



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Economic and Monetary Affairs

2009/0132(COD)

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*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (COM(2009)0491 – C7-0170/2009 – 2009/0132(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Wolf Klinz

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	46

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market
(COM(2009)0491 – C7-0170/2009 – 2009/0132(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0491),
 - having regard to Article 251(2) and Articles 44 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0170/2009),
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" (COM(2009)0665),
 - having regard to Article 294(3) and Articles 50 and 114 of the Treaty on the Functioning of the EU,
 - having regard to the opinion of the European Central Bank,
 - having regard to the opinion of the European Economic and Social Committee,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0000/2010),
1. Adopts the position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

Amendment 1

Proposal for a directive – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Following the conclusions of the report of the High Level Group on Financial Supervision in the EU (the de Larosière group), the Commission put forward concrete legislative proposals on 23 September 2009 in order to establish a European System of Financial Supervisors (ESFS) comprising a network of national financial supervisors working in tandem with new European Supervisory Authorities. Moreover, the newly created European Securities and Markets Authority (ESMA) is to replace the Committee of European Securities Regulators (CESR).

Or. en

Amendment 2

Proposal for a directive – amending act Recital 6

Text proposed by the Commission

Amendment

(6) For the purposes of private placements of securities, investment firms and credit institutions should be entitled to treat as qualified investors those natural or legal persons that are considered to be or that they treat as professional clients, or that are recognized eligible counterparties in accordance with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and

(6) For the purposes of private placements of securities, investment firms and credit institutions should be entitled to treat as qualified investors those natural or legal persons that are considered to be or that they treat as professional clients, or that are recognized eligible counterparties in accordance with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and

repealing Council Directive 93/22/EEC¹⁸. An alignment of the relevant provisions of Directives 2003/71/EC and 2004/39/EC in this sense would reduce complexity and costs for investment firms in the event of private placements because the firms would be able to define the persons to whom the placement is to be addressed relying on their own list of professional clients and eligible counterparties. Therefore, the definition of qualified investors in Directive 2003/71/EC should be widened to include those persons.

repealing Council Directive 93/22/EEC¹⁸. An alignment of the relevant provisions of Directives 2003/71/EC and 2004/39/EC in this sense would reduce complexity and costs for investment firms in the event of private placements because the firms would be able to define the persons to whom the placement is to be addressed relying on their own list of professional clients and eligible counterparties. Therefore, the definition of qualified investors in Directive 2003/71/EC should be widened to include those persons ***and no separate register should be maintained.***

Or. en

Amendment 3

Proposal for a directive – amending act Recital 8

Text proposed by the Commission

(8) A valid prospectus, drawn up by the issuer or the offeror and available to the public at the time of the final placement of securities through financial intermediaries or in any subsequent resale of securities, provides sufficient information for investors to make informed investment decisions. Therefore, financial intermediaries placing or subsequently reselling the securities should be entitled to rely upon the initial prospectus published by the issuer or the offeror as long as this is valid and duly supplemented in accordance with Article 9 and Article 16 of Directive 2003/71/EC and the issuer or the offeror responsible for drawing up such prospectus consents to its use. In this case no other prospectus should be required. However, in case the issuer or the offeror responsible for drawing up such initial prospectus does not consent to its use, the financial

Amendment

(8) A valid prospectus, drawn up by the issuer or the offeror and available to the public at the time of the final placement of securities through financial intermediaries or in any subsequent resale of securities, provides sufficient information for investors to make informed investment decisions. Therefore, financial intermediaries placing or subsequently reselling the securities should be entitled to rely upon the initial prospectus published by the issuer or the offeror as long as this is valid and duly supplemented in accordance with Article 9 and Article 16 of Directive 2003/71/EC and the issuer or the offeror responsible for drawing up such prospectus consents to its use. ***The issuer or the offeror should be able to attach conditions to his or her consent.*** In this case ***the issuer or the offeror responsible for drawing up the initial prospectus should***

intermediary should be required to publish a new prospectus.

be liable for the information stated therein and no other prospectus should be required. However, in case the issuer or the offeror responsible for drawing up such initial prospectus does not consent to its use, the financial intermediary should be required to publish a new prospectus. ***In that case, the financial intermediary should be liable for the information stated in the prospectus. Should the financial intermediary choose to use the initial prospectus without consent, the intermediary should also be liable for the information stated in the initial prospectus.***

Or. en

Amendment 4

Proposal for a directive – amending act Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) In order to allow for the efficient application of Directive 2003/71/EC (the Prospectus Directive), 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 market¹ (the Transparency Directive) 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)² (the Market Abuse Directive) and to clarify underlying problems of differentiation and overlaps, the Commission should put forward a definition of 'primary market', 'secondary market' and 'public offer'.

¹ OJ L 390, 31.12.2004, p. 38.

² OJ L 96, 12.4.2003, p. 16.

Amendment 5

Proposal for a directive – amending act Recital 8 b (new)

Text proposed by the Commission

Amendment

(8b) Liability regimes in the Member States exhibit significant differences due to national competence in civil law. In order to identify and monitor the arrangements in the Member States, ESMA shall establish a comparative table of Member States' regimes.

Or. en

Amendment 6

Proposal for a directive – amending act Recital 10

Text proposed by the Commission

Amendment

(10) The summary of the prospectus *is* a key source of information for retail investors. It should be short, simple and easy for targeted investors to understand. It should focus ***on the key information*** that investors need in order to be able to make informed investment decisions. Its ***content should not be restricted to any predetermined number of words. The format and content of the summary should be determined in a way that ensures comparability with other investment products that are similar to the investment proposal described in the prospectus. Therefore, Member States should attach civil liability on the basis of the summary not only if it is misleading, inaccurate or inconsistent, when read together with the other parts of the***

(10) The summary of the prospectus ***should be replaced by a key information document, which will be*** a key source of information for retail investors. It should be short, simple, ***clear*** and easy for targeted investors to understand. It should focus on ***essential elements*** that investors need in order to be able to make informed investment decisions. It ***should be concise and should present the information in a specified order to allow harmonisation to the highest extent possible and to facilitate comparability. ESMA should provide advice to the Commission when preparing the necessary level two measures. ESMA shall take into account developments regarding Packaged Retail Investment Products (PRIPs) referred to in the Commission Communication of 30***

prospectus, but also if it does not provide key information enabling investors to take informed investment decisions and to compare the securities with other investment products.

April 2009, when providing advice on the implementing measures.

Or. en

Amendment 7

Proposal for a directive – amending act Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) The PRIP initiative will clarify how to ensure adequate investor protection and comparability with other investment products at a pre-contractual stage. The distribution aspect is of paramount importance when ensuring retail investor protection. Directives 2003/71/EC and 2004/109/EC should be amended by a horizontal measure in this respect in due course.

Or. en

Amendment 8

Proposal for a directive – amending act Recital 10 b (new)

Text proposed by the Commission

Amendment

(10b) The key information document should replace the summary of the prospectus for the purposes of the notification process. The final terms should supplement the key information document where those terms are not known at the time of drawing up the key information document or in the case of base prospectuses.

Amendment 9

Proposal for a directive – amending act Recital 13

Text proposed by the Commission

(13) As the prospectus can be updated by way of supplements according to Directive 2003/71/EC, there is no risk that it may become outdated. Therefore, given the time and costs of drafting and approving a prospectus, the validity period of 12 months of the prospectus, **base prospectus** and registration document should be extended to 24 months provided they are properly supplemented.

Amendment

(13) As the prospectus can be updated by way of supplements according to Directive 2003/71/EC, there is no risk that it may become outdated. Therefore, given the time and costs of drafting and approving a prospectus, the validity period of 12 months of the prospectus and registration document should be extended to 24 months **and the validity of a base prospectus should be extended to 36 months** provided they are properly supplemented.

Or. en

Amendment 10

Proposal for a directive – amending act Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) In order to improve legal certainty, the validity of a prospectus should commence on its approval, which can be easily verified by the competent authority.

Or. en

Amendment 11

Proposal for a directive – amending act Recital 15

Text proposed by the Commission

(15) In order to clarify whether the requirement to publish a supplement to the prospectus ends with the start of trading of the securities on a regulated market irrespective of whether the offering period has closed, the obligation to supplement a prospectus should be terminated at the final closing of the offering period or the time when trading of such securities on a regulated market begins, whichever occurs earlier.

Amendment

(15) In order to clarify whether the requirement to publish a supplement to the prospectus ends with the start of trading of the securities on a regulated market irrespective of whether the offering period has closed, the obligation to supplement a prospectus should be terminated at the final closing of the offering period or the time when trading of such securities on a regulated market begins, whichever occurs earlier. ***The requirement to supplement the prospectus shall cease once the transparency obligations laid down in Directives 2004/109/EC and 2003/6/EC apply unless the prospectus is used for further public offers or further admissions to trading on a regulated market.***

Or. en

Amendment 12

Proposal for a directive – amending act Recital 16

Text proposed by the Commission

(16) When the prospectus is supplemented, harmonization at Community level of the time frame for the exercise by investors of the right of withdrawal of their previous acceptances would provide certainty to issuers making cross border offers of securities. To provide flexibility to issuers from Member States with traditionally longer time frame in this regard, the issuer, the offeror or the person asking for the admission to trading on a regulated market should be able to

Amendment

(16) When the prospectus is supplemented, harmonization at Community level of the time frame for the exercise by investors of the right of withdrawal of their previous acceptances would provide certainty to issuers making cross border offers of securities. To provide flexibility to issuers from Member States with traditionally longer time frame in this regard, the issuer, the offeror or the person asking for the admission to trading on a regulated market should be able to extend voluntarily the

extend voluntarily the term for the exercise of that right.

term for the exercise of that right. *To improve legal certainty the supplement to the prospectus should specify when the right of withdrawal ends.*

Or. en

Amendment 13

Proposal for a directive – amending act Recital 18

Text proposed by the Commission

(18) The measures necessary for the implementation of 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.

Amendment

(18) The measures necessary for the implementation of this Directive should be adopted in accordance *with Article 291 of the Treaty and* with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Or. en

Amendment 14

Proposal for a directive – amending act Recital 19

Text proposed by the Commission

(19) *In particular*, in order to take account of the technical developments in the financial markets and to ensure uniform application of Directive 2003/71/EC, the Commission should be empowered to adopt *implementing measures to update* the limits established in *that* Directive. *Since those measures are of general scope and are designed to amend non-essential elements of Directive 2003/71/EC by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure*

Amendment

(19) In order to take account of the technical developments in the financial markets and to ensure uniform application of Directive 2003/71/EC, the Commission should be empowered to adopt *delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union concerning the updating of the* limits established in Directive 2003/71/EC, *and specifying the detailed content and specific form of the key information document. In that regard, the Commission should take into account*

with scrutiny provided for in Article 5a of Decision 1999/468/EC.

ongoing developments regarding PRIPs.

Or. en

Amendment 15

Proposal for a directive – amending act Recital 21

Text proposed by the Commission

(21) Directive 2003/71/EC and Directive **2004/109** should therefore be amended accordingly,

Amendment

(21) Directive 2003/71/EC and Directive **2004/109/EC** should therefore be amended accordingly,

Or. en

Amendment 16

Proposal for a directive – amending act Article 1 – point 1 – point b Directive 2003/71/EC Article 1 – paragraph 4 (new)

Text proposed by the Commission

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall ***adopt implementing*** measures concerning the adjustment of the limits referred to in points (h) and (j) of Article 1(2). ***Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.***

Amendment

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall ***lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b,*** measures concerning the adjustment of the limits referred to in points (h) and (j) of Article 1(2).

Or. en

Amendment 17

Proposal for a directive – amending act
Article 1 – point 2 – point a – subpoint ii
Directive 2003/71/EC
Article 2 – paragraph 1 – point e

Text proposed by the Commission

(ii) **Points (ii) and (iii)** are deleted.

Amendment

(ii) **Points (ii), (iii), (iv) and (v)** are deleted.

Or. en

Amendment 18

Proposal for a directive – amending act
Article 1 – point 2 – point a a (new)
Directive 2003/71/EC
Article 2 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(aa) The following point is inserted:
"(fa) 'company with reduced market capitalization' means a company listed on a regulated market and having had an average market capitalization of less than EUR 100 000 000 on the basis of year-end quotes during the previous three calendar years."

Or. en

Amendment 19

Proposal for a directive – amending act
Article 1 – point 2 – point b a (new)
Directive 2003/71/EC
Article 2 – paragraph 4

Text proposed by the Commission

Amendment

(ba) Article 2(4) is replaced by the following:

"4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, the definitions referred to in paragraph 1, including adjustment of the figures used for the definition of SMEs, taking into account Community legislation and recommendations as well as economic developments [...]."

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 20

Proposal for a directive – amending act

Article 1 – point 3 – point a a (new)

Directive 2003/71/EC

Article 3 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(aa) The following point is added:

"(ea) rights issues of companies whose securities are already admitted for trading on a regulated market."

Or. en

Amendment 21

Proposal for a directive – amending act

Article 1 – point 3 – point b

Directive 2003/71/EC

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

Member States shall not require another prospectus in any such subsequent resale of

Member States shall not require another prospectus in any such subsequent resale of

securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Article 9 and the issuer or the person responsible for drawing up such prospectus consents to its use.

securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Article 9 and the issuer or the person responsible for drawing up such prospectus ***and any other entity which, as a result of a national law, is liable for the accuracy of the content of such prospectus*** consents to its use.

Or. en

Amendment 22

Proposal for a directive – amending act

Article 1 – point 4 a (new)

Directive 2003/71/EC

Article 4 – paragraph 2 – point h – point v

Text proposed by the Commission

Amendment

The substitution of 'summary' by 'key information document' applies through the whole text

4a. In Article 4(2)(h) point v is replaced by the following

"(v) that the person seeking the admission of a security to trading on a regulated market under this exemption makes a *key information document* available to the public in a language accepted by the competent authority of the Member State of the regulated market where admission is sought;"

Or. en

Amendment 23

Proposal for a directive – amending act

Article 1 – point 4 b (new)

Directive 2003/71/EC

Article 4 – paragraph 3

4b. Article 4(3) is replaced by the following:

"3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down by means of delegated acts in accordance with Articles 24, 24a and 24b measures concerning paragraphs 1(b), 1(c), 2(c) and 2(d), notably in relation to the meaning of equivalence. [...]"

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 24

Proposal for a directive – amending act

Article 1 – point 5

Directive 2003/71/EC

Article 5 – paragraph 2 – subparagraph 1 –introductory part

Text proposed by the Commission

Amendment

2. The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. **It** shall also include a **summary**. The **summary** shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities, in the language in which the prospectus was originally drawn up. The format and content of the **summary** of the prospectus shall provide **key information** in order to enable investors to take informed investment decisions **and to compare the securities with other investment products**. The **summary** shall also contain a warning that:

2. The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. **The prospectus** shall also include a **key information document**. The **key information document** shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities. **It shall be in a common format and** in the language in which the prospectus was originally drawn up. The format and content of the **key information document** of the prospectus shall provide **appropriate information about the essential characteristics of the securities concerned** in order to enable investors to take informed investment

decisions.

The key information document shall include information on the following essential elements in respect of the securities concerned:

(a) essential information on the issuer, if applicable, the guarantor, and the securities to be offered to the public or to be admitted to trading on a regulated market;

(b) a short description of the risks associated with and essential characteristics of the investment in the relevant security;

(c) details of the offer and admission to trading;

(d) the assets, liabilities and financial position of the securities, if applicable;

(e) the reasons for the offer and prospective use of proceeds, where appropriate;

(f) any rights attaching to the securities; and

(g) the general terms and associated costs.

The *key information document* shall also contain a warning that:

Or. en

Amendment 25

Proposal for a directive – amending act

Article 1 – point 5 a (new)

Directive 2003/71/EC

Article 5 – paragraph 5

Text proposed by the Commission

Amendment

5a. Article 5(5) is replaced by the following:

"5. In order to take account of technical developments on financial markets and to ensure uniform application of this

Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning the format of the prospectus or base prospectus and supplements. [...]"

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 26

Proposal for a directive – amending act

Article 1 – point 5 b (new)

Directive 2003/71/EC

Article 5 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5b. In Article 5 the following paragraph is added:

"5a. In order to achieve the objectives of this Directive, the Commission shall also lay down, by means of delegated acts in accordance with the Articles 24, 24a and 24b measures to establish:

(a) the detailed content and specific form of the key information document referred to in paragraph 2 and 3

(b) the detailed content and specific form of the key information document in regard to:

(i) structured securities and base prospectuses;

(ii) shares; and

(iii) bonds.

Those delegated acts shall be adopted by ...*.

*** OJ please insert date: 18 months after entry into force of this Directive,"**

Or. en

Amendment 27

Proposal for a directive – amending act

Article 1 – point 6

Directive 2003/71/EC

Article 6 – paragraph 2 – subparagraph 2

Text proposed by the Commission

However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the **summary**, including any translation thereof, unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, **and it does not provide key information enabling investors to take informed investment decisions and to compare the securities with other investment products.**

Amendment

However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the **key information document**, including any translation thereof, unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus. **Key investor information shall contain a clear warning in this respect.**

Or. en

Amendment 28

Proposal for a directive – amending act

Article 1 – point 6 a (new)

Directive 2003/71/EC

Article 7 – paragraph 1

Text proposed by the Commission

Amendment

6a. Article 7(1) is replaced by the following:

"1. Detailed *delegated acts* regarding the specific information which must be included in a prospectus, avoiding duplication of information when a prospectus is composed of separate documents, shall be adopted by the Commission *in accordance with Articles 24, 24a and 24b*. The first set of *delegated acts* shall be adopted by 1 July 2004."

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 29

Proposal for a directive – amending act

Article 1 – point 7 – point b

Directive 2003/71/EC

Article 7 – paragraph 2 – point g

Text proposed by the Commission

Amendment

Point (g) is inserted:

deleted

"(g) a proportionate disclosure regime shall apply to rights issues of companies whose shares are admitted to trading on a regulated market."

Or. en

Amendment 30

Proposal for a directive – amending act

Article 1 – point 7 a (new)

Directive 2003/71/EC

Article 7 – paragraph 3

Text proposed by the Commission

Amendment

7a. Article 7(3) is replaced by the following:

"3. The *delegated acts* referred to in paragraph 1 shall be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, and in particular by IOSCO and on the indicative Annexes to this Directive."

Or. en

(The wording in bold is unchanged text from the act being amended)

Amendment 31

Proposal for a directive – amending act

Article 1 – point 8 a (new)

Directive 2003/71/EC

Article 8 – paragraph 4

Text proposed by the Commission

Amendment

8a. Article 8(4) is replaced by the following:

"4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning paragraph 2. [...]"

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 32

Proposal for a directive – amending act

Article 1 – point 9 – point a

Directive 2003/71/EC

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. In the case of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to **24 months**.

2. In the case of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to **36 months**.

Or. en

Amendment 33

Proposal for a directive – amending act

Article 1 – point 11 a (new)

Directive 2003/71/EC

Article 11 – paragraph 3

Text proposed by the Commission

Amendment

11a. Article 11(3) is replaced by the following:

"3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning the information to be incorporated by reference. [...]"

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 34

Proposal for a directive – amending act

Article 1 – point 12

Directive 2003/71/EC

Article 12 – paragraph 2

Text proposed by the Commission

Amendment

2. In this case, the registration document shall be supplemented in accordance with Article 16. The securities and **summary notes** shall be subject to a separate approval.

2. In this case, the registration document shall be supplemented in accordance with Article 16. The securities **note** and **key information document** shall be subject to a separate approval.

Or. en

Amendment 35

Proposal for a directive – amending act

Article 1 – point 12 a (new)

Directive 2003/71/EC

Article 13 – paragraph 7

Text proposed by the Commission

Amendment

12a. Article 13(7) is replaced by the

following:

"7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures concerning the conditions in accordance with which time limits may be adjusted. [...]"

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 36

Proposal for a directive – amending act

Article 1 – point 13

Directive 2003/71/EC

Article 14 – paragraph 4

Text proposed by the Commission

4. The competent authority of the home Member State shall publish on its website over a period of **24 months**, at its choice, all the prospectuses approved, or at least the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the issuer, or on the website of the regulated market.

Amendment

4. The competent authority of the home Member State shall publish on its website over a period of **24 or 36 months respectively**, at its choice, all the prospectuses approved, or at least the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the issuer, or on the website of the regulated market.

Or. en

Amendment 37

Proposal for a directive – amending act

Article 1 – point 13 a (new)

Directive 2003/71/EC

Article 14 – paragraph 8

Text proposed by the Commission

Amendment

13a. Article 14(8) is replaced by the following:

"7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall *lay down, by means of delegated acts* in accordance with *Articles 24, 24a and 24b*, measures concerning paragraphs 1, 2, 3 and 4. The first set of *delegated acts* shall be adopted by 1 July 2004. [...]"

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 38

Proposal for a directive – amending act

Article 1 – point 13 b (new)

Directive 2003/71/EC

Article 15 – paragraph 7

Text proposed by the Commission

Amendment

13b. Article 15(7) is replaced by the following:

"7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall *lay down, by means of delegated acts* in accordance with *Articles 24, 24a and 24b*, measures concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and concerning paragraph 4. The first set of *delegated acts* shall be adopted by the Commission by 1 July

(The wording in bold is unchanged text from the act being amended.)

Amendment 39

Proposal for a directive – amending act

Article 1 – point 14

Directive 2003/71/EC

Article 16

Text proposed by the Commission

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs earlier, shall be mentioned in a supplement to the prospectus. Such a supplement shall be **approved in the same way in a maximum of seven working days** and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The **summary**, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.

2. Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the

Amendment

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs earlier, shall be mentioned in a supplement to the prospectus. ***In the event that the final closing of the offer takes place before an admission of the same securities to trade, the issuer may make further use of the existing prospectus and may update it by way of a supplement.*** Such a supplement shall be ***immediately submitted to the competent authority*** and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The ***key information document*** and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.

2. Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the

supplement, to withdraw their acceptances. This period may be extended by the issuer, the offeror or the person asking for the admission to trading on a regulated market.

supplement, to withdraw their acceptances ***in the event of adverse developments, provided that settlement has not yet taken place.*** This period may be extended by the issuer, the offeror or the person asking for the admission to trading on a regulated market. ***The final date of the right of withdrawal shall be stated in the supplement.***

Or. en

Amendment 40

Proposal for a directive – amending act

Article 1 – point 15 a (new)

Directive 2003/71/EC

Article 20 – paragraph 3

Text proposed by the Commission

Amendment

15a. Article 20(3) is replaced by the following:

"3. In order to ensure uniform application of this Directive, the Commission shall lay down, by means of delegated acts in accordance with Articles 24, 24a and 24b, measures to establish general equivalence criteria, based on the requirements laid down in Articles 5 and 7. [...]

On the basis of such criteria, the Commission may, in accordance with Articles 24, 24a and 24b, declare that a third country ensures the equivalence of prospectus drawn up in that country with this Directive by reason of its national law, or of practices or procedures based on international standards set by international organisations, including the IOSCO disclosure standards."

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 41

Proposal for a directive – amending act

Article 1 – point 15 b (new)

Directive 2003/71/EC

Article 24 – paragraph 1

Text proposed by the Commission

Amendment

This amendment applies to the whole text

15b. Article 24(1) is replaced by the following:

"1. The Commission shall be assisted by the European Securities and Markets Authority. (hereinafter referred to as 'the Authority')."

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 42

Proposal for a directive – amending act

Article 1 – point 15 c

Directive 2003/71/EC

Article 24 – paragraph 2a

Text proposed by the Commission

Amendment

15c. Article 24(2a) is replaced by the following:

2. The power to adopt the delegated acts referred to in Articles 1(3a), 2(4), 4(3), 5(5), 5(5a), 7(1), 7(3), 8(4), 11(3), 13(7), 14(8), 15(7) and 20(3) shall be conferred on the Commission for an indeterminate period of time.

2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 24a and 24b.

Or. en

Amendment 43

Proposal for a directive – amending act

Article 1 – point 15 d (new)

Directive 2003/71/EC

Article 24 – paragraph 3

Text proposed by the Commission

Amendment

15d. Article 24(3) is deleted.

Or. en

Amendment 44

Proposal for a directive – amending act

Article 1 – point 15 e (new)

Directive 2003/71/EC

Article 24 a (new)

Text proposed by the Commission

Amendment

15e. The following article is inserted after Article 24:

"Article 24a

Revocation of the delegation

1. The delegation of power referred to in Articles 1(3a), 2(4), 4(3), 5(5), 5(5a), 7(1), 7(3), 8(4), 11(3), 13(7), 14(8), 15(7) and 20(3) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission stating the

delegated powers which could be subject to revocation.

3. The decision of revocation shall state the reasons for the revocation and shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Or. en

Amendment 45

Proposal for a directive – amending act

Article 1 – point 15 d (new)

Directive 2003/71/EC

Article 24 b (new)

Text proposed by the Commission

Amendment

15d. The following article is inserted after Article 24a:

"Article 24b

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If on the expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force at the date stated therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act."

Or. en

Amendment 46

Proposal for a directive – amending act

Article 2 – point 1 a (new)

Directive 2004/109/EC

Article 2 – paragraph 3 – last subparagraph

Text proposed by the Commission

Amendment

1a. The third paragraph of Article 2(3) is replaced by the following:

"The *measures* referred to in points (a) and (b) of the second subparagraph [...] shall be *laid down by means of delegated acts* in accordance with the *Articles 27, 27a and 27b.*"

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 47

Proposal for a directive – amending act

Article 2 – point 1 b (new)

Directive 2004/109/EC

Article 5 – paragraph 6 – paragraphs 3 and 4

Text proposed by the Commission

Amendment

1b. The third and fourth paragraphs of Article 5(6) are replaced by the following:

"The measures referred to in point (a) shall be adopted in accordance with the regulatory procedure referred to in Article 27(2). The measures referred to in points (b) and (c)[...] shall be *laid down by means of delegated acts* in accordance with the *Articles 27, 27a and 27b.*"

Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1 *by means of a delegated act* in accordance with *Articles*

27, 27a and 27b."

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 48

Proposal for a directive – amending act

Article 2 – point 1 c (new)

Directive 2004/109/EC

Article 9 – paragraph 7 –subparagraphs 1 and 2

Text proposed by the Commission

Amendment

1c. Article 9(7) shall be replaced by the following:

"7. The Commission shall be empowered to lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2, 4 and 5. [...].

The Commission shall also specify the maximum length of the ‘short settlement cycle’ referred to in paragraph 4 of this Article, as well as the appropriate control mechanisms by the competent authority of the home Member State by means of delegated acts in accordance with Articles 27, 27a and 27b."

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 49

Proposal for a directive – amending act

Article 2 – point 1 d (new)

Directive 2004/109/EC

Article 12 – paragraph 8

1d. The introductory part of the first subparagraph of Article 12(8) is replaced by the following:

"8. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall *lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures:*

(a) to establish a standard form to be used throughout the Community when notifying the required information to the issuer under paragraph 1 or when filing information under Article 19(3);

(b) to determine a calendar of 'trading days' for all Member States;

(c) to establish in which cases the shareholder, or the natural person or legal entity referred to in Article 10, or both, shall effect the necessary notification to the issuer;

(d) to clarify the circumstances under which the shareholder, or the natural person or legal entity referred to in Article 10, should have learned of the acquisition or disposal;

(e) to clarify the conditions of independence to be complied with by management companies and their parent undertakings or by investment firms and their parent undertakings to benefit from the exemptions in paragraphs 4 and 5.

[...]."

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 50

Proposal for a directive – amending act

Article 2 – point 1 e (new)

Directive 2004/109/EC

Article 13 – paragraph 2

Text proposed by the Commission

Amendment

1e. Article 13(2) is replaced by the following:

"2. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. It shall in particular determine:

- (a) the types of financial instruments referred to in paragraph 1 and their aggregation;**
 - (b) the nature of the formal agreement referred to in paragraph 1;**
 - (c) the contents of the notification to be made, establishing a standard form to be used throughout the Community for that purpose;**
 - (d) the notification period;**
 - (e) to whom the notification is to be made.**
- [...]."**

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 51

Proposal for a directive – amending act

Article 2 – point 1 f (new)

Directive 2004/109/EC

Article 14 – paragraph 2

Text proposed by the Commission

Amendment

If Article 14(2) is replaced by the following:

"2. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets and to ensure the uniform application of paragraph 1. [...]"

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 52

Proposal for a directive – amending act

Article 2 – point 1 g (new)

Directive 2004/109/EC

Article 17 – paragraph 4

Text proposed by the Commission

Amendment

1g. Article 17(4) is replaced by the following:

"4. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraph 1, 2 and 3. It shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c). [...]"

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 53

Proposal for a directive – amending act

Article 2 – point 1 h (new)

Directive 2004/109/EC

Article 18 – paragraph 5

Text proposed by the Commission

Amendment

1h. Article 18(5) is replaced by the following:

"5. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraph 1 to 4. It shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c). [...]"

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 54

Proposal for a directive – amending act

Article 2 – point 1 i (new)

Directive 2004/109/EC

Article 19 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

1i. The first subparagraph of Article 19(4) is replaced by the following:

"4. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to ensure the uniform application of paragraphs 1, 2 and 3 [...]."

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 55

Proposal for a directive – amending act

Article 2 – point 1 j (new)

Directive 2004/109/EC

Article 19 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

1j. The third subparagraph of Article 19(4) is deleted.

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 56

Proposal for a directive – amending act

Article 2 – point 1 k (new)

Directive 2004/109/EC

Article 21 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

1k. The first subparagraph of Article 21(4) is replaced by the following:

"4. The Commission shall lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform

**application of paragraph 1, 2 and 3
[...]."**

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were text has been deleted.)

Amendment 57

Proposal for a directive – amending act
Article 2 – point 1 l (new) – point (b (new))
Directive 2004/109/EC
Article 21 – paragraph 4 – last subparagraph

Text proposed by the Commission

Amendment

***1l. The third subparagraph of Article
21(4) is deleted.***

Or. en

(The wording in bold is unchanged text from the act being amended.)

Amendment 58

Proposal for a directive – amending act
Article 2 – point 1 m (new)
Directive 2004/109/EC
Article 23 – paragraph 4

Text proposed by the Commission

Amendment

***1m. Article 23(4) is replaced by the
following:***

**"4. In order to ensure the uniform
application of paragraph 1, the
Commission shall lay down, by means of
delegated acts in accordance with Articles
27, 27a and 27b, measures:**

**(i) setting up a mechanism ensuring the
establishment of equivalence of
information required under this
Directive, including financial statements
and information, including financial**

statements, required under the law, regulations or administrative provisions of a third country;

(ii) stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in this Directive.

In the context of point (ii) of the first subparagraph, the Commission shall *lay down, by means of delegated acts* in accordance with *Articles 27, 27a and 27b*, measures concerning the assessment of standards relevant to the issuers of more than one country. [...].

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

In the context of the *third* subparagraph, the Commission shall also *lay down, by means of delegated acts* in accordance with *Articles 27, 27a and 27b*, measures aimed at establishing general equivalence criteria regarding accounting standards relevant to issuers of more than one country. [...]."

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows were

text has been deleted.)

Amendment 59

Proposal for a directive – amending act

Article 2 – point 1 n (new)

Directive 2004/109/EC

Article 23 – paragraph 5

Text proposed by the Commission

Amendment

In. Article 23(5) is replaced by the following:

"5. In order to ensure uniform application of paragraph 2, the Commission may lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures defining the type of information disclosed in a third country that is of importance to the public in the Community. [...]"

Or. en

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 60

Proposal for a directive – amending act

Article 2 – point 1 o(new) – point c (new)

Directive 2004/109/EC

Article 23 – paragraph 7 – second subparagraph

Text proposed by the Commission

Amendment

1o. The second subparagraph of Article 23(7) is replaced by the following:

"The Commission shall also lay down, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures aimed at establishing general equivalence criteria for the purpose of the first subparagraph. [...]"

(The wording in bold is unchanged text from the act being amended. The sign [...] shows where text has been deleted.)

Amendment 61

Proposal for a directive – amending act

Article 2 – paragraph 1 p (new)

Directive 2004/109/EC

Article 27 – paragraph 1

Text proposed by the Commission

Amendment

1p. Article 27(1) is replaced by the following:

"1. The Commission shall be assisted by the European Securities and Markets Authority."

(The wording in bold is unchanged text from the act being amended.)

Amendment 62

Proposal for a directive – amending act

Article 2 – paragraph 1 q (new)

Directive 2004/109/EC

Article 27 – paragraph 2a

Text proposed by the Commission

Amendment

1q. Article 27(2a) is replaced by the following:

"2a. The power to adopt delegated acts referred to in Articles 2(3), 5(6), 9(7), 12(8) 13(2) 14(2), 17(4) 18(5), 19(4) 21(4), 23(4), 23(5) and 23(7) shall be conferred on the Commission for an indeterminate period of time.

2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27a and 27b."

Or. en

Amendment 63

Proposal for a directive – amending act

Article 2 – paragraph 1 r (new)

Directive 2004/109/EC

Article 27 – paragraph 3

Text proposed by the Commission

Amendment

1r. Article 27(3) is deleted.

Or. en

(The sign [...] shows where text has been deleted.)

Amendment 64

Proposal for a directive – amending act

Article 2 – paragraph 1 s (new)

Directive 2004/109/EC

Article 27 a (new)

Text proposed by the Commission

Amendment

1s. The following article is inserted after Article 27:

"Article 27a

Revocation of the delegation

1. The delegation of power referred to in Articles 2(3), 5(6), 9(7), 12(8) 13(2) 14(2), 17(4) 18(5), 19(4) 21(4), 23(4), 23(5) and 23(7) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power

shall endeavour to inform the other institution and the Commission stating the delegated powers which could be subject to revocation.

The decision of revocation shall state the reasons for the revocation and shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union."

Or. en

Amendment 65

Proposal for a directive – amending act

Article 2 – paragraph 1 t (new)

Directive 2004/109/EC

Article 27 b (new)

Text proposed by the Commission

Amendment

1t. The following article is inserted after Article 27a:

Article 27b

Objections to delegated acts

- 1. The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.*
- 2. If on the expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall enter into force at the date state therein. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the*

delegated act."

Or. en

Amendment 66

Proposal for a directive – amending act Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Review

Five years after the entry into force of this Directive, the Commission shall make an assessment of the application of this Directive, in particular with regard to the application and the effects of the rules regarding the key information document. The Commission shall furthermore work on defining the following terms 'public offer', 'primary market' and 'secondary market' and in this respect fully clarify the links between this Directive and Directives 2004/109/EC and 2003/6/EC and present a report to the European Parliament and the Council of the European Union, accompanied, where appropriate, by proposals for a review of this Directive.

Or. en

EXPLANATORY STATEMENT

A. Short Background

Directive 2003/71/EC, the Prospectus Directive, regulates the public offer of securities and their admission to a regulated market in the Community. The prospectus functions as a passport, allowing access to all markets of the EU, after registration and authorisation in the home Member State only notification to the host Member State is necessary.

The review of the Prospectus Directive was foreseen in Article 31 that introduced a five year review clause. In line with the principle of better regulation and cutting bureaucracy, the Commission proposal focuses on eliminating legal uncertainties, lowering unjustifiable high costs and burdens to the industry while keeping the same level of investor protection.

B. Your rapporteur's position

Your rapporteur welcomes the review of the European Commission and the underlying work for this review.

Your rapporteur agrees with the majority of simplifications and clarifications undertaken by the Commission.

Notably he agrees with the *clarification of thresholds*, the *possibility to choose the home Member State* in the case of non-equity securities, the *simplification of the regime for employee share schemes*, the *simplification of over-burdensome disclosure requirement for government guarantees*, the *alignment with the transparency directive* and the *removal of uncertainty regarding the host Member State notification*.

On the following points, your rapporteur has some remarks and suggests improving the current Commission drafting

Retails cascade

The liability in the case of a subsequent resale of a security needs to be clarified. For the subsequent resale of securities via financial intermediaries the Commission proposes that the initial prospectus may be used as long as it is up to date and the issuer has consented to its use.

Your rapporteur is furthermore of the opinion that in case a financial intermediary uses the initial prospectus without consent or if he has drawn up a new prospectus, the intermediary should be liable for the prospectus.

Alignment of qualified investor

Your rapporteur agrees with the Commission proposal to align the prospectus directive with the definition in the Markets in Financial Instruments Directive (MiFID) , but he suggests to go further and to delete the separate register as it has shown very little value in practice.

Rights issue

The Commission introduces simplified publication requirements for rights issues. Your rapporteur is of the opinion that we should fully exempt rights issues from the obligation to publish a prospectus as information is available to already existing shareholders.

Validity of prospectus

The validity period is extended to 24 months both for prospectuses and base prospectuses. Your rapporteur wants to increase the validity for base prospectuses to 36 months.

Supplement the prospectus

The obligation to keep the prospectus up to date ends either with the closing of the public offer or the admission to trading on a regulated market, whichever occurs earlier. Furthermore, the right of withdrawal in the case of a supplement to the prospectus is harmonised to two working days with the possibility for the issuer to extend this period. Your rapporteur agrees with the Commission proposal but he introduces a further clarification that the existing prospectus may be used in the case of the final offer to the public closing before the same security is admitted to trading on a regulated market.

Civil liability regimes

Your rapporteur asks the new European Supervisory Authority to compile a comparative table exhibiting the differences in national liability regimes. As we discuss liability, the real life differences in national civil law that have an essential impact are disregarded.

Primary versus Secondary markets

Your rapporteur is of the opinion that the underlying problem of a definition of primary and secondary markets needs to urgently be addressed. For this purpose, he has introduced a review clause that includes further work on defining primary markets, secondary markets and the term public offer in order to account better for unsolved problem and to find solutions to this lack of clarity.

Key investor document

The concept introduced by the Commission in the Packaged Retail Investment Products (PRIIPs)¹ initiative on providing key information to retail investors for all retail investment products, which was introduced in the Key information document (KID) in the UCITs Directive² is an important idea.

The Commission introduces increased requirements to the prospect summary in this Directive. The summary is to give key information in order to allow the investor to compare the security with other products and make an informed investment decision. The Commission also extends the liability regime to the provision of such key information.

Your rapporteur is of the opinion that instead of introducing some key information elements in the summary, the summary should be replaced by a key information document. The detailed content and format shall be determined at level two, but shall incorporate to a large part the information in the current summary note. Advice by the new European Securities and Markets Authority on the level two measures should duly consider the developments in the PRIIPs debate. The concept of comparability across investment products is best dealt with during the course of the PRIIPs initiative as a horizontal measure and this should hence be

¹ Commission Communication from 29 April 2009

² Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

addressed in such a manner in due course.

Delegating and Implementing Acts

Due to the Lisbon Treaty coming into force, the possibility for the legislator to delegate the power to adopt non-legislative acts to the Commission to supplement or amend certain non-essential elements of the legislative acts is introduced.

However Article 291 will require the adoption of a Regulation to enter into force.

Consequently, the provisions concerned with the implementing acts will remain in comitology and the alignment is postponed to a further revision of the directives.

ESMA

In light of the recent Commission proposal, following the recommendations of the De Larosière group, to establish a European System of Financial Supervisors (ESFS) consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities, your rapporteur supports the new integrated supervisory framework and therefore already introduced the European Securities and Markets Authority (ESMA) as a replacement of the Committee of European Securities Regulators (CESR)