

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

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⁽¹⁾,

Having regard to the opinion of the European Central Bank⁽²⁾,

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

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.

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- (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.⁽⁴⁾ 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.
- (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⁽⁵⁾ 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.

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- (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

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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.
- (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

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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

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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⁽⁶⁾ 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.

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- (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;
 - 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.

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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.⁽⁷⁾ 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⁽⁸⁾.
- (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⁽⁹⁾,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 80, 30.3.2004, p. 128.](#)
- (2) [OJ C 242, 9.10.2003, p. 6.](#)
- (3) Opinion of the European Parliament of 30 March 2004 (not yet published in the Official Journal) and Council Decision of 2 December 2004.
- (4) [OJ L 345, 31.12.2003, p. 64.](#)
- (5) [OJ L 243, 11.9.2002, p. 1.](#)
- (6) [OJ L 191, 13.7.2001, p. 45.](#) Decision as amended by Decision 2004/8/EC ([OJ L 3, 7.1.2004, p. 33](#)).
- (7) [OJ L 184, 6.7.2001, p. 1.](#) Directive as last amended by Directive 2003/71/EC.
- (8) [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](#)).
- (9) [OJ L 184, 17.7.1999, p. 23.](#)