

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

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.

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⁽¹⁾ 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;

[^{F1}d 'issuer' means a natural person, or a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market.

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In the case of depository receipts admitted to trading on a regulated market, the issuer means the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market;]

- 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) ^[F2]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 Union, the Member State in which it has its registered office,
 - ^[F1]where the issuer is incorporated in a third country, the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market. The choice of home Member State shall remain valid unless the issuer has chosen a new home Member State under point (iii) and has disclosed the choice in accordance with the second paragraph of this point [letter] (i);]

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) [F¹for any issuer not covered by point (i), the Member State chosen by the issuer from among the Member State in which the issuer has its registered office, where applicable, and those Member States where its securities are admitted to trading on a regulated market. 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 Union or unless the issuer becomes covered by points (i) or (iii) during the three-year period;]
- (iii) [F³for an issuer whose securities are no longer admitted to trading on a regulated market in its home Member State as defined by the second indent of point (i) or (ii) but instead are admitted to trading in one or more other Member States, such new home Member State as the issuer may choose from amongst the Member States where its securities are admitted to trading on a regulated market and, where applicable, the Member State where the issuer has its registered office;]

[F³An issuer shall disclose its home Member State as referred to in points (i), (ii) or (iii) in accordance with Articles 20 and 21. In addition, an issuer shall disclose its home Member State to the competent authority of the Member State where it has its registered office, where applicable, to the competent authority of the home Member State and to the competent authorities of all host Member States.

In the absence of disclosure by the issuer of its home Member State as defined by the second indent of point (i) or (ii) within a period of three months from the date the issuers’ securities are first admitted to trading on a regulated market, the home Member State shall be the Member State where the issuer’s securities are admitted to trading on a regulated market. Where the issuer’s securities are admitted to trading on regulated markets situated or operating within more than one Member State, those Member States shall be the issuer’s home Member States until a subsequent choice of a single home Member State has been made and disclosed by the issuer.

For an issuer whose securities are already admitted to trading on a regulated market and whose choice of home Member State as referred to in the second indent of point (i) or in point (ii) has not been disclosed prior to 27 November 2015, the period of three months shall start on 27 November 2015.

An issuer that has made a choice of a home Member State as referred to in the second indent of point (i) or in point (ii) or (iii) and has communicated that choice to the competent authorities of the home Member State prior to 27 November 2015 shall be exempted from the requirement under the second paragraph of this point [letter] (i), unless such issuer chooses another home Member State after 27 November 2015.]

- 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)⁽²⁾, or under the laws,

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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)⁽³⁾;
- 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⁽⁴⁾;
- 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^[F1];
- ^[F3]q ‘formal agreement’ means an agreement which is binding under the applicable law.]

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.

^[F3]2a Any reference to legal entities in this Directive shall be understood as including registered business associations without legal personality and trusts.]

^[F4]^[F5]3 In order to take account of technical developments on financial markets, to specify the requirements and to ensure the uniform application of paragraph 1, the Commission shall adopt, in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures concerning the definitions set out in paragraph 1.]

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; and
- 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 and of rules on Information Society services⁽⁵⁾ in accordance with the regulatory procedure referred to in Article 27(2).

^[F5]The measures referred to in points (a) and (b) of the second subparagraph shall be laid down by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b.]]

Textual Amendments

- F1** Substituted by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (Text with EEA relevance).
- F2** Substituted by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Text with EEA relevance).
- F3** Inserted by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (Text with EEA relevance).
- F4** Substituted by Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as regards the implementing powers conferred on the Commission.
- F5** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 3

Integration of securities markets

[^{F1}1 The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive, except that it may not require issuers to publish periodic financial information on a more frequent basis than the annual financial reports referred to in Article 4 and the half-yearly financial reports referred to in Article 5.]

[^{F3}1a By way of derogation from paragraph 1, the home Member States may require issuers to publish additional periodic financial information on a more frequent basis than the annual financial reports referred to in Article 4 and the half-yearly financial reports referred to in Article 5, where the following conditions are met:

- the additional periodic financial information does not constitute a disproportionate financial burden in the Member State concerned, in particular for the small and medium-sized issuers concerned, and
- the content of the additional periodic financial information required is proportionate to the factors that contribute to investment decisions by the investors in the Member State concerned.

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Before taking a decision requiring issuers to publish additional periodic financial information, Member States shall assess both whether such additional requirements may lead to an excessive focus on the issuers' short-term results and performance and whether they may impact negatively on the ability of small and medium-sized issuers to have access to the regulated markets.

This is without prejudice to the ability of Member States to require the publication of additional periodic financial information by issuers who are financial institutions.

The home Member State may not make a holder of shares, or a natural person or legal entity referred to in Article 10 or 13, subject to requirements more stringent than those laid down in this Directive, except when:

- (i) setting lower or additional notification thresholds than those laid down in Article 9(1) and requiring equivalent notifications in relation to thresholds based on capital holdings;
- (ii) applying more stringent requirements than those referred to in Article 12; or
- (iii) applying laws, regulations or administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies, supervised by the authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids⁽⁶⁾.]

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.

Textual Amendments

- F1** Substituted by [Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC \(Text with EEA relevance\).](#)
- F3** Inserted by [Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC \(Text with EEA relevance\).](#)

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- (1) OJ L 145, 30.4.2004, p. 1.
- (2) OJ L 96, 12.4.2003, p. 16.
- (3) OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2004/39/EC.
- (4) 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).
- (5) [^{F4}OJ L 204, 21.7.1998, p. 37. Directive as last amended by Council Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81).]
- (6) [^{F3}OJ L 142, 30.4.2004, p. 12.]

Textual Amendments

- F3** Inserted by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (Text with EEA relevance).
- F4** Substituted by Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as regards the implementing powers conferred on the Commission.