

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 V

COMPETENT AUTHORITIES

Article 24

Competent authorities and their powers

[^{F11} Each Member State shall designate the central authority referred to in Article 21(1) of Directive 2003/71/EC as the 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 and ESMA 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.

[^{F13} Member States shall inform the Commission, ESMA in accordance with Article 28(4) of Regulation (EU) No 1095/2010, 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;

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- 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.

[^{F2}4a Without prejudice to paragraph 4, competent authorities shall be given all investigative powers that are necessary for the exercise of their functions. Those powers shall be exercised in conformity with national law.

4b Competent authorities shall exercise their sanctioning powers, in accordance with this Directive and national law, in any of the following ways:

- directly,
- in collaboration with other authorities,
- under their responsibility by delegation to such authorities,
- by application to the competent judicial 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.

Textual Amendments

- F1** 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).

- F2** 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).

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.

[^{F2}In the exercise of their sanctioning and investigative powers, competent authorities shall cooperate to ensure that sanctions or measures produce the desired results, and shall coordinate their action when dealing with cross-border cases.]

[^{F3}2a The competent authorities may refer to ESMA situations where a request for cooperation has been rejected or has not been acted upon within a reasonable time. Without prejudice to the Article 258 of the Treaty on the Functioning of the European Union (TFEU), ESMA may, in situations referred to in the first sentence, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

2b The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2c The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1095/2010, in accordance with Article 35 of that Regulation.]

[^{F13}. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information with, or from transmitting information to, other competent authorities, ESMA and the European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board⁽¹⁾. 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.]

[^{F14} Member States and ESMA in accordance with Article 33 of Regulation (EU) No 1095/2010, may conclude cooperation agreements providing for the exchange of information

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with the competent authorities or bodies of third countries enabled by their respective legislation to carry out any tasks under this Directive in accordance with Article 24. Member States shall notify ESMA when they conclude cooperation agreements. Such an exchange of information is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such an 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 shall not be disclosed without the express agreement of the competent authorities which disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.]

Textual Amendments

- F1** 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).
- F2** 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).
- F3** Inserted 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).

[^{F1} 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 and to ESMA.

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, informing the Commission and ESMA thereof at the earliest opportunity.]

Textual Amendments

- F1** 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,](#)

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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).

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(1) [^{F1}OJ L 331, 15.12.2010, p. 1.]

Textual Amendments

- F1** 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).