the date of the issue, at least equivalent to EUR 50 000.
- (16) More timely and more reliable information about the share issuer's performance over the financial year also requires a higher frequency of interim information. A requirement should therefore be introduced to publish an interim management statement during the first six months and a second interim management statement during the second six months of a financial year. Share issuers who already publish quarterly financial reports should not be required to publish interim management statements.
- (17) Appropriate liability rules, as laid down by each Member State under its national law or regulations, should be applicable to the issuer, its administrative, management or supervisory bodies, or persons responsible within the issuer. Member States should remain free to determine the extent of the liability.

<sup>(1)</sup> OJ L 243, 11.9.2002, p. 1.

- (18) The public should be informed of changes to major holdings in issuers whose shares are traded on a regulated market situated or operating within the Community. This information should enable investors to acquire or dispose of shares in full knowledge of changes in the voting structure; it should also enhance effective control of share issuers and overall market transparency of important capital movements. Information about shares or financial instruments as determined by Article 13, lodged as collateral, should be provided in certain circumstances.
- (19) Articles 9 and 10(c) should not apply to shares provided to or by the members of the ESCB in carrying out their functions as monetary authorities provided that the voting rights attached to such shares are not exercised; the reference to a 'short period' in Article 11 should be understood with reference to credit operations carried out in accordance with the Treaty and the European Central Bank (ECB) legal acts, in particular the ECB Guidelines on monetary policy instruments and procedures and TARGET, and to credit operations for the purpose of performing equivalent functions in accordance with national provisions.
- (20) In order to avoid unnecessary burdens for certain market participants and to clarify who actually exercises influence over an issuer, there is no need to require notification of major holdings of shares, or other financial instruments as determined by Article 13 that result in an entitlement to acquire shares with regard to market makers or custodians, or of holdings of shares or such financial instruments acquired solely for clearing and settlement purposes, within limits and guarantees to be applied throughout the Community. The home Member State should be allowed to provide limited exemptions as regards holdings of shares in trading books of credit institutions and investment firms.
- (21) In order to clarify who is actually a major holder of shares or other financial instruments in the same issuer throughout the Community, parent undertakings should not be required to aggregate their own holdings with those managed by undertakings for collective investment in transferable securities (UCITS) or investment firms, provided that such undertakings or firms exercise voting rights independently from their parent undertakings and fulfil certain further conditions.
- (22) Ongoing information to holders of securities admitted to trading on a regulated market should continue to be based on the principle of equal treatment. Such equal treatment only relates to shareholders in the same position and does not therefore prejudice the issue of how many voting rights may be attached to a particular share. By the same token, holders of debt securities ranking *pari passu* should continue to benefit from equal treatment, even in the case of sovereign debt. Information to holders of shares and/or debt securities in general meetings should be facilitated. In particular, holders of shares and/or debt securities situated abroad should be more actively involved in that they should be able to mandate proxies to act on their behalf. For the same reasons, it should be decided in a general meeting of holders of shares and/or debt securities whether the use of modern information and communication technologies should become a reality. In that case, issuers should put in place arrangements in order effectively to inform holders of their shares and/or debt securities, insofar as it is possible for them to identify those holders.
- (23) Removal of barriers and effective enforcement of new Community information requirements also require adequate control by the competent authority of the home Member State. This Directive should at least provide for a minimum guarantee for the timely availability of such information. For this reason, at least one filing and storage system should exist in each Member State.
- (24) Any obligation for an issuer to translate all ongoing and periodic information into all the relevant languages in all the Member States where its securities are admitted to trading does not foster integration of securities markets, but has deterrent effects on cross-border admission of securities to trading on regulated markets. Therefore, the issuer should in certain cases be entitled to provide information drawn up in a language that is customary in the sphere of international finance. Since a particular effort is needed to attract investors from other Member States and third countries, Member States should no longer prevent shareholders, persons exercising voting rights, or holders of financial instruments, from making the required notifications to the issuer in a language that is customary in the sphere of international finance.
- (25) Access for investors to information about issuers should be more organised at a Community level in order to actively promote integration of European capital markets. Investors who are not situated in the issuer's home Member State should be put on an equal footing with investors situated in the issuer's home Member State, when seeking access to such information. This could be achieved if the home Member State ensures compliance with minimum quality standards for disseminating information throughout the Community, in a fast manner on a non-discriminatory basis and depending on the type of regulated information in question. In addition, information which has been disseminated should be available in the home Member State in a centralised way allowing a European network to be built up, accessible at affordable prices for retail investors, while not leading to unnecessary duplication of filing requirements for issuers. Issuers should benefit from free competition when choosing the media or operators for disseminating information under this Directive.

- (26) In order to further simplify investor access to corporate information across Member States, it should be left to the national supervisory authorities to formulate guidelines for setting up electronic networks, in close consultation with the other parties concerned, in particular security issuers, investors, market participants, operators of regulated markets and financial information providers.
- (27) So as to ensure the effective protection of investors and the proper operation of regulated markets, the rules relating to information to be published by issuers whose securities are admitted to trading on a regulated market should also apply to issuers which do not have a registered office in a Member State and which do not fall within the scope of Article 48 of the Treaty. It should also be ensured that any additional relevant information about Community issuers or third country issuers, disclosure of which is required in a third country but not in a Member State, is made available to the public in the Community.
- (28) A single competent authority should be designated in each Member State to assume final responsibility for supervising compliance with the provisions adopted pursuant to this Directive, as well as for international cooperation. Such an authority should be of an administrative nature, and its independence from economic players should be ensured in order to avoid conflicts of interest. Member States may however designate another competent authority for examining that information referred to in this Directive is drawn up in accordance with the relevant reporting framework and taking appropriate measures in case of discovered infringements; such an authority need not be of an administrative nature.
- (29) Increasing cross-border activities require improved cooperation between national competent authorities, including a comprehensive set of provisions for the exchange of information and for precautionary measures. The organisation of the regulatory and supervisory tasks in each Member State should not hinder efficient cooperation between the competent national authorities.
- (30) At its meeting on 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European securities markets. In its final report, that Committee proposed the introduction of new legislative techniques based on a four-level approach, namely essential principles, technical implementing measures, cooperation amongst national securities regulators, and enforcement of Community law. This Directive should confine itself to broad 'framework' principles, while implementing measures to be adopted by the Commission with the assistance of the European Securities Committee established by Commission Decision 2001/528/EC<sup>(1)</sup> should lay down the technical details.
- (31) The Resolution adopted by the Stockholm European Council of March 2001 endorsed the final report of the Committee of Wise Men and the proposed four-level approach to make the regulatory process for Community securities legislation more efficient and transparent.
- (32) According to that Resolution, implementing measures should be used more frequently, to ensure that technical provisions can be kept up to date with market and supervisory developments, and deadlines should be set for all stages of implementing rules.
- (33) The Resolution of the European Parliament of 5 February 2002 on the implementation of financial services legislation also endorsed the Committee of Wise Men's report, on the basis of the solemn declaration made before the European Parliament the same day by the President of the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the Chairman of the Parliament's Committee on Economic and Monetary Affairs with regard to safeguards for the European Parliament's role in this process.
- (34) The European Parliament should be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, that period may be shortened. If, within that period, a Resolution is passed by the European Parliament, the Commission should re-examine the draft measures.
- (35) Technical implementing measures for the rules laid down in this Directive may be necessary to take account of new developments on securities markets. The Commission should accordingly be empowered to adopt implementing measures, provided that they do not modify the essential elements of this Directive and provided that the Commission acts in accordance with the principles set out therein, after consulting the European Securities Committee.
- (36) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles:
- the need to ensure confidence in financial markets among investors by promoting high standards of transparency in financial markets;
  - the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances;
  - the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against economic crime;

<sup>(1)</sup> OJ L 191, 13.7.2001, p. 45. Decision as amended by Decision 2004/8/EC (OJ L 3, 7.1.2004, p. 33).

- the need for high levels of transparency and consultation with all market participants and with the European Parliament and the Council;
  - the need to encourage innovation in financial markets if they are to be dynamic and efficient;
  - the need to ensure market integrity by close and reactive monitoring of financial innovation;
  - the importance of reducing the cost of, and increasing access to, capital;
  - the balance of costs and benefits to market participants on a long-term basis, including small and medium-sized businesses and small investors, in any implementing measures;
  - the need to foster the international competitiveness of Community financial markets without prejudice to a much-needed extension of international cooperation;
  - the need to achieve a level playing field for all market participants by establishing Community-wide regulations wherever appropriate;
  - the need to respect differences in national markets where these do not unduly impinge on the coherence of the single market;
  - the need to ensure coherence with other Community legislation in this area, as imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.
- (37) In order to ensure that the requirements set out in this Directive or the measures implementing this Directive are fulfilled, any infringement of those requirements or measures should be promptly detected and, if necessary, subject to penalties. To that end, measures and penalties should be sufficiently dissuasive, proportionate and consistently enforced. Member States should ensure that decisions taken by the competent national authorities are subject to the right of appeal to the courts.
- (38) This Directive aims to upgrade the current transparency requirements for security issuers and investors acquiring or disposing of major holdings in issuers whose shares are admitted to trading on a regulated market. This Directive replaces some of the requirements set out in Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities. <sup>(1)</sup> In order to gather transparency requirements in a single act it is necessary to amend it accordingly. Such an amendment however should not affect the ability of Member States to impose additional requirements under Articles 42 to 63 of Directive 2001/34/EC, which remain valid.
- (39) This Directive is in line with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(2)</sup>.
- (40) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.
- (41) Since the objectives of this Directive, namely to ensure investor confidence through equivalent transparency throughout the Community and thereby to complete the internal market, cannot be sufficiently achieved by the Member States on the basis of the existing Community legislation and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve these objectives.
- (42) The measures necessary for implementing this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>.

HAVE ADOPTED THIS DIRECTIVE:

#### CHAPTER I

### GENERAL PROVISIONS

#### Article 1

#### Subject matter and scope

1. This Directive establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within a Member State.
2. This Directive shall not apply to units issued by collective investment undertakings other than the closed-end type, or to units acquired or disposed of in such collective investment undertakings.

<sup>(1)</sup> OJ L 184, 6.7.2001, p. 1. Directive as last amended by Directive 2003/71/EC.

<sup>(2)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

3. Member States may decide not to apply the provisions mentioned in Article 16(3) and in paragraphs 2, 3 and 4 of Article 18 to securities which are admitted to trading on a regulated market issued by them or their regional or local authorities.

4. Member States may decide not to apply Article 17 to their national central banks in their capacity as issuers of shares admitted to trading on a regulated market if this admission took place before 20 January 2005.

#### Article 2

#### Definitions

1. For the purposes of this Directive the following definitions shall apply:

- (a) 'securities' means transferable securities as defined in Article 4(1), point 18, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(1)</sup> with the exception of money-market instruments, as defined in Article 4(1), point 19, of that Directive having a maturity of less than 12 months, for which national legislation may be applicable;
- (b) 'debt securities' means bonds or other forms of transferable securitised debts, with the exception of securities which are equivalent to shares in companies or which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares;
- (c) 'regulated market' means a market as defined in Article 4(1), point 14, of Directive 2004/39/EC;
- (d) 'issuer' means a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented;
- (e) 'shareholder' means any natural person or legal entity governed by private or public law, who holds, directly or indirectly:
- (i) shares of the issuer in its own name and on its own account;
  - (ii) shares of the issuer in its own name, but on behalf of another natural person or legal entity;
  - (iii) depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts;
- (f) 'controlled undertaking' means any undertaking
- (i) in which a natural person or legal entity has a majority of the voting rights; or
  - (ii) of which a natural person or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
  - (iii) of which a natural person or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question; or
  - (iv) over which a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control;
- (g) 'collective investment undertaking other than the closed-end type' means unit trusts and investment companies:
- (i) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk spreading; and
  - (ii) the units of which are, at the request of the holder of such units, repurchased or redeemed, directly or indirectly, out of the assets of those undertakings;
- (h) 'units of a collective investment undertaking' means securities issued by a collective investment undertaking and representing rights of the participants in such an undertaking over its assets;
- (i) 'home Member State' means
- (i) in the case of an issuer of debt securities the denomination per unit of which is less than EUR 1 000 or an issuer of shares:
    - where the issuer is incorporated in the Community, the Member State in which it has its registered office;
    - where the issuer is incorporated in a third country, the Member State in which it is required to file the annual information with the competent authority in accordance with Article 10 of Directive 2003/71/EC.
- The definition of 'home' Member State shall be applicable to debt securities in a currency other than Euro, provided that the value of such denomination per unit is, at the date of the issue, less than EUR 1 000, unless it is nearly equivalent to EUR 1 000;
- (ii) for any issuer not covered by (i), the Member State chosen by the issuer from among the Member State in which the issuer has its registered office and those Member States which have admitted its securities to trading on a regulated market on their territory. The issuer may choose only one Member State as its home Member State. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the Community;

<sup>(1)</sup> OJ L 145, 30.4.2004, p. 1.

- (j) 'host Member State' means a Member State in which securities are admitted to trading on a regulated market, if different from the home Member State;
- (k) 'regulated information' means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under this Directive, under Article 6 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) <sup>(1)</sup>, or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of this Directive;
- (l) 'electronic means' are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means;
- (m) 'management company' means a company as defined in Article 1a(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) <sup>(2)</sup>;
- (n) 'market maker' means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him;
- (o) 'credit institution' means an undertaking as defined in Article 1(1)(a) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions <sup>(3)</sup>;
- (p) 'securities issued in a continuous or repeated manner' means debt securities of the same issuer on tap or at least two separate issues of securities of a similar type and/or class.

2. For the purposes of the definition of 'controlled undertaking' in paragraph 1(f)(ii), the holder's rights in relation to voting, appointment and removal shall include the rights of any other undertaking controlled by the shareholder and those of any natural person or legal entity acting, albeit in its own name, on behalf of the shareholder or of any other undertaking controlled by the shareholder.

3. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraph 1, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures concerning the definitions set out in paragraph 1.

<sup>(1)</sup> OJ L 96, 12.4.2003, p. 16.

<sup>(2)</sup> OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2004/39/EC.

<sup>(3)</sup> OJ L 126, 26.5.2000, p. 1. Directive as last amended by Commission Directive 2004/69/EC (OJ L 125, 28.4.2004, p. 44).

The Commission shall, in particular:

- (a) establish, for the purposes of paragraph 1(i)(ii), the procedural arrangements in accordance with which an issuer may make the choice of the home Member State;
- (b) adjust, where appropriate for the purposes of the choice of the home Member State referred to in paragraph 1(i)(ii), the three-year period in relation to the issuer's track record in the light of any new requirement under Community law concerning admission to trading on a regulated market;
- (c) establish, for the purposes of paragraph 1(l), an indicative list of means which are not to be considered as electronic means, thereby taking into account Annex V to Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations <sup>(4)</sup>.

### Article 3

#### Integration of securities markets

1. The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive.

The home Member State may also make a holder of shares, or a natural person or legal entity referred to in Articles 10 or 13, subject to requirements more stringent than those laid down in this Directive.

2. A host Member State may not:

- (a) as regards the admission of securities to a regulated market in its territory, impose disclosure requirements more stringent than those laid down in this Directive or in Article 6 of Directive 2003/6/EC;
- (b) as regards the notification of information, make a holder of shares, or a natural person or legal entity referred to in Articles 10 or 13, subject to requirements more stringent than those laid down in this Directive.

## CHAPTER II

### PERIODIC INFORMATION

#### Article 4

#### Annual financial reports

1. The issuer shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least five years.

<sup>(4)</sup> OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

2. The annual financial report shall comprise:
- (a) the audited financial statements;
  - (b) the management report; and
  - (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

3. Where the issuer is required to prepare consolidated accounts according to the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts<sup>(1)</sup>, the audited financial statements shall comprise such consolidated accounts drawn up in accordance with Regulation (EC) No 1606/2002 and the annual accounts of the parent company drawn up in accordance with the national law of the Member State in which the parent company is incorporated.

Where the issuer is not required to prepare consolidated accounts, the audited financial statements shall comprise the accounts prepared in accordance with the national law of the Member State in which the company is incorporated.

4. The financial statements shall be audited in accordance with Articles 51 and 51a of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies<sup>(2)</sup> and, if the issuer is required to prepare consolidated accounts, in accordance with Article 37 of Directive 83/349/EEC.

The audit report, signed by the person or persons responsible for auditing the financial statements, shall be disclosed in full to the public together with the annual financial report.

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.

6. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. The Commission shall in particular specify the technical conditions under which a published annual financial report, including the audit report, is to remain available to the public.

<sup>(1)</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).

<sup>(2)</sup> OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2003/51/EC.

Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1.

#### Article 5

### Half-yearly financial reports

1. The issuer of shares or debt securities shall make public a half-yearly financial report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest two months thereafter. The issuer shall ensure that the half-yearly financial report remains available to the public for at least five years.

2. The half-yearly financial report shall comprise:

- (a) the condensed set of financial statements;
- (b) an interim management report; and
- (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole as required under paragraph 3, and that the interim management report includes a fair review of the information required under paragraph 4.

3. Where the issuer is required to prepare consolidated accounts, the condensed set of financial statements shall be prepared in accordance with the international accounting standard applicable to the interim financial reporting adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002.

Where the issuer is not required to prepare consolidated accounts, the condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts. In preparing the condensed balance sheet and the condensed profit and loss account, the issuer shall follow the same principles for recognising and measuring as when preparing annual financial reports.

4. The interim management report shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties transactions.



5. If the half-yearly financial report has been audited, the audit report shall be reproduced in full. The same shall apply in the case of an auditors' review. If the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

6. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1 to 5 of this Article.

The Commission shall, in particular:

- (a) specify the technical conditions under which a published half-yearly financial report, including the auditors' review, is to remain available to the public;
- (b) clarify the nature of the auditors' review;
- (c) specify the minimum content of the condensed balance sheet and profit and loss accounts and explanatory notes on these accounts, where they are not prepared in accordance with the international accounting standards adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002.

Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1.

#### Article 6

##### Interim management statements

1. Without prejudice to Article 6 of Directive 2003/6/EC, an issuer whose shares are admitted to trading on a regulated market shall make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six-month period of the financial year. Such statement shall be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period. It shall contain information covering the period between the beginning of the relevant six-month period and the date of publication of the statement. Such a statement shall provide:

- an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings, and
- a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.

2. Issuers which, under either national legislation or the rules of the regulated market or of their own initiative, publish quarterly financial reports in accordance with such legislation or rules shall not be required to make public statements by the management provided for in paragraph 1.

3. The Commission shall provide a report to the European Parliament and the Council by 20 January 2010 on the transparency of quarterly financial reporting and statements by the management of issuers to examine whether the information provided meets the objective of allowing investors to make an informed assessment of the financial position of the issuer. Such a report shall include an impact assessment on areas where the Commission considers proposing amendments to this Article.

#### Article 7

##### Responsibility and liability

Member States shall ensure that responsibility for the information to be drawn up and made public in accordance with Articles 4, 5, 6 and 16 lies at least with the issuer or its administrative, management or supervisory bodies and shall ensure that their laws, regulations and administrative provisions on liability apply to the issuers, the bodies referred to in this Article or the persons responsible within the issuers.

#### Article 8

##### Exemptions

1. Articles 4, 5 and 6 shall not apply to the following issuers:

- (a) a State, a regional or local authority of a State, a public international body of which at least one Member State is a member, the ECB, and Member States' national central banks whether or not they issue shares or other securities; and
- (b) an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 50 000 or, in the case of debt securities denominated in a currency other than Euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000.

2. The home Member State may choose not to apply Article 5 to credit institutions whose shares are not admitted to trading on a regulated market and which have, in a continuous or repeated manner, only issued debt securities provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that they have not published a prospectus under Directive 2003/71/EC.

3. The home Member State may choose not to apply Article 5 to issuers already existing at the date of the entry into force of Directive 2003/71/EC which exclusively issue debt securities unconditionally and irrevocably guaranteed by the home Member State or by one of its regional or local authorities, on a regulated market.

## CHAPTER III

## ONGOING INFORMATION

## SECTION I

*Information about major holdings*

## Article 9

**Notification of the acquisition or disposal of major holdings**

1. The home Member State shall ensure that, where a shareholder acquires or disposes of shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached, such shareholder notifies the issuer of the proportion of voting rights of the issuer held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %.

The voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended. Moreover this information shall also be given in respect of all the shares which are in the same class and to which voting rights are attached.

2. The home Member States shall ensure that the shareholders notify the issuer of the proportion of voting rights, where that proportion reaches, exceeds or falls below the thresholds provided for in paragraph 1, as a result of events changing the breakdown of voting rights, and on the basis of the information disclosed pursuant to Article 15. Where the issuer is incorporated in a third country, the notification shall be made for equivalent events.

3. The home Member State need not apply:

- (a) the 30 % threshold, where it applies a threshold of one-third;
- (b) the 75 % threshold, where it applies a threshold of two-thirds.

4. This Article shall not apply to shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle, or to custodians holding shares in their custodian capacity provided such custodians can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means.

5. This Article shall not apply to the acquisition or disposal of a major holding reaching or crossing the 5 % threshold by a market maker acting in its capacity of a market maker, provided that:

- (a) it is authorised by its home Member State under Directive 2004/39/EC; and

- (b) it neither intervenes in the management of the issuer concerned nor exerts any influence on the issuer to buy such shares or back the share price.

6. Home Member States under Article 2(1)(i) may provide that voting rights held in the trading book, as defined in Article 2(6) of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions<sup>(1)</sup>, of a credit institution or investment firm shall not be counted for the purposes of this Article provided that:

- (a) the voting rights held in the trading book do not exceed 5 %, and
- (b) the credit institution or investment firm ensures that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the issuer.

7. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2, 4 and 5 of this Article.

The Commission shall in particular specify the maximum length of the 'short settlement cycle' referred to in paragraph 4, as well as the appropriate control mechanisms by the competent authority of the home Member State. In addition, the Commission may draw up a list of the events referred to in paragraph 2.

## Article 10

**Acquisition or disposal of major proportions of voting rights**

The notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

- (a) voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;
- (b) voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
- (c) voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them;

<sup>(1)</sup> OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 2004/39/EC.

- (d) voting rights attaching to shares in which that person or entity has the life interest;
- (e) voting rights which are held, or may be exercised within the meaning of points (a) to (d), by an undertaking controlled by that person or entity;
- (f) voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders;
- (g) voting rights held by a third party in its own name on behalf of that person or entity;
- (h) voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.

#### Article 11

1. Articles 9 and 10(c) shall not apply to shares provided to or by the members of the ESCB in carrying out their functions as monetary authorities, including shares provided to or by members of the ESCB under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system.

2. The exemption shall apply to the above transactions lasting for a short period and provided that the voting rights attaching to such shares are not exercised.

#### Article 12

#### Procedures on the notification and disclosure of major holdings

1. The notification required under Articles 9 and 10 shall include the following information:

- (a) the resulting situation in terms of voting rights;
- (b) the chain of controlled undertakings through which voting rights are effectively held, if applicable;
- (c) the date on which the threshold was reached or crossed; and
- (d) the identity of the shareholder, even if that shareholder is not entitled to exercise voting rights under the conditions laid down in Article 10, and of the natural person or legal entity entitled to exercise voting rights on behalf of that shareholder.

2. The notification to the issuer shall be effected as soon as possible, but not later than four trading days, the first of which shall be the day after the date on which the shareholder, or the natural person or legal entity referred to in Article 10,

- (a) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the

date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or

- (b) is informed about the event mentioned in Article 9(2).

3. An undertaking shall be exempted from making the required notification in accordance with paragraph 1 if the notification is made by the parent undertaking or, where the parent undertaking is itself a controlled undertaking, by its own parent undertaking.

4. The parent undertaking of a management company shall not be required to aggregate its holdings under Articles 9 and 10 with the holdings managed by the management company under the conditions laid down in Directive 85/611/EEC, provided such management company exercises its voting rights independently from the parent undertaking.

However, Articles 9 and 10 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such management company and the management company has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

5. The parent undertaking of an investment firm authorised under Directive 2004/39/EC shall not be required to aggregate its holdings under Articles 9 and 10 with the holdings which such investment firm manages on a client-by-client basis within the meaning of Article 4(1), point 9, of Directive 2004/39/EC, provided that:

- the investment firm is authorised to provide such portfolio management under point 4 of Section A of Annex I to Directive 2004/39/EC;
- it may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under Directive 85/611/EEC by putting into place appropriate mechanisms; and
- the investment firm exercises its voting rights independently from the parent undertaking.

However, Articles 9 and 10 shall apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such investment firm and the investment firm has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

6. Upon receipt of the notification under paragraph 1, but no later than three trading days thereafter, the issuer shall make public all the information contained in the notification.

7. A home Member State may exempt issuers from the requirement in paragraph 6 if the information contained in the notification is made public by its competent authority, under the conditions laid down in Article 21, upon receipt of the notification, but no later than three trading days thereafter.

8. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures:

- (a) to establish a standard form to be used throughout the Community when notifying the required information to the issuer under paragraph 1 or when filing information under Article 19(3);
- (b) to determine a calendar of 'trading days' for all Member States;
- (c) to establish in which cases the shareholder, or the natural person or legal entity referred to in Article 10, or both, shall effect the necessary notification to the issuer;
- (d) to clarify the circumstances under which the shareholder, or the natural person or legal entity referred to in Article 10, should have learned of the acquisition or disposal;
- (e) to clarify the conditions of independence to be complied with by management companies and their parent undertakings or by investment firms and their parent undertakings to benefit from the exemptions in paragraphs 4 and 5.

#### Article 13

1. The notification requirements laid down in Article 9 shall also apply to a natural person or legal entity who holds, directly or indirectly, financial instruments that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market.

2. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. It shall in particular determine:

- (a) the types of financial instruments referred to in paragraph 1 and their aggregation;
- (b) the nature of the formal agreement referred to in paragraph 1;
- (c) the contents of the notification to be made, establishing a standard form to be used throughout the Community for that purpose;

(d) the notification period;

(e) to whom the notification is to be made.

#### Article 14

1. Where an issuer of shares admitted to trading on a regulated market acquires or disposes of its own shares, either itself or through a person acting in his own name but on the issuer's behalf, the home Member State shall ensure that the issuer makes public the proportion of its own shares as soon as possible, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights. The proportion shall be calculated on the basis of the total number of shares to which voting rights are attached.

2. The Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1.

#### Article 15

For the purpose of calculating the thresholds provided for in Article 9, the home Member State shall at least require the disclosure to the public by the issuer of the total number of voting rights and capital at the end of each calendar month during which an increase or decrease of such total number has occurred.

#### Article 16

### Additional information

1. The issuer of shares admitted to trading on a regulated market shall make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer itself and giving access to the shares of that issuer.

2. The issuer of securities, other than shares admitted to trading on a regulated market, shall make public without delay any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of these securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

3. The issuer of securities admitted to trading on a regulated market shall make public without delay of new loan issues and in particular of any guarantee or security in respect thereof. Without prejudice to Directive 2003/6/EC, this paragraph shall not apply to a public international body of which at least one Member State is member.

## SECTION II

**Information for holders of securities admitted to trading on a regulated market**

## Article 17

**Information requirements for issuers whose shares are admitted to trading on a regulated market**

1. The issuer of shares admitted to trading on a regulated market shall ensure equal treatment for all holders of shares who are in the same position.

2. The issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in the home Member State and that the integrity of data is preserved. Shareholders shall not be prevented from exercising their rights by proxy, subject to the law of the country in which the issuer is incorporated. In particular, the issuer shall:

- (a) provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings;
- (b) make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at a shareholders' meeting, together with the notice concerning the meeting or, on request, after an announcement of the meeting;
- (c) designate as its agent a financial institution through which shareholders may exercise their financial rights; and
- (d) publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.

3. For the purposes of conveying information to shareholders, the home Member State shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:

- (a) the use of electronic means shall in no way depend upon the location of the seat or residence of the shareholder or, in the cases referred to in Article 10(a) to (h), of the natural persons or legal entities;
- (b) identification arrangements shall be put in place so that the shareholders, or the natural persons or legal entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;
- (c) shareholders, or in the cases referred to in Article 10(a) to (e) the natural persons or legal entities entitled to

acquire, dispose of or exercise voting rights, shall be contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing, and

- (d) any apportionment of the costs entailed in the conveyance of such information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.

4. The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3. It shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c).

## Article 18

**Information requirements for issuers whose debt securities are admitted to trading on a regulated market**

1. The issuer of debt securities admitted to trading on a regulated market shall ensure that all holders of debt securities ranking *pari passu* are given equal treatment in respect of all the rights attaching to those debt securities.

2. The issuer shall ensure that all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in the home Member State and that the integrity of data is preserved. Debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of country in which the issuer is incorporated. In particular, the issuer shall:

- (a) publish notices, or distribute circulars, concerning the place, time and agenda of meetings of debt securities holders, the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights, and repayment, as well as the right of those holders to participate therein;
- (b) make available a proxy form on paper or, where applicable, by electronic means, to each person entitled to vote at a meeting of debt securities holders, together with the notice concerning the meeting or, on request, after an announcement of the meeting; and
- (c) designate as its agent a financial institution through which debt securities holders may exercise their financial rights.

3. If only holders of debt securities whose denomination per unit amounts to at least EUR 50 000 or, in the case of debt securities denominated in a currency other than Euro whose denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000, are to be invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

4. For the purposes of conveying information to debt securities holders, the home Member State, or the Member State chosen by the issuer pursuant to paragraph 3, shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:

- (a) the use of electronic means shall in no way depend upon the location of the seat or residence of the debt security holder or of a proxy representing that holder;
- (b) identification arrangements shall be put in place so that debt securities holders are effectively informed;
- (c) debt securities holders shall be contacted in writing to request their consent for the use of electronic means for conveying information and if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing; and
- (d) any apportionment of the costs entailed in the conveyance of information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.

5. The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1 to 4. It shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c).

#### CHAPTER IV

### GENERAL OBLIGATIONS

#### Article 19

#### Home Member State control

1. Whenever the issuer, or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the compe-

tent authority of its home Member State. That competent authority may decide to publish such filed information on its Internet site.

Where an issuer proposes to amend its instrument of incorporation or statutes, it shall communicate the draft amendment to the competent authority of the home Member State and to the regulated market to which its securities have been admitted to trading. Such communication shall be effected without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.

2. The home Member State may exempt an issuer from the requirement under paragraph 1 in respect of information disclosed in accordance with Article 6 of Directive 2003/6/EC or Article 12(6) of this Directive.

3. Information to be notified to the issuer in accordance with Articles 9, 10, 12 and 13 shall at the same time be filed with the competent authority of the home Member State.

4. In order to ensure the uniform application of paragraphs 1, 2 and 3, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures.

The Commission shall, in particular, specify the procedure in accordance with which an issuer, a holder of shares or other financial instruments, or a person or entity referred to in Article 10, is to file information with the competent authority of the home Member State under paragraphs 1 or 3, respectively, in order to:

- (a) enable filing by electronic means in the home Member State;
- (b) coordinate the filing of the annual financial report referred to in Article 4 of this Directive with the filing of the annual information referred to in Article 10 of Directive 2003/71/EC.

#### Article 20

### Languages

1. Where securities are admitted to trading on a regulated market only in the home Member State, regulated information shall be disclosed in a language accepted by the competent authority in the home Member State.

2. Where securities are admitted to trading on a regulated market both in the home Member State and in one or more host Member States, regulated information shall be disclosed:

- (a) in a language accepted by the competent authority in the home Member State; and

(b) depending on the choice of the issuer, either in a language accepted by the competent authorities of those host Member States or in a language customary in the sphere of international finance.

3. Where securities are admitted to trading on a regulated market in one or more host Member States, but not in the home Member State, regulated information shall, depending on the choice of the issuer, be disclosed either in a language accepted by the competent authorities of those host Member States or in a language customary in the sphere of international finance.

In addition, the home Member State may lay down in its law, regulations or administrative provisions that the regulated information shall, depending on the choice of the issuer, be disclosed either in a language accepted by its competent authority or in a language customary in the sphere of international finance.

4. Where securities are admitted to trading on a regulated market without the issuer's consent, the obligations under paragraphs 1, 2 and 3 shall be incumbent not upon the issuer, but upon the person who, without the issuer's consent, has requested such admission.

5. Member States shall allow shareholders and the natural person or legal entity referred to in Articles 9, 10 and 13 to notify information to an issuer under this Directive only in a language customary in the sphere of international finance. If the issuer receives such a notification, Member States may not require the issuer to provide a translation into a language accepted by the competent authorities.

6. By way of derogation from paragraphs 1 to 4, where securities whose denomination per unit amounts to at least EUR 50 000 or, in the case of debt securities denominated in a currency other than Euro equivalent to at least EUR 50 000 at the date of the issue, are admitted to trading on a regulated market in one or more Member States, regulated information shall be disclosed to the public either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer or of the person who, without the issuer's consent, has requested such admission.

7. If an action concerning the content of regulated information is brought before a court or tribunal in a Member State, responsibility for the payment of costs incurred in the translation of that information for the purposes of the proceedings shall be decided in accordance with the law of that Member State.

#### Article 21

##### Access to regulated information

1. The home Member State shall ensure that the issuer, or the person who has applied for admission to trading on a regu-

lated market without the issuer's consent, discloses regulated information in a manner ensuring fast access to such information on a non-discriminatory basis and makes it available to the officially appointed mechanism referred to in paragraph 2. The issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, may not charge investors any specific cost for providing the information. The home Member State shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The home Member State may not impose an obligation to use only media whose operators are established on its territory.

2. The home Member State shall ensure that there is at least one officially appointed mechanism for the central storage of regulated information. These mechanisms should comply with minimum quality standards of security, certainty as to the information source, time recording and easy access by end users and shall be aligned with the filing procedure under Article 19(1).

3. Where securities are admitted to trading on a regulated market in only one host Member State and not in the home Member State, the host Member State shall ensure disclosure of regulated information in accordance with the requirements referred to in paragraph 1.

4. In order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3, the Commission shall adopt implementing measures in accordance with the procedure referred to in Article 27(2).

The Commission shall in particular specify:

- (a) minimum standards for the dissemination of regulated information, as referred to in paragraph 1;
- (b) minimum standards for the central storage mechanism as referred to in paragraph 2.

The Commission may also specify and update a list of media for the dissemination of information to the public.

#### Article 22

##### Guidelines

1. The competent authorities of the Member States shall draw up appropriate guidelines with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive 2003/71/EC and this Directive.

The aim of those guidelines shall be the creation of:

- (a) an electronic network to be set up at national level between national securities regulators, operators of regulated markets and national company registers covered by the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 <sup>(1)</sup> of the Treaty, with a view to making such safeguards equivalent throughout the Community <sup>(2)</sup>; and
- (b) a single electronic network, or a platform of electronic networks across Member States.

2. The Commission shall review the results achieved under paragraph 1 by 31 December 2006 and may, in accordance with the procedure referred to in Article 27(2), adopt implementing measures to facilitate compliance with Articles 19 and 21.

#### Article 23

#### Third countries

1. Where the registered office of an issuer is in a third country, the competent authority of the home Member State may exempt that issuer from requirements under Articles 4 to 7 and Articles 12(6), 14, 15 and 16 to 18, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

However, the information covered by the requirements laid down in the third country shall be filed in accordance with Article 19 and disclosed in accordance with Articles 20 and 21.

2. By way of derogation from paragraph 1, an issuer whose registered office is in a third country shall be exempted from preparing its financial statement in accordance with Article 4 or Article 5 prior to the financial year starting on or after 1 January 2007, provided such issuer prepares its financial statements in accordance with internationally accepted standards referred to in Article 9 of Regulation (EC) No 1606/2002.

3. The competent authority of the home Member State shall ensure that information disclosed in a third country which may be of importance for the public in the Community is disclosed in accordance with Articles 20 and 21, even if such information is not regulated information within the meaning of Article 2(1)(k).

<sup>(1)</sup> Editorial note: The title has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 58 of the Treaty.

<sup>(2)</sup> OJ L 65, 14.3.1968, p. 8. Directive as last amended by Directive 2003/58/EC of the European Parliament and of the Council (OJ L 221, 4.9.2003, p. 13).

4. In order to ensure the uniform application of paragraph 1, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures

- (i) setting up a mechanism ensuring the establishment of equivalence of information required under this Directive, including financial statements and information, including financial statements, required under the law, regulations or administrative provisions of a third country;
- (ii) stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in this Directive.

The Commission shall, in accordance with the procedure referred to in Article 27(2), take the necessary decisions on the equivalence of accounting standards which are used by third country issuers under the conditions set out in Article 30(3) at the latest five years following the date referred to in Article 31. If the Commission decides that the accounting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such accounting standards during an appropriate transitional period.

5. In order to ensure uniform application of paragraph 2, the Commission may, in accordance with the procedure referred to in Article 27(2), adopt implementing measures defining the type of information disclosed in a third country that is of importance to the public in the Community.

6. Undertakings whose registered office is in a third country which would have required an authorisation in accordance with Article 5(1) of Directive 85/611/EEC or, with regard to portfolio management under point 4 of section A of Annex I to Directive 2004/39/EC if it had its registered office or, only in the case of an investment firm, its head office within the Community, shall also be exempted from aggregating holdings with the holdings of its parent undertaking under the requirements laid down in Article 12(4) and (5) provided that they comply with equivalent conditions of independence as management companies or investment firms.

7. In order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 6, the Commission shall, in accordance with the procedure referred to in Article 27(2), adopt implementing measures stating that, by reason of its domestic law, regulations, or administrative provisions, a third country ensures the equivalence of the independence requirements provided for under this Directive and its implementing measures.



## CHAPTER V

## COMPETENT AUTHORITIES

## Article 24

**Competent authorities and their powers**

1. Each Member State shall designate the central authority referred to in Article 21(1) of Directive 2003/71/EC as central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied. Member States shall inform the Commission accordingly.

However, for the purpose of paragraph 4(h) Member States may designate a competent authority other than the central competent authority referred to in the first subparagraph.

2. Member States may allow their central competent authority to delegate tasks. Except for the tasks referred to in paragraph 4(h), any delegation of tasks relating to the obligations provided for in this Directive and in its implementing measures shall be reviewed five years after the entry into force of this Directive and shall end eight years after the entry into force of this Directive. Any delegation of tasks shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out.

Those conditions shall include a clause requiring the entity in question to be organised in a manner such that conflicts of interest are avoided and information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. In any case, the final responsibility for supervising compliance with the provisions of this Directive and implementing measures adopted pursuant thereto shall lie with the competent authority designated in accordance with paragraph 1.

3. Member States shall inform the Commission and competent authorities of other Member States of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations.

4. Each competent authority shall have all the powers necessary for the performance of its functions. It shall at least be empowered to:

- (a) require auditors, issuers, holders of shares or other financial instruments, or persons or entities referred to in Articles 10 or 13, and the persons that control them or are controlled by them, to provide information and documents;
- (b) require the issuer to disclose the information required under point (a) to the public by the means and within the time limits the authority considers necessary. It may publish such information on its own initiative in the event

that the issuer, or the persons that control it or are controlled by it, fail to do so and after having heard the issuer;

- (c) require managers of the issuers and of the holders of shares or other financial instruments, or of persons or entities referred to in Articles 10 or 13, to notify the information required under this Directive, or under national law adopted in accordance with this Directive, and, if necessary, to provide further information and documents;
- (d) suspend, or request the relevant regulated market to suspend, trading in securities for a maximum of ten days at a time if it has reasonable grounds for suspecting that the provisions of this Directive, or of national law adopted in accordance with this Directive, have been infringed by the issuer;
- (e) prohibit trading on a regulated market if it finds that the provisions of this Directive, or of national law adopted in accordance with this Directive, have been infringed, or if it has reasonable grounds for suspecting that the provisions of this Directive have been infringed;
- (f) monitor that the issuer discloses timely information with the objective of ensuring effective and equal access to the public in all Member States where the securities are traded and take appropriate action if that is not the case;
- (g) make public the fact that an issuer, or a holder of shares or other financial instruments, or a person or entity referred to in Articles 10 or 13, is failing to comply with its obligations;
- (h) examine that information referred to in this Directive is drawn up in accordance with the relevant reporting framework and take appropriate measures in case of discovered infringements; and
- (i) carry out on-site inspections in its territory in accordance with national law, in order to verify compliance with the provisions of this Directive and its implementing measures. Where necessary under national law, the competent authority or authorities may use this power by applying to the relevant judicial authority and/or in cooperation with other authorities.

5. Paragraphs 1 to 4 shall be without prejudice to the possibility for a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

6. The disclosure to competent authorities by the auditors of any fact or decision related to the requests made by the competent authority under paragraph (4)(a) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision and shall not involve such auditors in liability of any kind.

*Article 25***Professional secrecy and cooperation between Member States**

1. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority and for entities to which competent authorities may have delegated certain tasks. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the laws, regulations or administrative provisions of a Member State.

2. Competent authorities of the Member States shall cooperate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers, whether set out in this Directive or in national law adopted pursuant to this Directive. Competent authorities shall render assistance to competent authorities of other Member States.

3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

4. Member States may conclude cooperation agreements providing for the exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out any of the tasks assigned by this Directive to the competent authorities in accordance with Article 24. Such an exchange of information is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information shall be intended for the performance of the supervisory task of the authorities or bodies mentioned. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

*Article 26***Precautionary measures**

1. Where the competent authority of a host Member State finds that the issuer or the holder of shares or other financial instruments, or the person or entity referred to in Article 10, has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the home Member State.

2. If, despite the measures taken by the competent authority of the home Member State, or because such measures prove inadequate, the issuer or the security holder persists in infringing the relevant legal or regulatory provisions, the competent authority of the host Member State shall, after

informing the competent authority of the home Member State, take, in accordance with Article 3(2), all the appropriate measures in order to protect investors. The Commission shall be informed of such measures at the earliest opportunity.

## CHAPTER VI

**IMPLEMENTING MEASURES***Article 27***Committee procedure**

1. The Commission shall be assisted by the European Securities Committee, instituted by Article 1 of Decision 2001/528/EC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof, provided that the implementing measures adopted in accordance with that procedure do not modify the essential provisions of this Directive.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

4. Without prejudice to the implementing measures already adopted by 20 January 2009 the application of the provisions of this Directive concerning the adoption of technical rules and decisions in accordance with the procedure referred to in paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, shall review them prior to the expiry of the four-year period.

*Article 28***Penalties**

1. Without prejudice to the right of Member States to impose criminal penalties, Member States shall ensure, in conformity with their national law, that at least the appropriate administrative measures may be taken or civil and/or administrative penalties imposed in respect of the persons responsible, where the provisions adopted in accordance with this Directive have not been complied with. Member States shall ensure that those measures are effective, proportionate and dissuasive.

2. Member States shall provide that the competent authority may disclose to the public every measure taken or penalty imposed for infringement of the provisions adopted in accordance with this Directive, save where such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

*Article 29***Right of appeal**

Member States shall ensure that decisions taken under laws, regulations, and administrative provisions adopted in accordance with this Directive are subject to the right of appeal to the courts.

## CHAPTER VII

**TRANSITIONAL AND FINAL PROVISIONS***Article 30***Transitional provisions**

1. By way of derogation from Article 5(3) of this Directive, the home Member State may exempt from disclosing financial statements in accordance with Regulation (EC) No 1606/2002 issuers referred to in Article 9 of that Regulation for the financial year starting on or after 1 January 2006.

2. Notwithstanding Article 12(2), a shareholder shall notify the issuer at the latest two months after the date in Article 31(1) of the proportion of voting rights and capital it holds, in accordance with Articles 9, 10 and 13, with issuers at that date, unless it has already made a notification containing equivalent information before that date.

Notwithstanding Article 12(6), an issuer shall in turn disclose the information received in those notifications no later than three months after the date in Article 31(1).

3. Where an issuer is incorporated in a third country, the home Member State may exempt such issuer only in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from drawing up its financial statements in accordance with Article 4(3) and its management report in accordance with Article 4(5) as long as

- (a) the competent authority of the home Member State acknowledges that annual financial statements prepared by issuers from such a third country give a true and fair view of the issuer's assets and liabilities, financial position and results;
- (b) the third country where the issuer is incorporated has not made mandatory the application of international accounting standards referred to in Article 2 of Regulation (EC) No 1606/2002; and
- (c) the Commission has not taken any decision in accordance with Article 23(4)(ii) as to whether there is an equivalence between the abovementioned accounting standards and

- the accounting standards laid down in the law, regulations or administrative provisions of the third country where the issuer is incorporated, or
- the accounting standards of a third country such an issuer has elected to comply with.

4. The home Member State may exempt issuers only in respect of those debt securities which have already been admitted to trading on a regulated market in the Community prior to 1 January 2005 from disclosing half-yearly financial report in accordance with Article 5 for 10 years following 1 January 2005, provided that the home Member State had decided to allow such issuers to benefit from the provisions of Article 27 of Directive 2001/34/EC at the point of admission of those debt securities.

*Article 31***Transposition**

1. Member States shall take the necessary measures to comply with this Directive by 20 January 2007. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Where Member States adopt measures pursuant to Articles 3(1), 8(2), 8(3), 9(6) or 30, they shall immediately communicate those measures to the Commission and to the other Member States.

*Article 32***Amendments**

With effect from the date specified in Article 31(1), Directive 2001/34/EC shall be amended as follows:

- (1) In Article 1, points (g) and (h) shall be deleted;
- (2) Article 4 shall be deleted;
- (3) In Article 6, paragraph 2 shall be deleted;
- (4) In Article 8, paragraph 2 shall be replaced by the following:
 

‘2. Member States may make the issuers of securities admitted to official listing subject to additional obligations, provided that those additional obligations apply generally for all issuers or for individual classes of issuers;’
- (5) Articles 65 to 97 shall be deleted;

- (6) Articles 102 and 103 shall be deleted;
- (7) In Article 107(3), the second subparagraph shall be deleted;
- (8) In Article 108, paragraph 2 shall be amended as follows:
- (a) in point (a), the words 'periodic information to be published by the companies of which shares are admitted' shall be deleted;
  - (b) point (b) shall be deleted;
  - (c) point (c)(iii) shall be deleted;
  - (d) point (d) shall be deleted.

References made to the repealed provisions shall be construed as being made to the provisions of this Directive.

#### *Article 33*

##### **Review**

The Commission shall by 30 June 2009 report on the operation of this Directive to the European Parliament and to the Council including the appropriateness of ending the exemption for existing debt securities after the 10-year period as provided for by Article 30(4) and its potential impact on the European financial markets.

#### *Article 34*

##### **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### *Article 35*

##### **Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 15 December 2004.

*For the European Parliament*

*The President*

J. BORRELL FONTELLES

*For the Council*

*The President*

A. NICOLAÏ

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