



**COUNCIL OF
THE EUROPEAN UNION**

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"I" ITEM NOTE

from: General Secretariat of the Council
to: Permanent Representatives Committee (Part 2)

Subject: Proposal for a Directive of the European Parliament and of the Council 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 and Commission Directive 2007/14/EC
- Approval of the final compromise text

1. On 25 October 2011, the Commission presented a proposal for a Directive of the European Parliament and of the Council 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 and Commission Directive 2007/14/EC¹. The Directive will be adopted under the ordinary legislative procedure with the European Parliament.
2. On 18 September 2012 the European Parliament's Committee on Legal Affairs adopted its report on the Commission's proposal. The position at first reading of the European Parliament is still pending.

¹ 16353/11

3. The European Central Bank¹ and the European Economic and Social Committee² adopted their opinions, respectively, on 10 and 22 February 2012.
4. The Committee of Permanent Representatives (Part 2) agreed on a general approach on the above mentioned proposal on 29 May 2012³. On that basis, the Presidency has conducted negotiations with the European Parliament and the Commission with a view to a first reading agreement. On 14 May 2013, a provisional agreement was reached which resulted in the final compromise text set out in the Annex.
5. Against this background the Permanent Representatives Committee (Part 2) is invited to:
 - a) approve the final compromise text;
 - b) confirm that the Presidency can indicate to the European Parliament that, should the European Parliament adopt its position at first reading in the form as set out in the Annex, subject, if necessary, to revision by the legal linguists of both institutions, the Council would approve the European Parliament's position and the Act shall be adopted in the wording which corresponds to the European Parliament's position.

¹ OJ C 93, 30.03.2012, p.2.

² OJ C 143, 22.05.2012, p.78.

³ 10384/12

DIRECTIVE 2012/.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) According to Article 33 of Directive 2004/109/EC of the European Parliament and of the Council¹ the Commission had to report on the operation of that Directive to the European Parliament and to the Council including on the appropriateness of ending the exemption for existing debt securities after the 10-year period as provided for by Article 30(4) of that Directive, and on the potential impact of the operation of that Directive on the European financial markets.
- (2) On 27 May 2010 the Commission adopted a report on the operation of Directive 2004/109/EC² which identified areas where the regime created by that Directive could be improved. In particular, the report demonstrates the need to provide for the simplification of certain issuers' obligations with a view to making regulated markets more attractive to small and medium-sized issuers raising capital in the Union. Furthermore, the effectiveness of the existing transparency regime needs to be improved, notably with respect to the disclosure of corporate ownership.
- (3) In addition, in its Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled "Single Market Act, Twelve levers to boost growth and strengthen confidence, Working together to create new growth", the Commission identified the need to review Directive 2004/109/EC in order to make the obligations applicable to listed small and medium-sized enterprises more proportionate, whilst guaranteeing the same level of investor protection.

¹ OJ L 390, 31.12.2004, p. 38.

² COM (2010), 243 final.

- (4) According to the Commission report and the Commission Communication, the administrative burden associated with obligations linked to admission to trading on regulated markets should be reduced for small and medium-sized issuers in order to improve their access to capital. The obligation to publish interim management statements or quarterly financial reports represent an important burden for many small and medium-sized issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection. Those obligations also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy it is essential to reduce short-term pressure on issuers and give investors incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished.
- (5) Member States should not be allowed to impose the requirement to publish periodic financial information on a more frequent basis than annual financial reports and half-yearly financial reports in their national legislation. However, Member States may nevertheless require issuers to publish additional periodic financial information if such requirement does not constitute a significant financial burden and if the additional information required is proportionate to what contributes to investment decisions. This directive is without prejudice to any additional information that may be required by sectorial European legislation and in particular Member States may require the publication of additional periodic financial information by financial institutions. Moreover, a regulated market may require issuers which have their securities admitted to trading on that regulated market to publish additional periodic financial information in all or some of its market segments.
- (6 a) In order to provide additional flexibility and thereby reduce administrative burdens, the deadline to publish half-yearly financial reports should be extended to three months after the end of the reporting period. As the period in which issuers can publish their half-yearly financial reports is extended, small and medium-sized issuers' reports are expected to get more attention from the market participants, and thereby these issuers become more visible.

(7) In order to provide for enhanced transparency of payments made to governments, issuers whose securities are admitted to trading on a regulated market and which have activities in the extractive or logging of primary forest industries should disclose in a separate report on an annual basis payments made to governments in the countries in which they operate. The report should include types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI). The disclosure of payments to governments should provide civil society and investors, with information to hold governments of resource-rich countries to account for their receipts from the exploitation of natural resources. The initiative is also complementary to the EU FLEGT Action Plan (Forest Law Enforcement, Governance and Trade) and the Timber Regulation which require traders of timber products to exercise due diligence in order to prevent illegal wood from entering into the EU market. Member States shall ensure that the members of the responsible bodies of an undertaking, acting within the competences assigned to them by national law, have responsibility for ensuring that, to the best of their knowledge and ability, the report on payments to governments is prepared in accordance with the requirements of this Directive. The detailed requirements are defined in Chapter 9 of Directive 2012/.../EU of the European Parliament and of the Council [Accounting Directive]".

(7a) For the purposes of transparency and investor protection, Member States should require the following principles to apply to reporting on payments to governments in accordance with Chapter 9 of Directive 2012/.../EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings: materiality (any payment, whether made as a single payment or a series of related payments, need not be taken into account in the report if it is below EUR 100,000 within a financial year); government and project-by-project reporting (reporting on payments to governments should be done on a government and project-by-project basis); universality (no exemptions, for instance for issuers active in certain countries, should be made which have a distortive impact and allow issuers to exploit lax transparency requirements); comprehensiveness (all relevant payments to governments should be reported, in line with Chapter 9 of Directive 2012/.../EU [Accounting Directive] and supporting recitals).

- (8) Financial innovation has led to the creation of new types of financial instruments that give investors economic exposure to companies, the disclosure of which has not been provided for in Directive 2004/109/EC. Those instruments could be used to acquire secret stocks in companies, which could result in market abuse and give a false and misleading picture of economic ownership of publicly listed companies. In order to ensure that issuers and investors have full knowledge of the structure of corporate ownership, the definition of financial instruments in that Directive should cover all instruments with similar economic effect to holding shares and entitlements to acquire shares.
- (8a) Financial instruments with similar economic effect to holding shares and entitlements to acquire shares which provide for cash settlement shall be calculated on a ‘delta-adjusted’ basis, by multiplying the notional amount of underlying shares by the delta of the instrument. Delta indicates how much a financial instrument’s theoretical value would move in case of the underlying instrument’s price variation and provides an accurate picture of the exposure to the underlying instrument of the holder. This approach is taken to ensure that the total voting rights accessible by the investor is as accurate as possible.
- (9) In addition, in order to ensure adequate transparency of major holdings, where a holder of financial instruments exercises its entitlement to acquire shares and the total holdings of voting rights attaching to physical shares exceed the notification threshold without affecting the overall percentage of the previously notified holdings, a new notification should be required to disclose the change in the nature of the holdings.

(10) A harmonised regime for notification of major holdings of voting rights, especially regarding aggregation of holdings of shares with holdings of financial instruments, should improve legal certainty, enhance transparency and reduce administrative burden for cross-border investors. Member States should therefore not be allowed to adopt more stringent rules than those provided in Directive 2004/109/EC regarding the calculation of notification thresholds, aggregation of holdings of voting rights attaching to shares with holdings of voting rights relating to financial instruments and exemptions from the notification requirements. However, taking into account the existing differences in ownership concentration in the Union, and the differences in company laws in the Union leading to the total number of shares differing from the total number of voting rights for some issuers, Member States should continue to be allowed to set both lower and additional thresholds for notification of holdings of voting rights, and to require equivalent notifications in relation to thresholds based on capital holdings. Moreover, Member States should continue to be allowed to set stricter obligations than those provided in Directive 2004/109/EC with regard to the content (such as disclosure of shareholders' intentions), process and the timing for notification and to be able to require additional information regarding major holdings not provided for by Directive 2004/109/EC. In particular, Member States should also be able to continue to apply laws, regulations or administrative provisions adopted in relation to take-over bids, merger transactions and other transactions affecting the ownership or control of companies regulated by the supervisory 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 bids¹ that impose disclosure requirements more stringent than those in Directive 2004/109/EC.

¹ OJ L 142, 30.4.2004, p. 12.

- (11) Technical standards should ensure consistent harmonisation of the regime for notification of major holdings and adequate transparency levels. It would be efficient and appropriate to entrust ESMA with the elaboration, for submission to the Commission, of draft regulatory technical standards which do not involve policy choices. The Commission should adopt the draft regulatory technical standards developed by ESMA to specify the conditions for the application of existing exemptions from the notification requirements for major holdings of voting rights. Using its expertise, ESMA should in particular determine the cases of exemptions while taking account of their possible misuse to circumvent notification requirements.
- (12) In order to take account of technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission to specify the contents of notification of major holdings of financial instruments. As set out in the Declaration (No 39) on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, it is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drafting up of delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(13) To facilitate cross-border investment, investors should be able to easily access regulated information for all listed companies in the Union. However, the current network of officially appointed national storage mechanisms for regulated information does not ensure an easy search for such information across the Union. In order to ensure cross-border access to information and to take account of technical developments in financial markets and in communication technologies, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to specify minimum standards for dissemination of regulated information, access to regulated information at Union level and central storage mechanism of regulated information. The Commission, with assistance of ESMA, should also be empowered to take measures to improve the functioning of the network of national officially appointed storage mechanisms and develop technical criteria for access to regulated information at the Union level, in particular, concerning the operation of a central access point for the search of regulated information at the Union level. ESMA should develop and operate a web portal serving as European electronic access point ("the access point").

(14) In order to improve compliance with the requirements of Directive 2004/109/EC and following the Communication from the Commission of 9 December 2010 entitled "Reinforcing sanctioning regimes in the financial sector", the sanctioning powers should be enhanced and should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying an administrative sanction or measure, key sanctioning powers and levels of administrative pecuniary sanctions. Those sanctioning powers should be available at least in case of breach of key provisions of the Directive; Member States may also apply them in other circumstances. In particular, Member States should ensure that the administrative sanctions and measures that can be applied include the possibility to impose pecuniary sanctions which are sufficiently high to be dissuasive. In case of breaches by legal entities, Member States should provide for the application of sanctions to members of administrative, management or supervisory bodies of the legal entity or other individuals who can be held liable for those breaches under the conditions laid down in national law. Member States should also provide for the suspension or for the possibility to suspend the exercise of voting rights for holders of shares and financial instruments who do not comply with the notification requirements. Member States may opt to provide that the suspension of voting rights applies only to the most serious breaches. This Directive should refer to both administrative sanctions and measures in order to cover all cases of non-compliance, irrespective of their qualification as a sanction or a measure under national law and should be without prejudice to any provisions in the law of Member States relating to criminal sanctions. Member States may provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than these provided for in this Directive, having regard to the need for sufficiently dissuasive sanctions in order to support clean and transparent markets. These and the provisions regarding the publication of administrative sanctions do not constitute a precedent for other EU legislation, in particular for more serious regulatory breaches.

- (14a) In order to ensure that decisions imposing an administrative measure or sanction have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool to inform market participants of what behaviour is considered to be in violation of this directive and to promote wider good behaviour amongst market participants. However if publication of a decision would seriously jeopardise the stability of the financial system or an ongoing official investigation, would cause, insofar as it can be determined, disproportionate and serious damage to the institutions or individuals involved, or where, in case the sanction is imposed on a natural person, publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication, the competent authority may decide to delay publication or to publish the information on an anonymous basis.
- (15) In order to clarify the treatment of non-listed securities represented by depository receipts admitted to trading on a regulated market and in order to avoid transparency gaps, the definition of "issuer" should be further specified to include issuers of non-listed securities represented by depository receipts admitted to trading on a regulated market. It is also appropriate to amend the definition of 'issuer' taking into account that in some Member States issuers can be natural persons with securities admitted to trading on regulated markets.
- (15 a) According to Directive 2004/109/EC, in case of a third country issuer of debt securities the denomination per unit of which is less than EUR 1 000 or shares the issuer's home Member State is the Member State referred to in point (iii) of Article 2(1)(m) of Directive 2003/71/EC. To clarify and simplify the determination of the home Member State of such third country issuers, the definition should be amended to establish that the home Member State should be the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market.

- (16) All issuers whose securities are admitted to trading on a regulated market within the Union should be supervised by a competent authority of a Member State to ensure that they comply with their obligations. Issuers who, according to Directive 2004/109/EC, have to choose their home Member State but who have not done so, could avoid being supervised by any competent authority in the Union. Therefore, Directive 2004/109/EC should be amended to determine a home Member State for issuers that have not disclosed their choice of home Member State to the competent authorities within a three-month period. In such case, the home Member State should be the Member State where the issuer's securities are admitted to trading on a regulated market in its territory. In case the securities are admitted to trading on a regulated market in more than one Member State, all those Member States will be home Member States until the issuer makes a choice of an unique home Member State and discloses it. This would become an incentive for such issuers to choose and disclose their choice of home Member State to the relevant competent authorities, and in the meantime competent authorities would no longer be without the necessary powers to intervene until an issuer has disclosed its choice of home Member State.
- (17) According to Directive 2004/109/EC, in case of an issuer of debt securities with the denomination per unit of which is EUR 1 000 or more the issuer's choice of a home Member State is valid for three years. However, where an issuer's securities are no longer admitted to trading on the regulated market in the issuer's home Member State and remains admitted to trading in one or more host Member States, such issuer has no relationship with its originally chosen home Member State where that is not the Member State of its registered office. Such issuer may choose one of its host Member States or the Member State where it has its registered office, as its new home Member State before the expiration of the three-year period. The same possibility to choose a new home Member State would also apply to a third country issuer of debt securities the denomination per unit which is less than EUR 1 000 or shares whose securities are no longer admitted to trading on the regulated market in the issuer's home Member State, but remain admitted to trading in one or more host Member States.

- (17a) There should be consistency between Directives 2004/109/EC and 2003/71/EC concerning the definition of the home Member State. In this respect, in order for supervision to be ensured by the most relevant Member State, Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 should be modified to provide for more flexibility for situations where the securities of an issuer incorporated in a third country are no longer admitted to trading on the regulated market in its home Member State but instead are admitted to trading in one or more other Member States.
- (18) Commission Directive 2007/14/EC¹ contains in particular rules concerning the notification of the choice of the home Member State by the issuer. These rules are moved to Directive 2004/109/EC. To avoid that competent authorities of the host Member State(s) and of the Member State where the issuer has its registered office, where such Member State is neither home nor host Member State, are not informed about the choice of home Member State by the issuer, all issuers should be required to communicate the choice of their home Member State to the competent authority of its home Member State, the competent authorities of all host Member States and to the competent authority of the Member State where they have their registered office, where it is different from their home Member State. The rules concerning notification of the choice of home Member State should therefore be amended accordingly.
- (19) The requirement of Directive 2004/109/EC regarding disclosure of new loans has led to many implementation problems in practice and its application is considered to be complex. Furthermore, that requirement overlaps partially with the requirements laid down in 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 trading² and Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)³ and it does not provide much additional information to the market. In order to reduce unnecessary administrative burden for issuers, that requirement should therefore be abolished.

¹ OJ L 69, 9.3.2007, p. 27.

² OJ L 345, 31.12.2003, p. 64.

³ OJ L 96, 12.4. 2003, p. 16.

- (20) The requirement to communicate any amendment of issuer's instruments of incorporation or statutes to the competent authorities of the home Member State overlaps with the similar requirement of Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies¹ and can result in confusion regarding the role of the competent authority. In order to reduce unnecessary administrative burden for issuers, that requirement should therefore be abolished.
- (21) Directive 95/46 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 data² and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data³, are fully applicable to the processing of personal data for the purposes of this Directive.

¹ OJ L 184, 14.7.2007, p. 17.

² OJ L 281, 23.11.1995, p. 31.

³ OJ L 8, 12.1.2001, p. 1.

(21a) A harmonised electronic format for reporting would be very beneficial for issuers, investors and competent authorities, since it would make reporting easier and facilitate accessibility, analysis and comparability of annual financial reports. Therefore, preparation of annual financial reports in a single electronic reporting format should be mandatory with effect from 1 January 2020, provided that a cost benefit analysis has been undertaken by ESMA. ESMA should develop draft regulatory standards for adoption by the Commission, to specify the electronic reporting format, with due reference to current and future technological options, such as eXtensible Business Reporting Language (XBRL). ESMA, when preparing the draft regulatory technical standards, should conduct open public consultations for all stakeholders concerned, make a thorough assessment of the potential impacts of the adoption of the different technological options, and conduct appropriate tests in Member States on which it should report to the Commission when it submits the draft regulatory technical standards. In developing the draft regulatory technical standards on the formats to be applied to banks and financial intermediaries and to insurance companies, ESMA should cooperate regularly and closely with the EBA and the EIOPA, in order to take into account the peculiarities of these sectors, ensuring cross-sectoral consistency of work and reaching joint positions. The European Parliament and the Council should be able to object to the regulatory technical standards in line with Article 13(3) of the ESMA Regulation, in which case these standards shall not enter into force.

(21b) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaty and has to be implemented in accordance with those rights and principles.

(21c) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(22) Directives 2004/109/EC, 2003/71/EC and 2007/14/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2004/109/EC

Directive 2004/109/EC is hereby amended as follows:

(1) Article 2(1) is amended as follows:

(a) point (d) is replaced by the following:

"(d) "issuer" means a natural person, or legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market.

In 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;"

(b) point (i) is amended as follows:

(i) in sub point (i) the second indent is replaced by the following::

“- 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 home Member State shall remain valid unless the issuer has chosen a new home Member State under sub point (iii) and has disclosed the choice according to sub point (iv);”;

- (ii) sub point (ii) is replaced by the following:

“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, 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 (i) or (iii), during the three-year period;”;

- (iii) the following sub points are added:

“(iii) an issuer whose securities are no longer admitted to trading on a regulated market in its home Member State as defined by sub point (i) second indent or sub point (ii) but instead are admitted to trading in one or more other Member States, that issuer may choose a new home Member State 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;

(iv) an issuer shall disclose its home Member State 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 absence of disclosure by the issuer of its home Member State as defined by sub point (i) second indent or sub point (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 issuers securities are admitted to trading on a regulated market on its territory. 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 unique home Member State has been taken and disclosed by the issuer."

(c) the following point is added:

"(q) "formal agreement" means an agreement which is binding under the applicable law."

(1a) In Article 2 the following paragraph is added:

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

(2) Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive, except requiring issuers to publish periodic financial information on a more frequent basis than annual financial reports referred to in Article 4 and half-yearly financial reports referred to in Article 5."

(b) The following Paragraphs are inserted:

“1a. By 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 what contributes to investment decisions by the investors in the Member State concerned.

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 short-term results and performance of the issuers and whether they may impact negatively on access of small and medium sized issuers 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 Articles 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; and
- (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, regulated by the supervisory 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 (*).

(*) OJ L 142, 30.4.2004, p. 12."

(3) Article 4 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'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 10 years.';

(c) The following paragraph is added:

"7a. With effect from 1 January 2020 all annual financial reports shall be prepared in a single electronic reporting format provided that a cost benefit analysis has been undertaken by ESMA.

ESMA shall develop draft regulatory technical standards to specify the electronic reporting format, with due reference to current and future technological options. Before the adoption of the draft regulatory technical standards, ESMA shall carry out an adequate assessment of possible electronic reporting formats and conduct appropriate field tests. ESMA shall submit those draft regulatory technical standards to the Commission at the latest by 31 December 2016.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010."

(3a) Article 5(1) is replaced by the following:

"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 three months thereafter. The issuer shall ensure that the half-yearly financial report remains available to the public for at least 10 years."

(*) OJ L 331, 15.12.2010, p. 84.'

(5) Article 6 is replaced by the following:

"Article 6

Report on payments to governments

Member States shall require issuers active in the extractive or logging of primary forest industries, as defined in Article 36, paragraphs 1 and 2 of [the Accounting Directive] (*) to prepare, in accordance with Chapter 9 of [the Accounting Directive], a report on payments made to governments on an annual basis. The report shall be made public at the latest six months after the end of each financial year and shall remain publicly available for at least ten years. Payments to governments shall be reported at consolidated level.

(*) OJ: Please insert the number for the Directive contained in doc. st..... and complete the reference in the footnote.

(6) Article 8 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Articles 4 and 5 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, the European Financial Stability Facility (EFSF) as established by EFSF Framework Agreement and any other mechanism established with the objective to preserve financial stability of European monetary union by providing temporary financial assistance to euro area Member States 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 100 000 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 100 000.";

(c) Paragraph 4 is replaced by the following:

"4. By way of derogation from paragraph 1a of this Article, Articles 4 and 5 shall not apply to issuers of exclusively debt securities 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, which have already been admitted to trading on a regulated market in the Union before 31 December 2010, for as long as such debt securities are outstanding."

(7) Article 9 is amended as follows:

(b) Paragraph 6 is replaced by the following:

"6. This Article shall not apply to voting rights held in the trading book, as defined in Article 11 of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (*), of a credit institution or investment firm provided that:

(a) the voting rights held in the trading book do not exceed 5 %, and

(b) the voting rights attached to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the issuer."

(*) OJ L 177, 30.6.2006, p. 201.!

(c) The following paragraphs are inserted:

"6a. This Article shall not apply to voting rights attached to shares acquired for stabilisation purposes in accordance with Commission Regulation (EU) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (**), provided the voting rights attached to these shares are not exercised nor otherwise used to intervene in management of the issuer.

(**) OJ L 336, 23.12.2003, p. 33."

6b. ESMA shall develop draft regulatory technical standards to specify the method of calculation of the 5 % threshold referred to in paragraphs 5 and 6, including in the case of a group of companies, taking into account Article 12(4) and (5).

ESMA shall submit those draft regulatory technical standards to the Commission by [insert date: one year after the date of entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010."

(7a) Article 12 is amended as follows:

(a) In paragraph 2, the introductory wording is replaced by the following:

'The notification to the issuer shall be effected promptly, but not later than four trading days [...] after the date on which the shareholder, or the natural person or legal person referred to in Article 10,';

(8) Article 13 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. The notification requirements laid down in Article 9 shall also apply to a natural person or legal entity who holds, directly or indirectly:

(a) financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market;

- (b) financial instruments which are not included in point (a) but which are referenced to shares referred to in that point and with economic effect similar to financial instruments referred to in that point, whether they give right to a physical settlement or not.

The notification required shall include the breakdown by type of financial instruments held according to point (a) and financial instruments held according to point (b), distinguishing between the financial instruments which give right to a physical settlement and the financial instruments which give right to a cash settlement."

- (b) The following paragraphs are inserted:

'1a. The number of voting rights shall be calculated by reference to the full notional amount of shares underlying the financial instrument except where the financial instrument provides exclusively for a cash settlement, in which case the number of voting rights shall be calculated on a 'delta-adjusted' basis, by multiplying the notional amount of underlying shares by the delta of the instrument. For this purpose, the holder shall aggregate and notify all financial instruments relating to the same underlying issuer. Only long positions shall be taken into account for the calculation of voting rights. Long positions shall not be netted with short positions relating to the same underlying issuer.

ESMA shall develop draft regulatory technical standards to specify:

- (a) the method to calculate the number of voting rights referred to in the first subparagraph in case of financial instruments referenced to a basket of shares or an index; and
- (b) the methods of determination of delta for the purposes of calculation of voting rights relating to financial instruments which provide exclusively for a cash settlement as required by the first subparagraph.

ESMA shall submit those draft regulatory technical standards to the Commission by [insert date: one year after the date of entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

1b. For the purposes of paragraph 1 the following shall be considered to be financial instruments, provided they satisfy any of the conditions set out in points (a) or (b) of paragraph 1:

- (a) transferable securities;
- (b) options;
- (c) futures;
- (d) swaps;
- (e) forward rate agreements;
- (f) contracts for differences; and,
- (g) any other contracts or agreements with similar economic effects which may be settled physically or in cash.

ESMA shall establish and periodically update an indicative list of financial instruments that are subject to notification requirements according to paragraph 1, taking into account technical developments on financial markets."

(c) Paragraph 2 is replaced by the following:

'2. The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, the measures to specify the contents of the notification to be made, the notification period and to whom the notification is to be made as referred to in paragraph 1.

(d) The following paragraph 4 is added:

'4. The exemptions laid down in Article 9(4), (5) and (6) and in Article 12(3), (4) and (5) shall apply *mutatis mutandis* to the notification requirements under this Article.

ESMA shall develop draft regulatory technical standards to specify the cases in which the exemptions referred to in the first subparagraph apply to financial instruments held by a natural person or a legal entity fulfilling orders received from clients or responding to a client's requests to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings.

ESMA shall submit those draft regulatory technical standards to the Commission by [insert date: one year after the date of entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010¹.

(9) The following Article 13a is inserted:

'Article 13a

Aggregation

1. The notification requirements laid down in Articles 9, 10 and 13 shall also apply to a natural person or a legal entity when the number of voting rights held directly or indirectly by such person or entity under Articles 9 and 10 aggregated with the number of voting rights relating to financial instruments held directly or indirectly under Article 13 reaches, exceeds or falls below the thresholds set out in Article 9(1).

The notification required under the first subparagraph of this paragraph shall include the breakdown of the number of voting rights attached to shares held according to Articles 9 and 10 and voting rights relating to financial instruments within the meaning of Article 13.

2. Voting rights relating to financial instruments that have already been notified according to Article 13 shall be notified again when the natural person or the legal entity has acquired the underlying shares and such acquisition results in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding the thresholds of Article 9(1).'

(10) Article 16(3) is deleted.

(11) In Article 19(1), the second subparagraph is deleted.

(12) Article 21(4) is replaced by the following:

'4. The Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures to specify the following minimum standards and rules:

- (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;
- (c) rules to ensure the interoperability of the information and communication technologies used by the national officially appointed mechanisms and the access to regulated information at the Union level, 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.'

(12a) The following article is inserted:

'Article 21a

1. A web portal serving as European electronic access point ("the access point") shall be established by 1 January 2018. ESMA shall develop and operate the access point.
2. The system of interconnection of officially appointed mechanisms shall be composed of:
 - the central storage mechanisms of Member States,
 - the portal serving as the European electronic access point.
3. Member States shall ensure the access to their central storage mechanisms via the access point.'

(13) Article 22 is replaced by the following:

'Article 22

Access to regulated information at the Union level

1. ESMA shall develop draft regulatory technical standards setting technical requirements regarding access to regulated information at the Union level in order to specify the following:
 - (a) the technical requirements regarding communication technologies used by the national officially appointed mechanisms
 - (b) the technical requirements for the operation of the central access point for the search of regulated information at the Union level;
 - (c) the technical requirements regarding the use of a unique identifier for each issuer by the national officially appointed mechanisms;
 - (d) the common format for delivering regulated information by national officially appointed mechanisms;
 - (e) the common classification of regulated information by national officially appointed mechanisms and the common list of types of regulated information.

2. In developing the draft regulatory technical standards, ESMA shall take into account the technical requirements for the system of interconnection of business registers established by the Directive 2012/17/EU of the European Parliament and of the Council (*).

ESMA shall submit those draft regulatory technical standards to the Commission by [insert date: two years after the date of entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'

(*) OJ: Please complete the reference in the footnote.

(13a) In Article 23, paragraph 1, a subparagraph is added after the second subparagraph:

"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."

(13b) In Article 24 the following paragraph is added:

"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.
-

(13c) In Article 25 (2) the following subparagraph is added:

“In the exercise of their sanctioning and investigative powers, competent authorities shall cooperate to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases.”

(14) The following title is inserted after Article 27b:

"CHAPTER VIa

SANCTIONS AND MEASURES"

(15) Article 28 is replaced by the following:

"Article 28

Administrative measures and sanctions

1. Without prejudice to the powers of competent authorities in accordance with Article 24 and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative measures and sanctions applicable to breaches of the national provisions adopted in the implementation of this Directive and shall take all measures necessary to ensure that they are implemented. Those administrative sanctions and measures shall be effective, proportionate and dissuasive.
2. Without prejudice to Article 7, Member States shall ensure that where obligations apply to legal entities, in case of a breach, sanctions can be applied, subject to the conditions laid down in national law, to the members of administrative, management or supervisory bodies of the legal entity, and to other individuals who are responsible for the breach under national law."

(16) The following articles are inserted:

"Article 28a

Breaches

Article 28b shall apply at least to the following breaches:

- (a) failure by the issuer to make public information required under the national provisions adopted in the implementation of Articles 4, 5, 6, 14 and 16 within the required time limit;
- (b) failure by the natural or the legal person to notify the acquisition or disposal of a major holding according to the national provisions adopted in the implementation of Articles 9, 10, 12, 13 and 13a within the required time limit.

Article 28b

Sanctioning powers

- 1. In case of breaches referred to in Article 28a competent authorities shall have the power to impose at least the following administrative measures and sanctions:
 - (a) a public statement which indicates the natural person or the legal entity responsible and the nature of the breach;
 - (b) an order requiring the natural person or the legal entity responsible to cease the conduct and to desist from a repetition of that conduct;
 - (c) administrative pecuniary sanctions of;

(i) in case of a legal entity,

- up to EUR 10 000 000 or up to 5 % of the total annual turnover according to the last available accounts approved by the management body; where the legal entity is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 83/349/EEC, the relevant total turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting Directives according to the last available consolidated account approved by the management body of the ultimate parent undertaking; or
- up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined;

whichever is higher;

(ii) in case of a natural person:

- up to EUR 2 000 000; or
- up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined;

whichever is higher.

In Member States where the Euro is not the official currency, the corresponding value to Euro in the national currency shall be calculated taking into account the official exchange rate on the date of entry into force of this Directive.

2. Without prejudice to the powers of competent authorities in accordance with Article 24 and the right of Member States to impose criminal sanctions, Member States shall ensure that their laws, regulations or administrative provisions provide for possibility to suspend the exercise of voting rights attached to shares in case of the breaches referred to in Article 28a point (b). Member States may provide that the suspension of voting rights applies only to the most serious breaches.
- 2a. Member States may provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in this Directive.

Article 28c

Exercise of sanctioning powers

1. Member States shall ensure that when determining the type and level of administrative sanctions or measures, the competent authorities shall take into account all relevant circumstances, including where appropriate:
 - (a) the gravity and the duration of the breach;
 - (b) the degree of responsibility of the responsible natural person or legal entity;
 - (c) the financial strength of the responsible natural person or legal entity, for example as indicated by the total turnover of the responsible legal entity or the annual income of the responsible natural person;
 - (d) the importance of profits gained or losses avoided by the responsible natural person or legal entity, insofar as they can be determined;

- (e) the losses for third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the responsible natural person or legal entity with the competent authority;
- (g) previous breaches by the responsible natural person or legal entity.

2. The processing of personal data collected in or for the exercise of the supervisory and investigatory powers in accordance with this Directive shall be carried out in accordance with Directive 95/46/EC and Regulation 45/2001 where relevant."

(17) The following title is inserted before Article 29:

"CHAPTER VIb
Publication of decisions"

(17a) Article 29 is replaced by the following:

"Article 29
Publication of decisions

1. Member States shall provide that competent authorities publish every decision on sanctions and measures imposed for a breach of this Directive without undue delay, including at least information on the type and nature of the breach and the identity of natural persons or legal entities responsible for it.

However competent authorities may delay publication of a decision, or may publish the decision on an anonymous basis in a manner which is in conformity with national law in any of the following circumstances:

- (a) where, in case the sanction is imposed on a natural person, publication of personal data is found to be disproportionate by an obligatory prior assessment of the proportionality of such publication;
 - (b) where publication would seriously jeopardise the stability of the financial system or an on-going official investigation;
 - (c) where publication would cause, insofar as it can be determined, disproportionate and serious damage to the institutions or natural persons involved.
2. If the decision published under paragraph 1 is appealed, the competent authority is obliged to include this information in the publication either at the time of the publication or amend the publication if appeal is submitted after the initial publication.”.

(18) Article 31(2) is replaced by the following

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

Article 1a
Amendments to Directive 2003/71/EC

Directive 2003/71/EC is amended as follows:

In Article 2(1)(m) sub point (iii) is replaced by the following:

“(iii) for all issuers of securities incorporated in a third country, which are not mentioned in (ii), the Member State where the securities are intended to be offered to the public for the first time after the date of entry into force of this Directive or where the first application for admission to trading on a regulated market is made, at the choice of the issuer, the offeror or the person asking for admission, as the case may be, subject to a subsequent election by issuers incorporated in a third country in the following circumstances:

- where the home Member State was not determined by their choice; or
- in accordance with Article 2(1)(i) sub point (iii) of Directive 2004/109/EC.”

Article 2
Amendments to Directive 2007/14/EC

Directive 2007/14/EC is hereby amended as follows:

- (1) Article 2 is deleted.
- (2) In Article 11, paragraphs 1 and 2 are deleted.
- (3) Article 16 is deleted.

Article 2a
Transitional provisions

1. By way of derogation from Article 1(1)(b), for an issuer whose securities are already admitted to trading on a regulated market and that has not made a choice of a home Member State prior to the date in Article 3(1) [or prior to the date of entry into force of this Directive], the period of three months will start on the date in Article 3(1) [or the date of entry into force of this Directive] ;
2. By way of derogation from Article 1(1)(b)(iii), an issuer that has made a choice of a home Member State and has communicated this choice to the competent authorities of the home Member State prior to the date in Article 3(1) [or prior to the date of entry into force of this Directive], shall be exempted from the requirement of Article 1(1)(b)(iii), unless such issuer chooses another home Member State after the date in Article 3(1) [or after the date of entry into force of this Directive].

Article 3
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive 24 months from the date of entry into force of the Directive. They shall forthwith communicate to the Commission the text of those provisions.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3a
Review

Three years after the transposition date of this Directive, the Commission shall report on the operation of this Directive to the European Parliament and the Council, including on its impact on small and medium-sized issuers, the application of sanctions, in particular whether they are effective, proportionate and dissuasive, and review the functioning and assess the effectiveness of the retained method to calculate the number of voting rights relating to the financial instruments referred to Article 13(1a), first subparagraph.

The report shall be submitted together with a legislative proposal, if appropriate.

Article 4
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 5
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
