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REPORT

on the proposal for a European Parliament and Council directive on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC
(COM(2003) 138 – C5-0151/2003 – 2003/0045(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Peter William Skinner

Draftsman(*): Klaus-Heiner Lehne, Committee on Legal Affairs and the Internal Market

(*) Enhanced cooperation between committees - Rule 162a

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***. 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). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 26 March 2003 the Commission submitted to Parliament, pursuant to Articles 251(2) and Articles 44 and 95 of the EC Treaty, the proposal for a European Parliament and Council directive on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (COM(2003) 138 – 2003/0045(COD)).

At the sitting of 15 May 2003 the President of Parliament announced that he had referred the proposal to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0151/2003).

At the sitting of 30 June 2003 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market, which had been asked for its opinion, would be involved in drawing up the report under Rule 162a.

The Committee on Economic and Monetary Affairs appointed Peter William Skinner rapporteur at its meeting of 21 May 2003.

The committee considered the Commission proposal and draft report at its meetings of 4 November 2003, 2 December 2003, 19 January 2004, 20 January 2004 and 17 February 2004.

At the last meeting it adopted the draft legislative resolution by 25 votes to 1, with no abstentions

The following were present for the vote Philippe A.R. Herzog (vice-chairman), Peter William Skinner (rapporteur), Luis Berenguer Fuster, Benedetto Della Vedova, Jonathan Evans, Göran Färm, Lisbeth Grönfeldt Bergman, Mary Honeyball, Brice Hortefeux, Christopher Huhne, Othmar Karas, Christoph Werner Konrad, Ioannis Koukiadis (for Giorgos Katiforis), Werner Langen (for Astrid Lulling), Alain Lipietz, Ioannis Marinos, Hans-Peter Mayer, Bill Newton Dunn (for Carles-Alfred Gasòliba i Böhm pursuant to Rule 153(2)) Elena Ornella Paciotti (for Bruno Trentin pursuant to Rule 153(2)), Fernando Pérez Royo, Elly Plooi-j-van Gorsel, Alexander Radwan, Bernhard Rapkay, Olle Schmidt, Charles Tannock (for Piia-Noora Kauppi), Theresa Villiers.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 25 February 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council directive on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (COM(2003) 138 – C5-0151/2003 – 2003/0045(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 138)¹,
 - having regard to Articles 251(2) and Articles 44 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0151/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0079/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 1

(1) Efficient and integrated securities markets contribute to a genuine single market in the Community and foster growth and job creation by better allocation of capital and by reducing costs. The disclosure of accurate and timely information about security issuers builds sustained investor confidence and allows an informed assessment of their business performance and assets *thereby enhancing* market efficiency. *In addition, the security issuers' responsibility for the disclosure of information constitutes an indirect tool for promoting corporate governance*

(1) Efficient, ***transparent*** and integrated securities markets contribute to a genuine single market in the Community and foster growth and job creation by better allocation of capital and by reducing costs. The disclosure of accurate, ***comprehensive*** and timely information about security issuers builds sustained investor confidence and allows an informed assessment of their ***current and future*** business performance and assets. ***This enhances both investor protection and*** market efficiency .

¹ Not yet published in OJ..

throughout the Community.

Justification

This is a combination of the Council Common Approach and Am 186 (Lipietz/Jonckheer/Mayol i Raynol) in order to insert references to the necessity to enhance investor protection and the need for transparent markets.

Amendment 2

Recital 2

(2) To that end, security issuers should ensure appropriate transparency towards investors through a regular flow of information. To the same end, ***security holders*** should also inform ***security*** issuers of the acquisition or ***disposal*** of major holdings in companies so that the latter are in a position to keep the public informed.

(2) To that end, security issuers should ensure appropriate transparency towards investors through a regular flow of information. To the same end, ***shareholders, or natural persons or legal entities holding voting rights or financial instruments that result in an entitlement to acquire existing shares with voting rights,*** should also inform issuers of the acquisition or ***other changes*** of major holdings in companies so that the latter are in a position to keep the public informed.

Justification

Text of Council Common Approach. See justification to amendment to Article 9.

Amendment 3

Recital 3a (new)

(3a) This Directive should ensure its compatibility with the tasks and duties conferred upon the ESCB and the Member States' central banks by the Treaty and the Statute of the ESCB; particular attention in this regard needs to be given to the Member States' central banks whose shares are presently admitted to trading on a regulated market, in order to guarantee the pursuit of primary Community law objectives.

Justification

Text of Council Common Approach. The Directive should take into account the specific status of Member States' Central Banks.

Amendment 4

Recital 5

(5) Supervision of an issuer for the purposes of this Directive would be best effected by the Member State in which the issuer has its registered office. In that respect, it is vital to ensure consistency with Directive [...]/.../EC of the European Parliament and the Council of [...] on the prospectus to be published when securities are offered to the public or admitted to trading. Along the same lines, some flexibility should be introduced allowing **companies issuing only high unit value debt securities** a choice of home Member State.

(5) Supervision of an issuer **of shares, or of debt securities the denomination per unit of which is less than EUR 1 000**, for the purposes of this Directive would be best effected by the Member State in which the issuer has its registered office. In that respect, it is vital to ensure consistency with Directive **2003/71/EC** of the European Parliament and the Council of **4 November 2003** on the prospectus to be published when securities are offered to the public or admitted to trading. Along the same lines, some flexibility should be introduced allowing **third country issuers and EU companies issuing only other securities than those mentioned above** a choice of home Member State.

Justification

Text of Council Common Approach. See justification to amendment to Article 2, paragraph 1, point (i), subpoint (i) and subpoint (ii)

Amendment 5

Recital 6a (new)

(6a) The removal of barriers on the basis of the home Member State principle under this Directive should not affect areas not covered by this Directive, such as rights of shareholders to intervene in the management of an issuer.

Justification

Text of Council Common Approach.

Amendment 6
Recital 6 b(new)

The disclosure obligations of the present Directive do not prevent a Regulated Market through its rule book to impose additional particular disclosure requirements on issuers of securities that they have admitted to trading with the issuer's consent or on those who have applied for the admission or securities without the issuer's consent. These requirements may include an obligation to send regulatory information to the Regulated Market at the same time as to the competent authority.

Justification

This recital is modelled on a similar recital in the new Prospectus Directive. It clarifies the right of a Regulated Market to introduce higher requirements in its admission rules. The possibility of admission without the issuer's consent as foreseen in the (Draft) ISD has to be recognised.

Amendment 7
Recital 7

(7) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards has already paved the way for a convergence of financial reporting standards throughout the Community for issuers whose securities are admitted to trading on a regulated market and who prepare consolidated accounts. Thus, a specific regime for security issuers beyond the general system for all companies, as laid down in the Company Law Directives, is already established. The current Directive continues to build on this approach with regard to annual and interim financial reporting.

(7) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards has already paved the way for a convergence of financial reporting standards throughout the Community for issuers whose securities are admitted to trading on a regulated market and who ***are required to*** prepare consolidated accounts. Thus, a specific regime for security issuers beyond the general system for all companies, as laid down in the Company Law Directives, is already established. The current Directive continues to build on this approach with regard to annual and interim financial reporting, ***including the principle of providing a true and fair view of an issuer's***

assets, liabilities, financial position and profit or loss. A condensed set of financial statements, as part of a half-yearly financial report, also represents a sufficient basis for giving such a true and fair view of the first six months of an issuer's financial year.

Justification

Text of Council Common Approach, clarifying the content of periodic reports. See justification to amendments to Articles 4, 5 and 6.

Amendment 8 Recital 8

(8) An annual financial report should ensure information over the years once the issuer's securities have been admitted to a regulated market. Better comparability of annual financial reports only serve investors in securities markets if they can be sure that this information will be ***published after a certain maximum delay.***

(8)An annual financial report should ensure information over the years once the issuer's securities have been admitted to a regulated market. Better comparability of annual financial reports only serve investors in securities markets if they can be sure that this information will be ***published within a certain time after the end of the financial year.***

Justification

Text of Council Common Approach. See justification to amendment to Article 5.

Amendment 9 Recital 8a (new)

(8a) The Directive will introduce more comprehensive half-yearly financial reports for issuers of shares admitted to trading on a regulated market. This should allow investors to make a more informed assessment of the issuer's situation.

Justification

Text of Council Common Approach. See justification to amendment to Article 5.

Amendment 10
Recital 8 b (new)

(8b) The annual financial report should contain information regarding the remuneration scales of employees of the issuer and regarding the total compensation packages paid to each member of the administrative, management and supervisory bodies and senior management, in order to have full accountability for investors of salary packages paid by issuers.

Justification

The management of private companies must be fully accountable, transparent and open regarding the remuneration structure of their company. Salary scales (already provided in the public sector) should therefore be included in the annual financial report so that investors have a full appreciation of the remuneration policies of companies they are investing in. For senior management of the company, the total value of remuneration should be specified, for example, including pension plans and share options.

Amendment 11
Recital 8 c(new)

(8c) Member States should encourage issuers to disclose payments made to any governments, whether they are to European Union Member States' governments or to third country governments.

Justification

This is an amendment to the Rapporteur's amendment 22. The reference in Am 22 to the Commission supporting the voluntary approach is deleted so as not to interfere with the Commission's right of initiative. See justification to amendment to Article 4, paragraph 2a (new).

Amendment 12
Recital 8 d(new)

(8d) The Directive will also make mandatory half-yearly reporting for issuers of only debt securities on regulated markets. Exemptions should only be provided for wholesale markets on the basis of an individual denomination per unit starting at EUR 50 000, as under Directive 2003/71/EC. Where debt securities are issued in another currency, exemptions are only possible where the denomination per unit in such a currency is, at the date of the issue, at least equivalent to the threshold above.

Justification

Text of Council Common Approach. See justification to amendment to Article 8, paragraph 1, point (b).

Amendment 13
Recital 8 e (new)

(8e) A home Member State may provide for exemptions from half-yearly reporting by issuers of debt securities in the case of:

- credit institutions acting as small-size issuers of debt securities, or***
- issuers already existing at the entry into force of this Directive, who exclusively issue debt securities unconditionally and irrevocably guaranteed by the home Member State or by one of its regional or local authorities, or***
- during a transitional period only, certain debt securities already issued prior to the entry into force of this Directive and addressed to professional investors solely.***

Justification

See justification to amendment to Article 8, paragraphs 2 and 3.

Amendment 14
Recital 9

9. More timely and more reliable information about the issuer's performance over the year also requires a higher frequency of interim financial information. There has been a marked trend at international level and in the majority of the Member States to move to a quarterly frequency, but the reporting standards for such quarterly information differ. A first important step should be made to make quarterly financial information mandatory for the first and third quarter of a financial year. Such quarterly financial information would not imply the establishment of interim reports following the International Accounting Standards, in particular IAS 34. Instead, quarterly financial information should provide key historical data on the issuer's performance. If the issuer so chooses, it would also include a trend information allowing investors to judge on any long-term strategy, which the share issuer pursues.

deleted

Justification

See justification to amendment to article 6.

Amendment 15

Recital 11

(11) The public should be informed of changes to major holdings in issuers whose shares are traded on a regulated market situated or operating within the Community; ***those issuers can inform the public of changes in major holdings only if they have been informed of such changes by the holders.*** This information should enable investors to acquire or dispose of shares in full knowledge of changes in the voting ***and capital structure leading to blocking minorities;*** it should also enhance effective control of share issuers and overall market transparency on important capital movement. ***In order to simplify the periods***

(11) The public should be informed of changes to major holdings in issuers whose shares are traded on a regulated market situated or operating within the Community. This information should enable investors to acquire or dispose of shares in full knowledge of changes in the voting structure; it should also enhance effective control of share issuers and overall market transparency on important capital movement. ***Information about shares, or financial instruments as determined in Article 11a, lodged as collateral should be provided in certain circumstances.***

for notifying changes to the voting rights or to the capital structure and to approximate them more amongst Member States, such periods should be limited to five business days for the holder and subsequently to three business days for the issuer to disclose such information to the public.

Justification

Text of Council Common Approach. See Articles 9, 10 (in particular point (c) and 11a.

Amendment 16
Recital 11a (new)

(11a) Articles 9 and 10(c) should not apply to shares provided to or by the members of the European System of Central Banks (ESCB) in carrying out their functions as monetary authorities provided that the voting rights attached to such shares are not exercised; the reference to a "short period" should be understood with reference to credit operations carried out in accordance with the Treaty and ECB legal acts, in particular the ECB Guidelines on monetary policy instruments and procedures and TARGET, and to credit operations for the purpose of performing equivalent functions in accordance with national provisions.

Justification

Text of Council Common Approach. See Article 10, point (a).

Amendment 17
Recital 11b (new)

(11b) In order to avoid unnecessary burdens for certain market participants and to clarify who actually exercises influence over an issuer, there is no need for

notification requirements of major holdings of shares or other financial instruments as determined under Article 11a that result in an entitlement to acquire shares with regard to market makers or custodians, or of holdings of shares or such financial instruments acquired solely for clearing and settlement purposes, within limits and guarantees to be applied throughout the European Union. The home Member State should be allowed to provide limited exemptions as regards holdings of shares in trading books of credit institutions and investment firms.

Justification

Text of Council Common Approach regarding specificity of certain categories of investors to be taken account of regarding notification requirements. See justification to amendment Article 9, paragraph 3a (new), 3b (new) and 3c (new).

Amendment 18
Recital 11c (new)

(11c) In order to clarify who is actually a major holder of shares or other financial instruments in the same issuer throughout the European Union, parent undertakings should not be required to aggregate their own holdings with those managed by UCITS or investment firms, provided that the latter exercise voting rights independently from parent undertaking and fulfil certain further conditions.

Justification

Text of Council Common Approach. See justification to amendment to Article 11.

Amendment 19
Recital 12

(12) Ongoing information of **security**

(12) Ongoing information of **holders of**

holders should continue to be based on the principle of equal treatment. Such equal treatment only relates to shareholders in the same position and does not therefore prejudice the issue of how many voting rights may be attached to a particular share. By the same token, holders of debt securities ranking *pari passu* should continue to benefit from equal treatment. Information of **security holders** in general meetings should be facilitated. In particular, **securities holders** situated abroad should be more actively involved in that they should be able to mandate proxies to act on their behalf. For the same reasons, it should be decided in a general meeting of **security holders** whether the use of modern information and communication technologies should become a reality.

securities admitted to trading on a regulated market should continue to be based on the principle of equal treatment. Such equal treatment only relates to shareholders in the same position and does not therefore prejudice the issue of how many voting rights may be attached to a particular share. By the same token, holders of debt securities ranking *pari passu* should continue to benefit from equal treatment, **even in the case of sovereign debt**. Information of **holders of shares and/or debt securities** in general meetings should be facilitated. In particular, **holders of shares and/or debt securities** situated abroad should be more actively involved in that they should be able to mandate proxies to act on their behalf. For the same reasons, it should be decided in a general meeting of **holders of shares and/or debt securities** whether the use of modern information and communication technologies should become a reality. ***In that case, issuers should put in place arrangements in order to effectively inform holders of their shares and/or debt securities, in so far as it is possible for them to identify those holders.***

Justification

Text of Council Common Approach. See Member State exemption for sovereign debt in Article 1, paragraph 3 and Article 14, paragraph 1. See information and identification of shareholders in Article 14, paragraph 2 and Article 14, paragraph 4.

Amendment 20 Recital 13

(13) Removal of barriers and effective enforcement of new Community information requirements also require adequate control by the competent authority of the home Member State. The present Directive ***should not provide for a scrutiny of the contents of financial information to be disclosed, but*** at least a minimum guarantee for the timely availability of such information. For this

(13) Removal of barriers and effective enforcement of new Community information requirements also require adequate control by the competent authority of the home Member State. The present Directive should at least ***provide for*** a minimum guarantee for the timely availability of such information. ***For this reason, at least one filing and storage system should exist in each***

reason, *each competent authority in a home Member State should introduce a filing system.*

Member State.

Justification

Text of Council Common Approach. See justification to amendment to Article 17, paragraph 1.

Amendment 21
Recital 14

(14) Any obligation for an issuer to translate all ongoing and periodic information into all the relevant languages in all the Member States where its securities are admitted to trading does not foster integration of securities markets, but has deterrent effects on cross-border admission of securities to trading on regulated markets. Therefore, the issuer should be entitled to provide information drawn up in a language that is customary in the sphere of international finance ***in the case of securities admitted to trading in more than one Member State.*** Since a particular effort is needed to attract investors from abroad, even outside the Community, Member States should no longer prevent ***security holders*** from making the required notifications to the issuer in a language customary in the sphere of international finance.

(14) Any obligation for an issuer to translate all ongoing and periodic information into all the relevant languages in all the Member States where its securities are admitted to trading does not foster integration of securities markets, but has deterrent effects on cross-border admission of securities to trading on regulated markets. Therefore, the issuer should ***in certain cases*** be entitled to provide information drawn up in a language that is customary in the sphere of international finance. Since a particular effort is needed to attract investors from abroad, even outside the Community, Member States should no longer prevent ***shareholders, persons exercising voting rights, or holders of financial instruments,*** from making the required notifications to the issuer in a language customary in the sphere of international finance.

Justification

Text of Council Common Approach. See amendments to Article 16.

Amendment 22
Recital 15

(15) To ensure timely access to information about the issuer whose securities are admitted to trading on regulated markets ***in more than one Member State, the Internet sites of the issuer concerned might also be***

(15) To ensure timely access to information about the issuer whose securities are admitted to trading on regulated markets, ***fast, simultaneous and pan-European***

used as means of public disclosure, provided that real-time dissemination of information is ensured, together with an efficient electronic alert system for all interested parties.

dissemination must be ensured.

Justification

All price-sensitive and relevant periodic information should be provided to the market in a fast, simultaneous, pan-European manner because this ensures that all EU investors (retail and professional) are operating on a 'level playing field', it guards against market abuse and facilitates cross-border investment. This should be achieved through a system of competing providers so that issuers receive a cost-effective, efficient service as a result of competitive forces. This would be consistent with Directive 2003/6/EC and its implementing measures.

Amendment 23 Recital 18

(18) A single competent authority should be designated in each Member State to assume final responsibility for supervising compliance with the provisions adopted pursuant to this Directive, as well as for international cooperation. Such an authority should be of an administrative nature, and its independence of economic actors should be ensured in order to avoid conflicts of interest.

(18) A single competent authority should be designated in each Member State to assume final responsibility for supervising compliance with the provisions adopted pursuant to this Directive, as well as for international cooperation. Such an authority should be of an administrative nature, and its independence of economic actors should be ensured in order to avoid conflicts of interest. ***Member States may however designate another competent authority for examining that information referred to in this Directive is drawn up in accordance with the relevant reporting framework and taking appropriate measures in case of discovered infringements; such an authority need not be of an administrative nature.***

Justification

Text of Council Common Approach. See justification to amendment to Article 20, paragraph 1a (new).

Amendment 24 Recital 26a (new)

In exercising its implementing powers in accordance with this Directive, the

Commission should respect the following principles:

- the need to ensure confidence in financial markets among investors by promoting high standards of transparency in financial markets;*
- the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances;*
- the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against economic crime;*
- the need for high levels of transparency and consultation with all market participants and with the European Parliament and the Council;*
- the need to encourage innovation in financial markets if they are to be dynamic and efficient;*
- the need to ensure market integrity by close and reactive monitoring of financial innovation;*
- the importance of reducing the cost of, and increasing access to, capital;*
- the balance of costs and benefits to market participants on a long-term basis (including small and medium-sized businesses and small investors) in any implementing measures;*
- the need to foster the international competitiveness of EU financial markets without prejudice to a much-needed extension of international cooperation;*
- the need to achieve a level playing field for all market participants by establishing EU-wide regulations every time it is appropriate;*
- the need to respect differences in national markets where these do not unduly impinge on the coherence of the single market;*
- the need to ensure coherence with other EU legislation in this area, as imbalances*

in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.

Justification

The Commission should be guided by these principles when exercising its implementing powers

Amendment 25

Recital 27

(27) In order to ensure fulfilment of the requirements laid down pursuant to this Directive or measures implementing this Directive, an infringement of those requirements should be promptly detected and, if necessary, ***penalised***. To that end, sanctions, ***including civil sanctions***, should be sufficiently dissuasive, proportionate and consistently enforced. Member States should ensure that decisions taken by the competent national authorities are ***open to judicial review***.

(27) In order to ensure fulfilment of the requirements laid down pursuant to this Directive or measures implementing this Directive, an infringement of those requirements should be promptly detected and, if necessary, ***sanctioned***. To that end, ***measures and*** sanctions should be sufficiently dissuasive, proportionate and consistently enforced. Member States should ensure that decisions taken by the competent national authorities are ***subject to the right of appeal to the courts***.

Justification

Text of Council Common Approach. See justification to amendment to Article 24, paragraph 1.

Amendment 26

Recital 28

(28) This Directive aims to upgrade the current prevailing transparency requirements for security issuers and investors acquiring or disposing of major holdings in security issuers. This Directive replaces some of the requirements set out in Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities. In order to gather transparency requirements in a single act it is necessary to amend it accordingly.

(28) This Directive aims to upgrade the current prevailing transparency requirements for security issuers and investors acquiring or disposing of major holdings in issuers whose shares are admitted to trading on a regulated market. This Directive replaces some of the requirements set out in Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities. In order to gather transparency

requirements in a single act it is necessary to amend it accordingly. ***Such an amendment however does not affect the ability of Member States to impose additional requirements under Articles 42 to 63 of Directive 2001/34/EC which remain valid.***

Justification

Text of Council Common Approach. See justification to amendment to Article 24, paragraph 1.

Amendment 27
Recital 29a (new)

(29a) This Directive is in line with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.¹

Justification

Text of Council Common Approach. This states the general principal that the directive is consistent with the Directive on data protection.

Amendment 28
Recital 30 a (new)

(30a) In order to maintain the liquidity and international competitiveness of the European financial markets, equivalence in Article 19 shall be interpreted to mean standards which either (i) achieve broadly similar objectives to those envisaged by the provisions of this directive or (ii) are used customarily in the field of international finance or (iii) are determined as acceptable under the Comitology procedure.

¹ OJ L 281, 23.11.1995, p. 31.

Justification

This clarification avoids confusion and is consistent with terminology used in Directive 2002/87/EC (the Conglomerates Directive).

Amendment 29

Article 1, paragraphs 2a and 2b (new)

Member States may decide not to apply the provisions mentioned in Article 12(3) and in paragraphs 2 to 4 of Article 14 to securities which are admitted to trading on a regulated market issued by them or their regional or local authorities.

Member States may decide not to apply Article 13 to their national central banks in their capacity as issuers of shares admitted to trading on a regulated market if this admission took place before the entry into force of this Directive.

Justification

Text of Council Common Approach. The proposed amendments take account of the specific situation of sovereign issuers and of two national central banks which are also issuers of shares admitted to trading on a regulated market. As regards sovereign issuers, exemptions do not cover the equal treatment principle given the introduction of the EURO; the exemption regarding national central banks only applies to existing issuers, not to new ones. Text of Council Common Approach

Amendment 30

Article 2, paragraph 1, point (d)

(d) “issuer” means a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depositary receipts representing securities, the issuer of the securities represented;

(d) “issuer” means a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depositary receipts representing securities, the issuer of the securities represented, ***but only where the issuer of the securities represented consented to or was otherwise involved in the issue of the depositary receipts;***

Justification

Depository receipts can be issued without the consent or knowledge of the underlying issuer. It is wrong to impose obligations on non-consenting parties.

Amendment 31

Article 2, paragraph 1, point (e), introductory phrase

(e) “**security holder**” means any natural person or legal entity governed by private or public law, who, directly or **through intermediaries, acquires or disposes of**:

(e) “**shareholder**” means any natural person or legal entity governed by private or public law, who holds, directly or **indirectly**:

Justification

Text of Council Common Approach, which incorporates Am 32 (Andria). and limits holdership no longer to cases where financial intermediaries intervene, but also includes other cases (e.g. holdership through a chain of controlled undertakings)

Amendment 32

Article 2, paragraph 1, point (e), subpoint (i)

(i) **securities** of the issuer in its own name and on its own account;

(i) **shares** of the issuer in its own name and on its own account;

Amendment 33

Article 2, paragraph 1, point (e), subpoint (ii)

(ii) **securities** of the issuer in its own name, but on behalf of another natural person or legal entity, **except where such securities are acquired for the sole purpose of clearing and settling transactions within a short period**;

(ii) **shares** of the issuer in its own name, but on behalf of another natural person or legal entity;

Justification

Text of Council Common Approach which incorporates part of Am 35 (Andria). Necessary clarification in the light of amendment on Article 11a (new) concerning the treatment of derivatives and amendment on Article 11, paragraph 3a (new) concerning clearing and settlement.

Amendment 34
Article 2, paragraph 1, point (e), subpoint (iii)

(iii) depository receipts, in which case the **security holder** shall be the bearer;

(iii) depository receipts, in which case the **holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts.**

Justification

Text essentially builds on Am 38 (Karas/Mann/Villiers), just replacing the word security holder with shareholder. This text takes fully into account the Council Approach. It also takes account of Am 39 (Andria)

Amendment 35
Article 2, paragraph 1, point (e), subpoint (iv)

(iv) derivative securities entitling a natural person or legal entity to acquire, on its initiative, or to dispose of, on the sole initiative of a third party, shares to which voting rights with the issuer are attached;

deleted

Justification

Derivative instruments do not seem relevant to the directive's scope.

Amendment 36
Article 2, paragraph 1, point (f), subpoints (i) to (iv)

(i) in which a **security holder** has a majority of the voting rights;

(i) in which a **natural person or legal entity** has a majority of the voting rights; **or**

(ii) of which a **security holder is both the parent undertaking, with** the right to appoint or remove a majority of the members of the administrative, management or supervisory body, **and a shareholder or member;**

(ii) of which a **natural person or legal entity has** the right to appoint or remove a majority of the members of the administrative, management or supervisory body **and is at the same time a shareholder in, or member of, the undertaking in question; or**

(iii) of which **the security holder** is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members;

(iii) of which **a natural person or legal entity** is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members **of the undertaking in question; or**

(iv) over which *the security holder actually exercises, directly or indirectly, a dominant influence;*

(iv) over which *a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control;*

Justification

The term “controlled undertaking” serves inter alia to attribute the voting rights that are held by a subsidiary also to another undertaking controlling such a subsidiary directly as its shareholder or via a chain of other undertakings. In addition, the definition is needed for the rules concerning the interim management statement, as well as on the competence of the supervisory authorities (Article 20 (4) a). Text of Council Common Approach.

Amendment 37

Article 2, paragraph 1, point (i), subpoint (i)

(i) in the case of an issuer of debt securities the denomination of which does not exceed **EUR 5 000** or an issuer of shares:

(i) in the case of an issuer of debt securities the denomination of which is less than **EUR 1 000** or an issuer of shares:

- where the issuer is incorporated in the Community, the Member State in which it has its registered office;

- where the issuer is incorporated in the Community, the Member State in which it has its registered office;

- where the issuer is incorporated in a third country, the Member State in which it is required to file the annual information with the competent authority in accordance with Article 10 of Directive [...]/EC/**[Prospectus]**;

- where the issuer is incorporated in a third country, the Member State in which it is required to file the annual information with the competent authority in accordance with Article 10 of Directive **2003/71/EC**;

The same regime shall be applicable to debt securities in another currency than Euro, provided that the value of such denomination per unit is, at the date of the issue, less than EUR 1 000, unless it is nearly equivalent to EUR 1 000;

Justification

Text of Council Common Approach. The proposed amendment ensures full consistency with the Prospectus Directive 2003/71/EC as regards both the threshold of EUR 1000 and the use of currencies other than the Euro.

Amendment 38
Article 2, paragraph 1, point (i), subpoint (ii)

(ii) for any issuer not covered by (i), the Member State chosen by the issuer from among those Member States which have admitted its securities to trading on a regulated market on their territory, ***provided that those securities continue to be admitted to trading on that regulated market for three financial years, that being the period of validity of the issuer's choice;***

(ii) 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 and those Member States*** which have admitted its securities to trading on a regulated market on their territory. ***The issuer may choose only one Member State as its home Member State. Such choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the European Union;***

Justification

Text of Council Common Approach. The proposed amendment extends the possibilities for choosing a home Member State, clarifies that only a single and not several Member States could become home Member State for a single issuer and restricts the application of the three years rule to a situation where such issuer's securities are actually admitted to trading on a regulated market in Europe.

Amendment 39
Article 2, paragraph 1, point (k)

(k) “regulated information” means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under this Directive, under Article 6 of Directive 2003/6/EC of the European Parliament and of the Council or under the laws, regulations or administrative provisions of a Member State;

(k) “regulated information” means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under this Directive, under Article 6 of Directive 2003/6/EC of the European Parliament and of the Council, or under the laws, regulations or administrative provisions of a Member State, ***as adopted under Article 3(1) of this Directive;***

Justification

Text of Council Common Approach. Clarification of the scope. The definition of regulated information concerns all information regulated by securities market laws at national level of

the Member State; it should not cover company law, environmental or social law.

Amendment 40

Article 2, paragraph 1, point (la) (new)

(la) “management company” means a company as defined in Article 1a(2) of Council Directive 85/611/EEC¹ of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

Justification

Text of Council Common Approach. The definition is needed with regard to amendment on Article 11 (3a).

Amendment 41

Article 2, paragraph 1, point (lb) (new)

(lb) “credit institution” means an undertaking as defined in Article 1(1)(a) of Directive 2000/12/EC² of 20 March 2000 of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions;

Justification

Text of Council Common Approach. A definition of credit institutions is necessary with regard to amendment on Article 8 paragraph 1a new and amendment on Article 9 paragraph 3c.

Amendment 42

Article 2, paragraph 1, point (lc) (new)

(lc) “securities issued in a continuous or

¹ OJ L 375, 31.12.1985, p.3. as last amended by Directive 2001/108/EC of the European Parliament and of the Council (OJ L 41, 13.2.2001, p.35.

² OJ L 126, 26.5.2000, p.1.Dir. as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p.1-

repeated manner” means debt securities of the same issuer on tap or at least two separate issues of securities of a similar type and/or class;

Justification

Text of Council Common Approach. A definition is necessary with regard to amendment on Article 8, paragraph 1b (new); the definition is line with the one used in the Prospectus Directive..

Amendment 43
Article 2, paragraph 1, point (ld) (new)

(ld) “market maker” means a person who holds himself out on the financial markets as being willing to deal on own account by buying and selling financial instruments against his proprietary capital.

Justification

Text of Council Common Approach. A definition is necessary with regard to amendment on Article 9 (3b).

Amendment 44
Article 2, paragraph 2

2. For the purposes of the definition of “controlled undertaking” in paragraph 1(f)(ii), the holder’s rights in relation to voting, appointment and removal shall include the rights of any other undertaking controlled by the ***securities holder*** and those of any natural person or legal entity acting, albeit in its own name, on behalf of the ***securities holder*** or of any other undertaking controlled by the ***securities holder***.

2. For the purposes of the definition of “controlled undertaking” in paragraph 1(f)(ii), the holder's rights in relation to voting, appointment and removal shall include the rights of any other undertaking controlled by the ***shareholder*** and those of any natural person or legal entity acting, albeit in its own name, on behalf of the ***shareholder*** or of any other undertaking controlled by the ***shareholder***.

Justification

Text of Council Common Approach. Technical clarification necessary for the same reasons as already set out for amendment on Article 2, paragraph 1, point (e), subpoint (ii) with respect to derivatives.

Amendment 45
Article 2, paragraph 3, point (a)

<i>(a) specify, for the purposes of the exception referred to in paragraph 1(e)(ii) in relation to securities acquired for the sole purpose of clearing and settling transactions within a short period, the maximum length, in number of days, of the “short period”;</i>	<i>deleted</i>
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Justification

Text of Council Common Approach. See also amendments on Article 9, paragraph 3a (new) and on Article 9, paragraph 3d (new) dealing with special treatment of clearing and settlement systems under the rules for the notification of voting rights

Amendment 46
Article 3, paragraph 1

1. The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive, **as regards the disclosure of information to the public or to security holders.**

The home Member State may also make a **security** holder subject to requirements more stringent than those laid down in this Directive, **as regards the notification of information.**

1. The home Member State may make an issuer subject to requirements more stringent than those laid down in this Directive.

The home Member State may also make a holder **of shares, or a natural person or legal entity referred to in Articles 10 or 11a**, subject to requirements more stringent than those laid down in this Directive.

Justification

Text of Council Common Approach. Useful clarification to ensure that a home Member State may also impose requirements covered by the directive other than disclosure requirements, e.g. a limited review of half-yearly financial reports by auditors

Amendment 47
Article 3, paragraph 2, point (b)

(b) as regards the notification of information, impose on **security holders** requirements more stringent than those laid

(b) as regards the notification of information, impose on **holders of shares, or on natural persons or legal entities referred to in Articles 10 or 11a**, requirements more

down in this Directive.

stringent than those laid down in this Directive.

Justification

Text of Council Common Approach. Clarification with regard to the rules applicable to the notification of changes to major shareholdings (see amendments on Article 10 and 11a (new)). See also justification to amendment on Article 2.1(e), introductory phrase.

Amendment 48 Article 4, paragraph 1

1. The issuer shall **disclose** its annual financial report to the public at the latest **three** months after the end of each financial year and shall ensure that it remains publicly available.

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 five years**.

Or. en

Justification

Text of Council Common Approach. The compromise amendment clarifies that the minimum period for keeping an annual financial report available should be five years; this is an important issue which could not be left to implementing measures, as initially proposed by the Commission. In addition, the new text regarding "make public". The term "make public" is important with regard to the liability provision in Article 7 (see also Article 12) since otherwise the liability would be too broad.

Amendment 49 Article 4, paragraph 2, point (c)

(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect **that the information contained in the annual financial report is**, to the best of their knowledge, **in accordance with the facts and that the report makes no omission likely to affect its import**.

(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, **the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the**

consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with the description of the principal risks and uncertainties that they face.

Or. en

Justification

Text of Council Common Approach, which incorporates Am 58 (Karas). The compromise amendment avoids overly far-reaching commitments by the persons responsible and limits it to compliance with the general principles of “true and fair view” for accounts and “fair review” of a management report – as already provided in the fourth and seven company law directives.

Amendment 50

Article 4, paragraph 2, point (c a) (new)

(ca) the annual financial report shall contain information regarding the remuneration scales of the issuer, including the total remuneration paid (including any contingent or deferred compensation) and benefits in kind granted to each member of the administrative, management and supervisory bodies, senior management and key personnel.

Or. en

Justification

The management of private companies must be fully accountable, transparent and open regarding the remuneration structure of their company. Salary scales (already provided in the public sector) should therefore be included in the annual financial report so that investors have a full appreciation of the remuneration policies of companies they are investing in. For senior management of the company, the total value of remuneration should be specified including, for example, pension plans and share options.

Amendment 51

Article 4, paragraph 2 a (new)

2a. Member States shall encourage issuers to disclose in the annual financial report any payments made to governments, whether they are to European Union Member States' governments or to third country governments.

Justification

This amendment is identical to Am 60 of the Rapporteur except that the last line requesting the Commission to submit concrete proposals has been deleted, since this would interfere with the Commission's right of initiative. The transparency of information principle should apply to payments made by companies to governments, in particular by the extractive industries. Member States should encourage companies to disclose any payments to governments whether within the European Union or third countries on a voluntary basis.

Amendment 52
Article 4, paragraph 3

3. The audited financial statements **shall comprise the issuer's consolidated accounts in accordance with Article 4 of Regulation (EC) No 1606/2002 or, where the issuer has no subsidiary, the accounts for the financial year**, in accordance with the national law of the **home** Member State.

3. Where the issuer is required to prepare consolidated accounts according to Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts, the audited financial statements shall comprise **such** consolidated accounts **drawn up in accordance with Regulation (EC) No 1606/2002 and the annual accounts of the parent company drawn up** in accordance with the national law of the Member State **in which the parent company is incorporated**.

Where the issuer is not required to prepare consolidated accounts, the audited financial statements shall comprise the accounts prepared in accordance with the national law of the Member State in which the company is incorporated.

Justification

Text of Council Common Approach. It would be prudent, particularly in the light of the Parmalat scandal, to ensure that the individual accounts of the parent company are also made public. The Council text incorporates the second subparagraph of Am 61 (Radwan/Villiers) in order to take account of the exemption from establishing consolidated accounts under the seventh company law directive. In addition, it is made clear with regard to bond issuers that the law of its Member State of incorporation and not the one of its home Member State remains applicable in order to avoid conflict of national laws.

Amendment 53
Article 4, paragraph 4, subparagraph 1

4. The financial statements shall be audited in accordance with Article **37** of Council Directive **83/349/EEC** or, *where the issuer has no subsidiary, in accordance with Articles 51 and 51a of Council Directive 78/660/EEC.*

4. The financial statements shall be audited in accordance with Articles **51 and 51a** of Council Directive 78/660/EEC and, *if the issuer is required to prepare consolidated accounts, in accordance with Article 37 of Council Directive 83/349/EEC.*

Justification

Text of Council Common Approach, which incorporates Am 62 (Radwan/Villiers). The proposed text would ensure consistency with regard to the seventh company law directive according to which companies having subsidiaries are not always required to prepare consolidated accounts.

Amendment 54
Article 4, paragraph 4, subparagraph 2

The audit report, signed by the person or persons responsible for auditing the financial statements, *together with any qualifications thereto or references to any matters by way of emphasis to which the auditors draw attention without qualifying their report,* shall be disclosed in full to the public together with the annual financial report.

The audit report, signed by the person or persons responsible for auditing the financial statements shall be disclosed in full to the public together with the annual financial report.

Justification

Text of Council Common Approach.

Amendment 55
Article 4, paragraph 5

5. The management report shall be drawn up in accordance with Article **36 of Directive 83/349/EEC** or, *where the issuer has no subsidiary, in accordance with Article 46 of Directive 78/660/EEC.*

5. The management report shall be drawn up in accordance with Article **46 of Council Directive 78/660/EEC¹ of 25 July 1978 on the annual accounts of certain types of companies, and, if the issuer is required to prepare consolidated accounts,** in accordance with Article **36 of Council Directive 83/349/EEC.**

¹ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p.16).

Justification

Text of Council Common Approach. See amendment to Article 4, paragraph 4, subparagraph 1.

Amendment 56

Article 4, paragraph 6, subparagraph 2

The Commission shall, in particular, specify ***the period of time throughout*** which a published annual financial report, including the audit report, is to remain available to the public, ***as well as any other conditions to be complied with by the issuer in that connection.***

The Commission shall in particular specify ***the technical conditions under*** which a published annual financial report, including the audit report, is to remain available to the public. ***Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1.***

Justification

Text of Council Common Approach. The proposed text limits the implementing measures; the period for keeping the annual financial report available is an important issue which cannot be left to implementing measures.

Amendment 57

Article 5, paragraph 1

1. The issuer shall disclose to the ***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 two months thereafter. The issuer shall ensure that the half-yearly report remains available to the public.

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 two months thereafter. The issuer shall ensure that the half-yearly ***financial*** report remains available to the public for ***at least five years.***

Justification

Text of Council Common Approach. Half-yearly financial reports should not be required for issuers of exclusively other types of securities (e.g. covered warrants). In addition, the new text preserves Member States' competence as regards its liability regime under Article 7. Finally, it clarifies that such a report should be kept available for five years; such an issue should not be left to implementing measures.

Amendment 58
Article 5, paragraph 2, point (b)

- | | |
|---|---|
| (b) an <i>update of the last</i> management report
<i>as provided for in Article 4 (5)</i> ; | (b) <i>an interim</i> management report; |
|---|---|

Justification

Text of Council Common Approach. An interim management report would be less burdensome than an update of the management report yet would still provide appropriate information for investors. This term would in particular avoid that the current annual reports under the fourth company law directive would have to be established every six months

Amendment 59
Article 5, paragraph 2, point (c)

- | | |
|--|---|
| (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect <i>that the information contained in the half-yearly financial report is, to the best of their knowledge, in accordance with the facts and that the report makes no omission likely to affect its import.</i> | (c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, <i>to the best of their knowledge, the condensed set of financial statements have been prepared in accordance with the applicable set of accounting standards, gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertaking included in the consolidation as a whole, as required under paragraph 3, and that the interim management report includes a fair review of the information required under paragraph 3a.</i> |
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Justification

Text of Council Common Approach. The statement should be made according to the applicable standards which also include the true and fair view principle; a condensed set of financial statements in this respect can also comply with this principle; in this respect, the EU agreed this principle under the IAS-Regulation even for standards referring to interim financial reporting.

Amendment 60
Article 5, paragraph 3

- | | |
|--|--|
| 3. The condensed set of financial statements | 3. <i>Where the issuer is required to prepare</i> |
|--|--|

shall be prepared in accordance with the international accounting standards **for** interim financial reporting, as adopted pursuant to Articles 2, 3 and 6 of Regulation (EC) No 1606/2002 or, **where the issuer has no subsidiary, in accordance with the national law of the home Member State.**

consolidated accounts, the condensed set of financial statements shall be prepared in accordance with the international accounting standard **applicable to the** interim financial reporting as adopted pursuant **to the procedure provided for under Article 6 of** Regulation (EC) No. 1606/2002.

Where the issuer is not required to prepare consolidated accounts, the condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes on these accounts. In preparing the condensed balance sheet and the condensed profit and loss account, the issuer shall follow the same principles for recognising and measuring as when preparing annual financial reports.

Justification

Text of Council Common Approach. It is necessary to ensure minimum harmonisation as regards the publication of half-yearly individual accounts in order to ensure minimum comparability across Member States.

Amendment 61
Article 5, paragraph 3a (new)

3a. The interim management report shall include at least an indication of important events that have occurred during the first six months of the financial year and its impact on the condensed set of financial statements together with a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties transactions.

Justification

Text of Council Common Approach. This provides details of the interim management report, as provided for in Article 5, paragraph 2, point (b). It also includes information on major related parties transactions, which is not required under the international accounting

standards for interim reporting; this requirement should however be limited to share issuers; there would be no added value as regards bond issuers.

Amendment 62
Article 5, paragraph 4

4. If the half-yearly financial report has been audited, the audit report, ***and any qualifications thereto or references to any matters by way of emphasis to which the auditors draw attention without qualifying their report***, shall be reproduced in full. The same shall apply in the case of an auditors' review. If the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

4. If the half-yearly financial report has been audited, the audit report shall be reproduced in full. The same shall apply in the case of an auditors' review. If the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

Justification

Text of Council Common Approach. There is no need to include references to qualifications since these feature in an audit report or an auditor's review to be published in full

Amendment 63
Article 5, paragraph 5, point (a)

(a) specify the ***period of time throughout which a published half-yearly financial report, including where applicable the audit report***, is to remain available to the public, ***as well as any other conditions to be complied with by the issuer in that connection***;

(a) specify the ***technical conditions under which a published half-yearly financial report, including the auditors' review***, is to remain available to the public;

Justification

Text of Council Common Approach. A minimum period of five years for keeping the half-yearly report available has been suggested in amendment to Article 5, paragraph 1; the determination of such a period should not be left to implementing measures, as initially proposed by the Commission.

Amendment 64
Article 5, paragraph 5, point (b)

(b) clarify the nature of the auditors' review,
referred to in paragraph 5; and

(b) clarify the nature of the auditors' review;

Justification

Text of Council Common Approach. Clarification of the text. In addition, the reference should relate to paragraph 4 and not to paragraph 5;

Amendment 65

Article 5, paragraph 5, point (c)

(c) if there is evidence of an urgent need to enhance investor protection throughout the Community, make the half-yearly financial report subject to a mandatory auditors' review.

(c) specify the minimum content of the condensed balance sheet and profit and loss accounts and explanatory notes on these accounts where they are not prepared in accordance with the international accounting standards, as adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No 1606/2002.

Justification

Text of Council Common Approach. A decision as to whether a review of half-yearly financial reports should be mandatory at EU-level can only be taken by legislators; this is not a technical detail which could be left to implementing measures. Instead, clarification of the components of half-yearly accounts would be useful to enhance comparability across Member States.

Amendment 66

Article 5, last paragraph

Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1.

Justification

Text of Council Common Approach. See amendments to Article 5, paragraph.1 and Article 5, paragraph 5, point (c).

Amendment 67

Article 5, paragraph 5 a (new)

5a. Paragraphs 1 to 5 do not apply to

issuers of debt securities that do not prepare the condensed set of financial statements in accordance with the international accounting standards for interim financial reporting, as adopted pursuant to Articles 2, 3 and 6 of Regulation (EC) No 1606/2002.

Justification

Only half-yearly financial reports where the condensed set of financial statements is prepared in accordance with IFRS/IAS are comparable in all Member States. With regard to the expenditure entailed by half-yearly reporting, small and medium-sized issuers of debt securities should be exempt from the obligation to prepare half-yearly financial reports.

Amendment 68 Article 6

1. An issuer whose shares are admitted to trading on a regulated market shall disclose to the public quarterly financial information covering the first and third quarter, respectively, of the financial year, as soon as possible after the end of the relevant three-month period, but at the latest two months thereafter. The same issuer shall ensure that the quarterly financial information remains available to the public. **deleted**

2. Quarterly financial information shall contain at least:

(a) consolidated figures, presented in table form, indicating, for the relevant three-month period, the net turnover, and the profit or loss before or after deduction of tax; and

(b) an explanatory statement relating to the issuer's activities and profits and losses during the relevant three-month period; and

(c) if the issuer so chooses an indication of the likely future development of the issuer and its subsidiaries at least for the remaining financial year, including any significant uncertainties and risks which may affect that development.

3. Where the quarterly financial information, or any quarterly financial report, has been audited, the audit report, and any qualifications thereto or references to any matters by way of emphasis to which the auditors draw attention without qualifying their report, shall be reproduced in full. The same shall apply in the case of an auditors' review. If the quarterly financial information has not been audited or reviewed by auditors, the issuer shall make a statement to that effect.

4. The Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures, in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1, 2 and 3 of this Article.

The Commission shall, in particular:

(a) specify the period of time throughout which published quarterly financial information is to remain available to the public, as well as any other conditions to be complied with by the issuer in that connection

(b) clarify, if necessary, the terms “net turnover” and “profit or loss before or after deduction of tax” in relation to specific types of issuers, such as credit institutions;

(c) specify the information to be given in the explanatory statement, as referred to in paragraph 2(b), and in the indication of the issuer's likely future development, as referred to in paragraph 2(c);

(d) clarify the nature of the auditors' review, referred to in paragraph 3.

Justification

Quarterly reporting is an inappropriate method of boosting information levels available to investors - continuous disclosure would suffer, while issuers could save up bad news until the

next quarterly reports - and would represent a false promise to investors of being an improvement in information levels. Quarterly disclosure is an extremely costly mechanism and it encourages management to focus on short-term earnings performance, at the expense of long-term strategy. The availability punctually of relevant information is what is of value to investors.

Amendment 69
Article 7, paragraph 1

1. Member States shall ensure that responsibility for the information to be drawn up and to be **made** public in accordance with Articles 4, 5 and 6 lies with the issuer or its administrative, management or supervisory bodies.

1. Member States shall ensure that responsibility for the information to be drawn up and to be **disclosed to the** public in accordance with Articles 4, 5 and 6 lies with the issuer or its administrative, management or supervisory bodies **on the basis determined under Article 7(2).**

Justification

This amendment clarifies that it is the liability laws of the home Member State that should be applied, so as to avoid an issuer being liable in a multiplicity of Member States.

Amendment 70
Article 7, paragraph 2

2. Member States shall ensure **that their laws, regulations and administrative provisions on civil liability apply to** those persons responsible for the information disclosed **to the public** in accordance with Articles 4, 5 and 6.

2. Member States shall ensure, **in conformity with their national law and where they are the home Member State (but not otherwise) that the appropriate administrative action may be taken or liability imposed on** those persons responsible for the information disclosed in accordance with Articles **4(2)**, 5 and 6 **in such manner and by reference to different classes of recipient as the home Member State shall determine where the provisions have not been complied with.**

Justification

This amendment makes it clear that it is the liability laws of the home Member State that should be applied, so as to avoid an issuer being liable in a multiplicity of Member States.

Amendment 71
Article 8, paragraph 1, point (a)

(a) a State, a regional or local authority of a

(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 European Central Bank, and national central banks whether or not they issue shares or other securities; and

State, a public international body of which at least one Member State is a member, the European Central Bank, and **Member States'** national central banks whether or not they issue shares or other securities; and

Justification

Text of Council Common Approach. The exemption should be limited to central banks of Member States in order to strengthen investor protection.

Amendment 72

Article 8, paragraph 1, point (b)

(b) an issuer exclusively of debt securities admitted to trading on a regulated market in a Member State, the denomination per unit of which is at least EUR 50 000 .

(b) an issuer exclusively of debt securities admitted to trading on a regulated market in a Member State, the denomination per unit of which is at least EUR 50 000 ***or, in the case of debt securities denominated in another currency than Euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000.***

Justification

Text of Council Common Approach. The exemption should also cover cases where debt securities have not been issued in Euro, but in another currency.

Amendment 73

Article 8, paragraph 1a (new)

1a. The home Member State may choose not to apply Article 5 to credit institutions whose shares are not admitted to trading on a regulated market and which have, in a continuous or repeated manner, only issued debt securities provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that they have not published a prospectus under Directive 2003/71/EC.

Justification

Text of Council Common Approach. This partly takes on board Am 88 (Radwan) and 89 (Ettl). It increases the threshold to EUR 100 000 000, makes this exemption workable by avoiding the use of any artificial reference periods (e.g. 12 months) in the current context and would cover small credit institutions if the home Member State of such Member State wishes to make use of such a system.

Amendment 74

Article 8, paragraph 1b (new)

1b. The home Member State may choose not to apply Article 5 to issuers already existing at the date of the entry into force of Directive 2003/71/EC which exclusively issue debt securities unconditionally and irrevocably guaranteed by the home Member State or by one of its regional or local authorities, on a regulated market.

Justification

Text of Council Common Approach. This amendment takes on board partly Am 91 (Villiers). Such an exemption should only cover cases where all the securities of the same issuer are guaranteed, not only a part thereof, in order to avoid major problems for investors. In addition, the possibility for a Member State to provide for exemptions is limited to already existing issues.

Amendment 75

Article 9, paragraph 1

1. The home Member State shall ensure that, where ***the security holder, or any natural person or legal entity entitled to exercise voting rights on behalf the security holder,*** acquires or disposes ***of voting rights or capital of the issuer, the security holder*** notifies the issuer of the proportion of voting rights ***and capital of the issuer held by the security holder*** as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.

1. The home Member State shall ensure that, where ***a shareholder*** acquires or disposes of ***shares of an issuer whose shares are admitted to trading on a regulated market and to which voting rights are attached,*** ***that shareholder*** notifies the issuer of the proportion of voting rights as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%.

The voting rights shall be calculated on the basis of all shares to which voting rights are attached. Moreover this information must be given also in respect of all shares

which are in the same class and to which voting rights are attached.

Justification

Text of Council Common Approach. The amendment makes clear that general notification requirements do not include derivatives securities (for which a separate rule should be established in a new article 11a) or issuers whose shares are, in their entirety, not admitted to trading on a regulated market . In addition, an appropriate basis for the calculation of all voting rights should be provided.

Amendment 76
Article 9, paragraph 2

2. The proportion of capital need be notified only to the extent that the home Member State allows multiple voting rights to attach to shares and the issuer provides accordingly in its statutes or instruments of incorporation.

2 The home Member States shall ensure that the shareholders notify the issuer of the proportion of voting rights, where that proportion reaches, exceeds or falls below the thresholds provided for in paragraph 1, as a result of events changing the breakdown of voting rights which trigger the obligation provided for in Article 2 of First Council Directive 68/151/EEC of 9 May 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community , and based on the information disclosed pursuant to Article 11c. Where the issuer is incorporated in a third country, the notification shall be done for equivalent events.

Justification

Text of Council Common Approach. This also covers passive crossing of thresholds where no acquisition or disposal of shares by investors has taken place, but where the cancellation or the issue of new shares by the issuer would change the overall breakdown of voting rights . Since such events require publication of a change to the statutes, a reference to the First Company Law Directive has been added.

Amendment 77
Article 9, paragraph 3, point (a)

(a) the 5% threshold where a security holder holds only derivative securities as referred to in Article 2(e)(iv) or where voting rights may be exercised in accordance with Article 10(d) or (f); **deleted**

Justification

Text of Council Common Approach. This provision should be deleted in accordance with the deletion of derivative securities from the definition of security holder and in accordance with the new notification requirement in the amendment on Article 11 a (new).

Amendment 78
Article 9, paragraph 3a (new)

3a. Article 9 shall not apply to shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle, nor to custodians holding shares in their custodian capacity provided such custodians can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means.

Or. en

Justification

Text of Council Common Approach. This amendment ensures that shares held by custodians (banks and investment firms) and clearing and settlement organisations in their own name are not covered by the provisions of Article 9.

Amendment 79
Article 9, paragraph 3 b (new)

(3b). The home Member State shall ensure that issuers whose shares are listed on a regulated market may investigate the nature of a security holder by a simple notification procedure. Member States shall also require any natural person or

legal entity that is a recipient of such a notice to inform the company making the enquiry whether they have or had an interest such as owning, controlling or having certain contractual or other rights over shares and if so what the nature of the interest is or was. The recipient may also be required to inform the company of anyone else whom they know to have, or have had, such an interest in the shares in question.

Or. en

Justification

If the thresholds for notification of ownership are to be implemented effectively, companies must be able to investigate the cause of sudden movements in their share prices by requesting information on the security holders. This amendment provides listed companies with such a procedure, and also ensures that security holders are under an obligation to provide information about any interest in the securities. Such provisions are necessary to ensure the proper cross-border functioning of transparency of ownership.

Amendment 80

Article 9, paragraph 3c (new)

(3c). Article 9 shall also not apply to the acquisition or disposal of a major holding reaching or crossing the 5% threshold by a market maker acting in its capacity of a market maker, provided that:

a) it is authorised by its home Member State under Directive 2004/./EC of the European Parliament and of the Council [on markets in financial instruments];

b) it does neither intervene in the management of the issuer concerned nor exert any influence on the issuer to buy such shares or back the share price.

Justification

Text of Council Common Approach. The proposed text takes account of the particular situation of market makers in the Member States. The exemption should be possible, provided that market makers pursue their ordinary activities, i.e. they neither intervene in the management of the share issuer nor put undue pressure on them, keeping a high proportion of

shares of a particular issuer.

Amendment 81
Article 9, paragraph 3d (new)

(3d). Home Member States under Article 2(1)(i) may provide that voting rights held in the trading book, as defined in Article 2(6) of Directive 93/6/EEC, of a credit institution or investment firm shall not be counted for the purposes of this Article provided that:

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

b) the credit institution or investment firm ensures that the voting rights from shares held in the trading book are not exercised and not otherwise used to intervene in the management of the issuer.

Justification

Text of Council Common Approach. Credit institutions and investment firms carry out short term investments through trading books which do not serve the purpose of controlling share issuers. In contrast to market makers, such activity only relates to the trading book of a market participant who might also invest for other purposes. It should therefore be up to a Member State to exempt them with regard to issuers for which it is the home Member State.

Amendment 82
Article 9, paragraph 3e (new)

(3e). The Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2, 3a and 3b of this Article.

The Commission shall in particular specify the maximum length of the "short settlement cycle" referred to in paragraph 4, as well as appropriate control mechanisms by the competent authority of the home Member State. In addition, the

Commission may list up the events referred to in paragraph 2b.

Justification

Text of Council Common Approach. Technical details for the exemptions as regards market makers and clearing and settlement service providers should be laid down by implementing measures in order to ensure uniform application across the Member States. Further clarification might also be necessary regarding the notification requirements in the case of passive investments (see amendment to Article 9, paragraph 2).

Amendment 83
Article 10, title and paragraph 1

Determination of the voting rights

For the purposes of determining whether a notification is to be made pursuant to Article 9(1), a natural person or legal entity shall be regarded as being entitled to exercise voting rights on behalf of a security holder in the case of the following:

Acquisition or disposal of major proportions of voting rights

The notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

Or. en

Justification

Technical clarification to ensure that the person covered under the cases described in this provision has actually the legal requirement to notify changes in voting rights and not the shareholder who did not take any action.

Amendment 84
Article 10, point (f)

(f) voting rights attaching to shares deposited with that person or entity which the latter can exercise at its discretion in the absence of specific instructions from the ***security holders***;

(f) voting rights attaching to shares deposited with that person or entity which the latter can exercise at its discretion in the absence of specific instructions from the ***shareholders***;

Justification

Text of Council Common Approach in accordance with other amendments.

Amendment 85

Article 10, point (fa) (new)

(fa) voting rights held by a third party in its own name on behalf of that person or entity;

Or. en

Justification

Text of Council Common Approach, in order to cover trustees.

Amendment 86

Article 10, point (g)

(g) voting rights which that person or entity or one of the parties mentioned in points (a) to (e) is required to sell, on the sole initiative of a third person, or is entitled to acquire, on his own initiative, under a formal agreement;

(g) voting rights which that person or entity may exercise as a proxy where it can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.

Justification

Text of Council Common Approach. The provision proposed by the Commission covered derivatives requiring aggregation of shareholdings with holdings of derivative securities. Instead, a tailor-made solution is now proposed under Article 11a (see compromise amendment no 63). The Commission proposal for covering proxies under the proposed Article 10 h has been retained, but limited to cases where proxies can act at their own discretion. Proxies receiving instructions would no longer be included.

Amendment 87

Article 10, point (h)

(h) voting rights which that person or entity may exercise as a proxy according to common instruction from securities holders. ***deleted***

Justification

As currently drafted, the directive would require chairmen, in the run-up to and following general meetings, to disclose the number of proxy votes they receive each time one of the disclosure thresholds specified in Article 9(1) is breached. This would result in a significant administrative burden and cost, as the number of proxy votes may differ between the different resolutions that are put to a general meeting. The benefit of disclosing this information is doubtful, as proxy votes do not amount to a free vote to be used at the discretion of the Chairman, but rather attach to specific resolutions that are put to a specific general meeting. Disclosure of proxy votes prior to the actual meeting may also deter especially smaller shareholders from exercising their vote in person at the general meeting.

Amendment 88 Article 10a (new)

Article 10a

Articles 9 and 10(c) shall not apply to shares provided to or by the members of the European System of Central Banks (ESCB) in carrying out their functions as monetary authorities, including shares provided to or by members of the ESCB under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system.

The exemption would apply to the above transactions lasting for a short period and provided that voting rights attached to such shares are not exercised.

Justification

Text of Council Common Approach. The notification requirements should not apply to the European System of Central Banks since this would raise fundamental problems for carrying out its duties under the Treaty.

Amendment 89 Article 11, paragraph 1

1. The notification required under Article 9 shall include the following information:

(a) the resulting situation, in terms of voting

1. The notification required under Articles 9 ***and 10*** shall include the following information:

(a) the resulting situation, in terms of voting rights and ***where applicable, in terms of***

rights and capital;

(b) the date on which the acquisition or disposal was effected;

(c) the identity of the **security holder**, and the natural person or legal entity entitled to exercise voting rights on behalf of the **security holder**; and

(d) in the cases referred to in Article 10(a), (b) and (g), the remuneration or any other form of consideration given in return for the voting rights.

capital;

(aa) the chain of controlled undertakings through which voting rights are effectively held, if applicable;

(b) the date on which the **threshold was crossed or reached**; and

(c) the identity of the **shareholder even if the latter is not entitled to exercise voting rights under the conditions laid down in Article 10**, and the natural person or legal entity entitled to exercise voting rights on behalf of the **shareholder**.

Justification

Text of Council Common Approach. Deletion of point (d) coincides with Amendment 114 (Huhne). It also adapts the text to take account of the case of passive investments (see amendment on Article 9, paragraph 2) and changes proposed to Article 10.

Amendment 90 Article 11, paragraph 2

2. The notification to the issuer shall be effected ***within five business days, the first of which shall be the day on which the security holder*** learns of the acquisition or disposal or on which, having regard to the circumstances, the security holder should have learned of it.

2. The notification to the issuer shall be effected ***as soon as possible, but not later than four trading days, the first of which shall be the day after the date on which the shareholder, or the natural person or legal entity referred to in Article 10,***

a) learns of the acquisition or disposal or of the possibility to exercise voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility to exercise voting rights takes effect; or

b) is informed about the event mentioned in Article 9(2).

Justification

Text of Council Common Approach. This amendment is a compromise between the Commission text and Ams 115 (Goebbels/Trentin) and 116 (Färm) and 117 (Schmidt). It no longer refers to business days, but to trading days of regulated markets so that the notification periods would de facto be shorter; regulated markets indeed open sometimes even on some holidays.

Amendment 91 Article 11, paragraph 3

3. Where a controlled undertaking makes the required notification in accordance with paragraph 1, the security holder, or the natural person or legal entity which may exercise voting rights on its behalf, shall be exempted from the obligation to make that notification.

3. An undertaking shall be exempted from making the required notification in accordance with paragraph 1, if the notification is made by the parent undertaking or, where the parent undertaking is itself a subsidiary undertaking, by its own parent undertaking.

Justification

Text of Council Common Approach. The proposed text should ensure that it would be up to the parent undertaking to aggregate even the shareholdings of its subsidiaries. In such a case, there should be no notification requirements for the subsidiaries.

Amendment 92 Article 11, paragraph 3a (new)

3a. The parent undertaking of a management company shall not be required to aggregate its holdings under Articles 9 and 10 with the holdings managed by the management company under the conditions laid down in Directive 85/611/EEC, provided such management company exercises the voting rights independently from the parent undertaking. This provision shall not apply where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by this management company

and the management company has no discretion to exercise the voting rights attached to such holdings on behalf of the parent undertaking or another controlled undertaking and can only exercise the voting rights attached to such holdings under direct instructions from the parent or another controlled undertaking of the parent undertaking to the management company.

Justification

A parent undertaking should not be required to aggregate its holdings with a asset or UCITS management company subsidiary where there are firewalls/Chinese Walls and the asset management subsidiary acts independently and has no knowledge of the investment or trading decisions of the parent company or rest of the group. Aggregating the holdings of an asset or UCITS manager with those of a parent company, irrespective of whether they have knowledge of each other's investment or voting decisions, will send a misleading signal to the market, confusing issuers and other investors. For example, such aggregation may lead the market to believe that a group is building a stake in a particular company when this is not the case.

Amendment 93

Article 11, paragraph 3b (new)

3b. The parent undertaking of an investment firm authorised under Directive 2004/./EC (ISD2) shall not be required to aggregate its holdings under Articles 9 and 10 with the holdings which such investment firm manages on a client-by-client basis within the meaning of Article 4(1)(9) of Directive 2004/./EC of the European Parliament and of the Council [on markets in financial instruments], provided that:

- the investment firm is authorised to provide such portfolio management under point 4 of Section A of Annex I to Directive 2004/./EC (ISD2);***
- it may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means or it ensures that individual portfolio management services are conducted in an***

independent manner from any other services under conditions equivalent to those provided for under Directive 85/611/EEC by putting into place appropriate mechanisms;

- the parent undertaking, or a controlled undertaking of the parent undertaking, has not invested in holdings managed by the investment firm in circumstances where the management company may only exercise the voting rights attached to such holdings under instructions given in writing or by electronic means given by the parent undertaking or the controlled undertaking to the management company ; and

- the investment firm exercises its voting rights independently from the parent undertaking.

Justification

See amendment to Article 11, paragraph 3a (new).

Amendment 94
Article 11, paragraph 4

4. Upon receipt of the notification under paragraph 1, but no later than three **business** days thereafter, the issuer shall make public all the information contained in the notification, **together with the new breakdown of voting rights and capital.**

4. Upon receipt of the notification under paragraph 1, but no later than three **trading** days thereafter, the issuer shall make public all the information contained in the notification.

Or. fr

Justification

Monthly notification of the new breakdown of voting rights seems more justified than notification on a case-by-case basis, which may amount to a very significant burden.

Amendment 95
Article 11, paragraph 4a (new)

4a. A home Member State may exempt issuers from the requirement in

paragraph 4 if the information contained in the notification is made public by its competent authority, under the conditions laid down in Article 17, upon receipt of the notification, but no later than three trading days thereafter.

Justification

Text of Council Common Approach. Where a competent authority of a Member State is willing to organise the publication of changes to voting rights on behalf of issuers, it should be allowed to do so, provided that this is not detrimental to the overall efficiency of the dissemination process provided for in Article 17.

Amendment 96
Article 11, paragraph 5

5. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1 to 4 of this Article, the Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures:

5. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs **1, 2, 3a, 3b and 4** of this Article, the Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures:

Justification

Text of Council Common Approach. This alters the article references in line with the proposed amendments. There is a need for further technical clarification through implementing measures; the details of the delegation should however be set out in the subsequent amendments.

Amendment 97
Article 11, paragraph 5, point (a)

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

(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 15(3);***

Justification

Text of Council Common Approach. Drafting change to tighten up the text.

Amendment 98
Article 11, paragraph 5, point (b)

(b) ***to establish the*** calendar of “***business*** days” for all Member States.

(b) ***to make available a*** calendar of “***trading*** days” for all Member States;

Justification

Text of Council Common Approach. This is a more precise term..

Amendment 99
Article 11, paragraph 5, point (ba) (new)

(ba) 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;

Justification

Text of Council Common Approach. It is necessary to identify in which cases the shareholder, or the person referred to in Article 10, or both should carry out the required notifications. At present, each Member States regulates this in its own way leading to difficult situations notably for investors active in several Member States.

Amendment 100
Article 11, paragraph 5, point (bb) (new)

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

Justification

Text of Council Common Approach. It is necessary to provide clarity the exact circumstances by which the notification requirement is actually triggered.

Amendment 101

Article 11, paragraph 5, point (bc) (new)

(bc) 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 3a and 3b.

Justification

Text of Council Common Approach. Further details should be laid down to ensure that management companies (UCITS) and investment firms benefit from a uniform exemption across all the Member States. In order to ensure this, it is vital to clarify the safeguards and conditions related to the criterion of independence through implementing measures.

102

Article 11a (new)

Article 11a

1. The notification requirements laid down in Article 9 shall also apply to a natural person or legal entity who holds, directly or indirectly, financial instruments that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached already issued of an issuer whose shares are admitted to trading on a regulated market.

2. The Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures in order to take account of technical developments on 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.***

Justification

Text of Council Common Approach. The Commission initially proposed to aggregate major holdings of shares and other derivatives securities. However this is not very practical and might even be misleading. Instead, a separate notification system is proposed. In contrast to the Commission proposal, it is limited to derivatives on already existing shares, in order to avoid detrimental effects on major derivatives markets in Europe.

Amendment 103
Article 11b (new)

Article 11b

1. Where an issuer of shares admitted to trading on a regulated market acquires or disposes of own shares, either itself or through a person acting in his own name but on the issuer's behalf, the home Member State shall ensure that the issuer shall make public the proportion of own shares as soon as possible, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights. The proportion shall be calculated on the basis of the total number of shares to which voting rights are attached.

2. The Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of the first paragraph of this Article.

Justification

Text of Council Common Approach. The proposed text is linked to amendment to Article 9, paragraph 2 concerning “passive investments”. Shareholders will not be in a position to notify any changes to their voting rights if the issuer does not publish overall changes on its own.

Amendment 104
Article 11c (new)

Article 11c

The home Member State shall at least require the disclosure to the public by the issuer of the total number of voting rights and capital (for the purpose of calculating the thresholds provided for in Article 9) at the end of each calendar month during which an increase or decrease of such total number has occurred.

Justification

Text of Council Common Approach. The Commission initially proposed that the issuer should provide information about the breakdown of all voting rights each time it has to publish a particularly major change in the voting rights. This should be made simpler. Instead, a monthly reporting requirement should be introduced.

Amendment 105
Article 12

1. The issuer shall inform the public without delay of

1. The issuer ***of shares admitted to trading on a regulated market*** shall inform the public without delay of any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by

the issuer itself and giving access to the shares of that issuer.

(a) any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer itself and giving access to the shares of that issuer;

(b) any changes in the rights of *securities holders* resulting in particular from a change in loan terms or in interest rates; *and*

(c) new loan issues and in particular of any guarantee or security in respect thereof.

2. The issuer of securities other than shares, admitted to trading on a regulated market, shall inform the public without delay of any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of these securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

3. The issuer of securities admitted to trading on a regulated market shall inform the public without delay of new loan issues and in particular of any guarantee or security in respect thereof. Where the issuer is a public international body of which at least one Member State is a member, paragraph 3 shall only apply if such new local issues would be likely to have a significant effect on the price of such issuer's outstanding securities.

3a. This directive is without prejudice to Directive 2002/96/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)¹ regarding obligations for issuers to inform the public as soon as possible concerning market sensitive information.

Justification

Text of Council Common Approach to clarify which type of issuers are actually concerned by the disclosure requirements. The additional last sentence in paragraph 3 mirrors the

¹ OJ L 96, 12.4.2003, p.16

materiality principle of Article 1 of the Market Abuse Directive (2003/6/EC), in order to take account of the fact that these new obligations could create significant additional burdens (and no added value) for holders of bonds issued by public international bodies, such as the European Bank of Reconstruction and Development or the European Investment Bank. The term “make public” is important with regard to the liability provision in Article 7. Finally, a cross-reference to the Market Abuse Directive should be inserted so that is clearly specified that issuers are obliged to reveal to the public all price sensitive information as soon as possible.

Amendment 106
Article 13, title

Information **for shareholders**

**Information requirements for issuers whose
shares are admitted to trading
on a regulated market**

Justification

Text of Council Common Approach. Clarification that only issuers of shares admitted to trading on a regulated market are concerned.

Amendment 107
Article 13, paragraph 1

1. The issuer shall ensure equal treatment for all holders of shares who are in the same position.

1. The issuer **of shares admitted to trading on a regulated market** shall ensure equal treatment for all holders of shares who are in the same position.

Or. en

Justification

Text of Council Common Approach. Clarification of the type of issuer in question

Amendment 108
Article 13, paragraph 3, point (b)

(b) identification arrangements shall be put in place **in order to ensure** that the shareholders or, **in the cases referred to in**

(b) identification arrangements shall be put in place **so that** the shareholders or, the natural persons or legal entities **entitled to**

Article 10 (a) to (g), the natural persons or legal entities, are effectively informed;

exercise or to direct the exercise of voting rights, are effectively informed;

Justification

Text of Council Common Approach. Clarification of the Commission drafting.

Amendment 109

Article 13, paragraph 3, point (c)

(c) the use of electronic means for the transmission of information shall remain subject to the individual consent of the shareholder concerned or, in the cases referred to in Article 10 (a) to (e), of the natural person or legal entity;

(c) shareholders or, in the cases referred to in Article 10 (a) to (e), the natural persons or legal entities entitled to acquire, dispose of, or exercise voting rights, shall be contacted in writing to inform them of the use of electronic means for conveying information; they shall be able to request, at any time in the future, that information be conveyed in writing.

Justification

The text of Council Common Approach has been amended so that the issuer must inform the shareholder that information will be communicated electronically, in accordance with the decision of the meeting of shareholders (see Article 13, paragraph 3, introductory paragraph) but so that the shareholder is able to request written information at any point in the future.

Amendment 110

Article 13, paragraph 4 a (new)

4a. Nothing in this Article shall require the issuer to take any action in relation to any shareholder resident outside the EU which would, or could in its reasonable opinion, result in an infraction of the laws of any jurisdiction outside the EU in which a shareholder is resident, or which would involve the issuers in substantial cost or significant delay in order to avoid such an infraction.

Justification

This amendment is necessary to make it clear that issuers should not be obliged to take actions in relation to shareholders resident in a third country, if that would break the laws of

that country, or if it would impose disproportionate costs on issuers or lead to significant delays. (For example, in the case of rights issues to shareholders who are resident in the US, the Securities and Exchange Commission requires issuers to file a registration statement, resulting in substantial additional costs to the issuer.)

Amendment 111
Article 14, title and paragraph 1

Information for debt securities holders

1. The issuer shall ensure that all holders of debt securities ranking *pari passu* are given equal treatment in respect of all the rights attaching to those debt securities.

Information **requirements** for **issuers whose**
debt securities **are admitted to trading**
on a regulated market

1. The issuer **of debt securities admitted to trading on a regulated market** shall ensure that all holders of debt securities ranking *pari passu* are given equal treatment in respect of all the rights attaching to those debt securities.

Justification

Text of Council Common Approach. Clarification of the issuer who is in question and on the title of Article 14.

Amendment 112
Article 14, paragraph 2

2. The issuer shall ensure that all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in the home Member State and that the integrity of data is preserved. Debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of **the home Member State**. In particular, the issuer shall:

2. The issuer shall ensure that all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in the home Member State and that the integrity of data is preserved. Debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of **country in which the issuer is incorporated**. In particular, the issuer shall:

Justification

Text of Council Common Approach. Use of the law of the country in which the issuer is incorporated is a more workable criterion in this context than the law of Home member state. This also covers the law of the third country.

Amendment 113
Article 14, paragraph 2, point (a)

(a) publish notices, or distribute circulars,

(a) publish notices, or distribute circulars,

concerning the place, time and agenda of meetings of debt securities holders, **the payment of** interest, the exercise of any conversion, exchange, subscription or cancellation rights, and repayment, as well as the right of those holders to participate therein;

concerning the place, time and agenda of meetings of debt securities holders, interest **rate changes**, the exercise of any conversion, exchange, subscription or cancellation rights, and **advance** repayment, as well as the right of those holders to participate therein;

Justification

The conditions relating to the payment of interest and repayment are set out in the respective loan terms, and it is therefore only changes to those conditions that are of importance. Conditions applying to debt securities that are already known in advance to the subscriber do not need to be separately notified.

Amendment 114
Article 14, paragraph 3

3. If only holders of debt securities whose denomination per unit amounts to at least EUR 50000 are to be invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

3. If only holders of debt securities whose denomination per unit amounts to at least EUR 50 000 **or, in the case of debt securities denominated in another currency than Euro, whose denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000**, are to be invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

Justification

Text of Council Common Approach. Amendment to the wording of the Commission proposal to take into account non-Euro denominated issues. Need to adapt criterion of prospectus directive to context of transparency directive.

Amendment 115
Article 14, paragraph 4, point (b)

(b) identification arrangements shall be put in place in order **to ensure that** debt securities holders **and proxies representing those holders** are effectively informed;

(b) identification arrangements shall be put in place **so that** debt securities holders are effectively informed;

Justification

Text of Council Common Approach. Taking proxies into consideration is too burdensome.

Amendment 116

Article 14, paragraph 4, point (c)

(c) the use of electronic means for the conveyance of information shall remain subject to the individual consent of the debt securities holder concerned, or of a proxy entitled to give such consent;

(c) debt securities holders shall be contacted in writing to inform them of the use of electronic means for conveying information; they shall be able to request, at any time in the future, that information be conveyed in writing.

Justification

This mirrors the amendment to amendment to Article 13, paragraph 3, point (c) but is here applied to debt securities holders.

Amendment 117

Article 14, paragraph 5 a (new)

5a. Nothing in this Article shall require the issuer to take any action in relation to any shareholder resident outside the EU which would, or could in its reasonable opinion, result in an infraction of the laws of any jurisdiction outside the EU in which a shareholder is resident, or which would involve the issuers in substantial cost or significant delay in order to avoid such an infraction.

Justification

This amendment is necessary to make it clear that issuers should not be obliged to take actions in relation to shareholders resident in a third country, if that would break the laws of that country, or if it would impose disproportionate costs on issuers or lead to significant delays. (For example, in the case of rights issues to shareholders who are resident in the US, the Securities and Exchange Commission requires issuers to file a registration statement, resulting in substantial additional costs to the issuer.)

Amendment 118

Article 15, paragraph 1

1. Whenever the issuer discloses regulated information, it shall at the same time file that information with the competent authority of its home Member State. That competent authority may decide to publish such filed information on its Internet site.

Where an issuer proposes to amend its instrument of incorporation or statutes, it shall communicate the draft amendment to the competent authority of the home Member State and to the regulated market to which its securities *is admitted* to trading. Such communication shall be effected without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.

1. Whenever the issuer, *or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market* discloses regulated information, it shall at the same time file that information with the competent authority of its home Member State. That competent authority may decide to publish such filed information on its Internet site. Where an issuer proposes to amend its instrument of incorporation or statutes, it shall communicate the draft amendment to the competent authority of the home Member State and to the regulated market to which its securities *have been admitted* to trading. Such communication shall be effected without delay, but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.

Justification

This article imposes a notification requirement on anyone other than the issuer who has requested, without the issuer's consent, the admission of its securities to trading on a regulated market.

Amendment 119 Article 15, paragraph 3

3. Information to be notified to the issuer in accordance with Article 9 shall at the same time be filed with the competent authority of the home Member State.

3. Information to be notified to the issuer in accordance with Articles 9, **10, 11 and 11a** shall at the same time be filed with the competent authority of the home Member State.

Justification

Text of Council Common Approach. For consistency purposes with other Council amendments

Amendment 120 Article 15, paragraph 4, subparagraph 2

The Commission shall, in particular, specify the procedure in accordance with which an issuer *or security holder* is to file information with the competent authority of the home Member State under paragraphs 1

The Commission shall, in particular, specify the procedure in accordance with which an issuer, *a holder of shares or other financial instruments, or person referred to in Article 10*, is to file information with the

or 3, respectively, in order to:

competent authority of the home Member State under paragraphs 1 or 3, respectively, in order to:

Justification

Text of Council Common Approach. Clarification of the Commission drafting.

Amendment 121
Article 15, paragraph 4, subparagraph 3

The Commission shall also establish a standard form to be used throughout the Community when filing information under paragraph 3. ***deleted***

Justification

Text of Council Common Approach. See amendment to Article 11, paragraph 5, point (a).

Amendment 122
Article 16, paragraph 1

1. Where securities are admitted to trading on a regulated market only in the home Member State, regulated information shall be disclosed in a language accepted by the competent authority in the home Member State. ***Where the denomination per unit of those securities amounts to at least EUR 50 000, regulated information may, depending on the choice of the issuer, be provided only in a language customary in the sphere of international finance.***

1. Where securities are admitted to trading on a regulated market only in the home Member State, regulated information shall be disclosed in a language accepted by the competent authority in the home Member State.

Justification

Text of Council Common Approach. The specific regime for issuers of debt with high denomination moves to a new article 5a.

Amendment 123
Article 16, paragraph 2, point (b)

(b) depending on the choice of the issuer,

(b) depending on the choice of the issuer,

either in a language accepted by the competent authority **in each** host Member **State** or in a language customary in the sphere of international finance.

either in a language accepted by the competent authorities **of those** host Member **States** or in a language customary in the sphere of international finance.

Justification

Text of Council Common Approach. Clarification of Commission proposal: there should be a language agreed between all of the Member States concerned.

Amendment 124 Article 16, paragraph 3

3. Where securities are admitted to trading on a regulated market **only** in one host Member **State, and** not in the home Member State, regulated information shall be disclosed in a language accepted by the competent authority in that host Member **State. Where the denomination per unit of those securities amounts to at least EUR 50 000, regulated information may, depending on the choice of the issuer, be provided only** in a language customary in the sphere of international finance.

Where securities are admitted to trading on a regulated market in more than one host Member State, but not in the home Member State, regulated information shall, depending on the choice of the issuer, be disclosed either in a language accepted by the competent authority in each host Member State or in a language customary in the sphere of international finance.

3. Where securities are admitted to trading on a regulated market in one or more host Member **States, but** not in the home Member State, regulated information shall, **depending on the choice of the issuer,** be disclosed **either** in a language accepted by the competent authorities of **those** host Member **States** or in a language customary in the sphere of international finance.

In addition, the home Member State may lay down in its law, regulations or administrative provisions that the regulated information shall, depending on the choice of the issuer, be disclosed either in a language accepted by its authority or in a language customary in the sphere of international finance.

Justification

Text of Council Common Approach. Specific regime for issuers of debt with high denomination moves to a new article 5a and additional flexibility (second paragraph).

Amendment 125 Article 16, paragraph 5

5. Member States shall allow security

5. Member States shall allow **shareholders**

holders to notify information to an issuer under this Directive only in a language customary in the sphere of international finance.

and the natural person or legal entity referred to in Articles 9, 10 and 11a to notify information to an issuer under this Directive only in a language customary in the sphere of international finance. ***If the issuer receives such a notification, Member States may not impose on the issuer to provide for a translation into a language accepted by the competent authorities.***

Justification

Text of Council Common Approach. Clarification to take account of the proposed changes in art 10 and 11a, and additional comfort to issuers.

Proposed Amendment 126
Article 16, paragraph 5a (new)

5a. By way of derogation from paragraphs 1 to 4, where securities whose denomination per unit amounts to at least EUR 50 000 or, in the case of debt securities denominated in another currency than Euro, equivalent to at least EUR 50 000 at the date of the issue, are admitted to trading on a regulated market in one or more Member States, regulated information shall be disclosed to the public either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer or of the person who, without the issuer's consent, has requested such admission.

Justification

Text of Council Common Approach. Specific regime for issuers of securities with high denomination set out in one provision for clarification purposes (instead of 16.1 and 16.3 of Commission proposal)

Proposed Compromise Amendment by Peter William Skinner
Amendment 127
Article 17, paragraph 1

1. The home Member State shall ensure that the issuer discloses regulated information in a manner ensuring *timely* access to such information. ***In particular, it shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout its territory and abroad.*** The home Member State may not impose an obligation to use only media whose operators are established on its territory. ***Nor may it prevent the issuer from using a single medium for disseminating all regulated information.***

1. The home Member State shall ensure that the issuer, ***or the person who has applied for admission to trading on a regulated market without the issuer's consent,*** discloses regulated information in a manner ensuring ***fast, simultaneous and pan-European*** access to such information ***and makes it available to the officially appointed mechanism referred to in paragraph 1a.*** ***The issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, may not charge investors any specific cost for providing the information.*** ***The home Member State shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the European Union.*** The home Member State may not impose an obligation to use only media whose operators are established on its territory.

In accordance with Article 3, so long as Member States ensure that the obligation, set out in the preceding sub-paragraph, to ensure fast, simultaneous and pan-European disclosure of regulated information, is complied with, they may, if they wish, in addition, require publication of regulated information in a newspaper.

Or. en

Justification

This amendment introduces the concept of the officially appointed mechanism which ensures a central collection point for information in each Member State, to ensure a central point of access for information for investor (as proposed in 145 Karas/Mann, 150 Herzog and the Council Common Approach. The Compromise deletes the part of the Commission text which had allowed Member States to permit issuers to use one single medium for disseminating the information (146 Berès, 147 Huhne, 149 Herzog, 150 Herzog, 151 Marinos, Council Common Approach). The amendment also ensures that the home Member State must require issuers to disseminate information specifically throughout the European Union (Am 14 Rapporteur, 144 Randzio-Plath, 148 Villiers, 151 Marinos). The amendment also requires that issuers are required to disclose information in a fast, simultaneous and pan-European

manner (147 Huhne, 148 Villiers)

Amendment 128
Article 17, paragraph 1a (new)

1a. The home Member State shall ensure that there is at least one officially appointed mechanism for the central storage of regulated information. These mechanisms should comply with minimum quality standards of security, certainty on the information source, time recording and easy access by end users and shall be aligned with the filing procedure under Article 15(1).

Justification

This amendment introduces the concept of the officially appointed mechanism which ensures a central collection point for information in each Member State, to ensure a central point of access for information for investor, as proposed in 145 (Karas/Mann), 150 (Herzog) and the Council Common Approach.

Amendment 129
Article 17, paragraph 1b (new)

1b. The Home Member State should remove any obstacles to competing providers within any dissemination medium.

Justification

This amendment ensures that Member States are obliged to remove obstacles to competition. This incorporates the substance of Am 152 (Villiers).

Proposed Compromise Amendment by Peter William Skinner
Amendment 130
Article 17, paragraph 2

2. A host Member State may not impose on issuers any requirements ***regarding the media to be used for the dissemination of regulated information. However, a host***

2. To the extent that regulated information is disseminated throughout the European Union and the competent authority of the home Member State monitors compliance

Member State may require issuers:

*with the dissemination requirements set out in paragraph 1 and the operators entrusted by the issuer for this purpose, a host Member State may not impose on issuers any **additional** requirements **save for** to alert **the public, including the regulated market of the host Member State**, without delay, to any new disclosure or any change to regulated information which has already been published, such communication to be effected by electronic means or, upon request, on paper.*

(a) to publish regulated information on their Internet sites, in which case the host Member State shall keep the public informed as regards the Internet sites of issuers; and

*(b) to alert **any interested person**, without delay **and free of charge**, to any new disclosure or any change to regulated information which has already been published, such communication to be effected by electronic means or, upon request, on paper.*

Justification

This amendment forbids Member States from applying additional requirements apart from those relating to publication on the issuer's website or regarding alerting the public to new disclosures.

Amendment 131 Article 17, paragraph 3 a (new)

3a. Where immediate delivery of regulated information is not vital to informing investors' decision about their investments this information may be disclosed via other mechanisms.

Justification

All price-sensitive and relevant periodic information should be provided to the market in a fast, simultaneous, pan-European manner because this ensures that all EU investors (retail and professional) are operating on a 'level playing field', it guards against market abuse and facilitates cross-border investment. This should be achieved through a system of competing providers so that issuers receive a cost-effective, efficient service as a result of competitive

forces. This would be consistent with Directive 2003/6/EC and its implementing measures. There are some regulatory announcements, such as the date and time of an AGM, which are less relevant to investors' real-time decisions and could be distributed via other mechanisms. If pan-European dissemination obligations are placed on home Member States there is no need for additional host State regulation.

Amendment 132
Article 17, paragraph 4

4. In order to take account of technical developments on financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3 of this Article, the Commission shall adopt implementing measures in accordance with the procedure referred to in Article 23(2).

The Commission shall, in particular, specify:

(a) minimum standards for the dissemination of regulated information via the issuers' Internet sites, including the conditions for alerting interested parties;

(b) for the various types of regulated information, conditions and time-limits in accordance with which published regulated information must be kept available to the public;

The Commission may also specify and update a list of media for the dissemination of information to the public.

4. In order to take account of technical developments on financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, ***1a***, 2 and 3 of this Article, the Commission shall adopt implementing measures in accordance with the procedure referred to in Article 23(2).

The Commission shall, in particular, specify:

(a) for the various types of regulated information, conditions and time-limits in accordance with which published regulated information must be kept available to the public;

(b) minimum standards for the officially appointed mechanism for the central storage of regulated information, as referred to in paragraph 1a.

The Commission may also specify and update a list of media for the dissemination of information to the public.

Justification

Implementing measures are necessary regarding the minimum standards of dissemination of regulated information, the types of information and the standards for the officially appointed mechanism.

Amendment 133

Article 19, paragraph 1, subparagraph 1

1. Where the registered office of an issuer is in a third country, the competent authority of the home Member State may exempt that issuer from requirements under Articles 4 to 7 and Articles 11 to 14, provided that the law of the third country in question lays down at least equivalent requirements.

1. Where the registered office of an issuer is in a third country, the competent authority of the home Member State may exempt that issuer from requirements under Articles 4 to 7 and Articles 12 to 14, provided that the law of the third country in question lays down requirements ***that are at least equivalent to those under Articles 4 to 7 and Articles 12 to 14 of this Directive.***

Amendment 134

Article 19, paragraph 1, subparagraph 1 a (new)

An issuer is deemed to fall within this paragraph and to be subject to third country requirements that are equivalent to the requirements under this directive where they are subject to any one or more of the following rule systems:

(a) International Accounting Standards

(b) US Generally Accepted Accounting Principles (US GAAP), Canadian Generally Accepted Accounting Principles (Canadian GAAP) or Australian Generally Accepted Accounting Principles (Australian GAAP); or

(c) a third country's local Generally Accepted Accounting Principles (GAAP) which are either:

(i) accepted by the Commission from time to time in accordance with the procedure referred to in Article 24 of the Directive; or

(ii) customarily used in the field of international finance and/or in connection with securities offered internationally of the type being offered; or

(iii) comparable to financial information prepared according to International Accounting Standards when taken together with a statement of differences between such standard of Generally Accepted Accounting Principles (GAAP) and International Accounting Standards.

Justification

Many problems have been caused by the term 'equivalence' in the context of EU/US relations. In order to avoid misunderstanding, it should be clearly stated in the Level 1 text of the Transparency directive that US GAAP imposes 'equivalent requirements' for the purposes of Article 19(1).

Amendment 135

Article 19, paragraph 3

3. In order to ensure the uniform application of paragraphs 1 and 2, the Commission may, in accordance with the procedure referred to in Article 23(2), adopt implementing measures stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on international standards set out by international organisations, a third country ensures the equivalence of the information requirements provided for in this Directive.

3. In order to ensure the uniform application of paragraphs 1 and 2, the Commission may, in accordance with the procedure referred to in Article 23(2), adopt implementing measures:

(i) stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on international standards set out by international organisations, a third country ensures the equivalence of the information requirements provided for in this Directive;

(ii) defining the type of information disclosed in a third country that is of importance to the public in the Community.

Or. en

Justification

Text of Council Common Approach.

Amendment 136

Article 19, paragraph 3 a (new)

3a. Undertakings whose registered office is in a third country which would have required an authorisation in accordance with Article 5(1) of Directive 85/611/EEC or with Directive 2004/./EC (ISD2) if it had its registered office or its head office within the Community shall also be exempted from aggregating holdings with the holdings of its parent undertaking

under the requirements laid down in Articles 11(3a) and 11(3b) provided that they comply with equivalent conditions of independence as management companies or investment firms.

Justification

Text is added to the Council Common Approach to permit non-EU asset managers engaged in activities similar to those of UCITS management companies or ISD firms not to aggregate their holdings with those of their parent companies if they exercise investment and voting decisions independently. This provision would improve the quality of information about the ownership of securities available to the public by eliminating a large volume of filings that are uninformative or potentially misleading. In addition, requiring aggregation may undermine the firewalls that may exist among affiliates to ensure that they operate completely independently.

Amendment 137

Article 19, paragraph 3 b (new)

3b. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraph 4, the Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures stating that, by reason of its domestic law, regulations, or administrative provisions, a third country ensures the equivalence of the independence requirements provided for under this Directive and its implementing measures.

Justification

Text of Council Common Approach.

Amendment 138

Article 19a (new)

Article 19a Clear application of rules

Issuers of securities are deemed to fulfil the relevant obligations set out under this directive for the lifetime of their issue, if at the time of the issue they comply with the following:

1. currency conversion of thresholds: where a threshold is fixed in EUR but the issue is in a different currency which, converted on the day of issue of the

security, is within the limit set by the threshold, the exemption provided by the threshold is to apply over the lifetime of the issue;

2. third countries: where an issuer is exempt on the basis that the third country lays down comparable requirements at the time of issue, the exemption applies over the lifetime of the issue.

Justification

Exchange rates when thresholds are fixed in euro only and equivalency/comparability acceptance for third countries still remain open questions. In the interest of issuers clearly knowing over the lifetime of each bond what reporting requirements they are subjected to, we propose to add a new Article 19a.

Amendment 139

Article 20, paragraph 1a (new)

However, for the purpose of paragraph 4(h) Member States may designate another competent authority, different from the central competent authority as referred to in paragraph 1.

Justification

Text of Council Common Approach. Additional flexibility (examination of accounts not necessarily by administrative authority).

Amendment 140

Article 20, paragraph 2, subparagraph 1

2. Member States may allow their central competent authority to delegate tasks . Any delegation of tasks related to the obligations provided for in this Directive and in its implementing measures shall end five years after the entry into force of Directive[.../.../EC] [prospectus]. Any delegation of tasks shall be made in a specific manner stating the tasks to be undertaken and the conditions under which

2. Member States may allow their central competent authority to delegate tasks.
Except for the tasks referred to in paragraph 4(h), any delegation of tasks related to the obligations provided for in this Directive and in its implementing measures shall ***be reviewed*** five years after the entry into force of ***this Directive and shall end eight years after the entry into force of this Directive***. Any delegation of tasks shall be made in a specific manner stating the tasks

they are to be carried out.

to be undertaken and the conditions under which they are to be carried out.

Justification

Text of Council Common Approach. Additional flexibility and as regards auditors, a delegation would be possible without a time limit.

Amendment 141

Article 20, paragraph 4, introductory phrase

4. Each competent authority shall have all the **rights** necessary for the performance of its functions. It shall at least be empowered to:

4. Each competent authority shall have all the **powers** necessary for the performance of its functions. It shall at least be empowered to:

Justification

Text of Council Common Approach. Amendment to ensure consistency with the Prospectus Directive.

Amendment 142

Article 20, paragraph 4, point (a)

(a) require issuers, security holders, and the persons that control them or are controlled by them, to provide information and documents;

(a) require **auditors**, issuers, **holders of shares or other financial instruments, or persons referred to in Articles 10 or 11a**, and the persons that control them or are controlled by them, to provide information and documents;

Justification

Text of Council Common Approach. Important amendment to enable authorities to receive information also from auditors, such as in the Parmalat case.

Amendment 143

Article 20, paragraph 4, point (b)

(b) require **managers and, if need be, auditors of the issuer** to disclose the information required under point (a) to the public by the means and within the time limits the authority considers necessary. It

(b) require the **issuer** to disclose the information required under point (a) to the public by the means and within the time limits the authority considers necessary. It may publish such information on its own

may publish such information on its own initiative in the event that the issuer, or the persons that control them or are controlled by them, fail to do so and after having heard the issuer;

initiative in the event that the issuer, or the persons that control them or are controlled by them, fail to do so and after having heard the issuer;

Justification

Text of Council Common Approach. Limited to issuers due to general duty of confidentiality of auditors.

Amendment 144 Article 20, paragraph 4, point (c)

(c) require managers of the ***security holders*** to notify the information required under this Directive, or under national law adopted in accordance with this Directive, and, if necessary, to provide further information and documents;

(c) require managers of the ***issuers and of the holders of shares or other financial instruments, or of persons referred to in Articles 10 or 11a***, to notify the information required under this Directive, or under national law adopted in accordance with this Directive, and, if necessary, to provide further information and documents;

Justification

Text of Council Common Approach. Consistency amendment to take into account other changes.

Amendment 145 Article 20, paragraph 4, point (f)

(f) ***ensure that*** the issuer discloses timely information ***in a way guaranteeing*** effective and equal access to the public in all Member States where the securities are traded;

(f) ***monitor*** that the issuer discloses timely information ***with the objective of ensuring*** effective and equal access to the public in all Member States where the securities are traded ***and take appropriate action if that is not the case***;

Justification

Text of Council Common Approach. Clarification of powers of competent authorities.

Amendment 146 Article 20, paragraph 4, point (g)

(g) make public the fact that an issuer, ***or a security holder***, is failing to comply with its obligations; ***and***

(g) make public the fact that an issuer, ***or a holder of shares or other financial instruments, or a person referred to in Articles 10 or 11a***, is failing to comply with its obligations;

Justification

Text of Council Common Approach. Consistency amendment to take into account other changes.

Amendment 147
Article 20, paragraph 4, point (h)

(h) scrutinise completeness, accuracy, and comprehensibility of information required under this Directive, to the extent that a Member State decides to make mandatory such scrutiny in full or only in respect of completeness and comprehensibility.

(h) examine that information referred to in this Directive is drawn up in accordance with the relevant reporting framework and take appropriate measures in case of discovered infringements; and

Justification

Text of Council Common Approach. Clarification of powers of competent authority as to examination of accounts (ex post) (see amendment to Article 20, paragraph 1)

Amendment 148
Article 20, paragraph 4, point (ha) (new)

(ha) carry out on-site inspections in its territory in accordance with national law, in order to verify compliance with the provisions of this Directive and its implementing measures. Where necessary under national law, the competent authority or authorities may use this power by applying to the relevant judicial authority and/or in co-operation with other authorities.

Justification

Text of Council Common Approach. Consistency with article 21, paragraph 4, point (c) of the Prospectus Directive.

Amendment 149
Article 20, paragraph 5

5. Where necessary, the competent authority may apply to the relevant judicial authority for permission to enforce the powers referred in points (d) and (e). *deleted*

Justification

Text of Council Common Approach. Presentation amendment.

Amendment 150
Article 20, paragraph 6a (new)

6a. The disclosure to competent authorities by the auditors of any fact or decision related to the requests made by the competent authority under Article 20(4)(a) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such auditors in liability of any kind.

Justification

Text of Council Common Approach. Clarification that amendment to Article 20, paragraph 4, point (a) and (b) will not impinge on auditors' general duty of confidentiality.

Amendment 151
Article 21, paragraph 2

2. Competent authorities of the Member States shall co-operate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers, whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States.

2. Competent authorities of the Member States shall co-operate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers, whether set out in this Directive or in national law ***adopted pursuant to this Directive***. Competent authorities shall render assistance to competent authorities of other Member States.

Justification

Text of Council Common Approach. Clarification of Commission proposal.

Amendment 152
Article 21, paragraph 3a (new)

3a. Member States may conclude cooperation agreements providing for exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out the tasks (or some of them) assigned by the present Directive to the competent authorities, in accordance with Article 20. Such an exchange of information is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Justification

Text of Council Common Approach. Aims at enabling cooperation agreements with third country competent authorities for the purpose of exchanging information subject to a certain number of guarantees.

Amendment 153
Article 22, paragraph 1

1. Where the competent authority of a host Member State finds that the issuer or the security holder has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the home Member State.

1. Where the competent authority of a host Member State finds that the issuer or the ***holder of shares or other financial instruments, or the person referred to in Article 10***, has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the

home Member State.

Justification

Text of Council Common Approach. Consistency amendment to take into account other changes.

Amendment 154
Article 24, paragraph 1

1. Without prejudice to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that the appropriate administrative measures may be taken or civil sanctions imposed in respect of the persons responsible, where the provisions adopted in accordance with this Directive have not been complied with. Member States shall ensure that those measures are effective, proportionate and dissuasive.

1. Without prejudice to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that ***at least*** the appropriate administrative measures may be taken or civil ***and/or administrative*** sanctions imposed in respect of the persons responsible, where the provisions adopted in accordance with this Directive have not been complied with. Member States shall ensure that those measures are effective, proportionate and dissuasive.

Justification

Text of Council Common Approach. Clarification of Commission proposal with reference to possibility of administrative sanctions .

Amendment 155
Article 25

Member States shall ensure that decisions taken under laws, regulations, and administrative provisions adopted in accordance with this Directive are subject ***to review*** by the courts.

Member States shall ensure that decisions taken under laws, regulations, and administrative provisions adopted in accordance with this Directive are subject to ***the right of appeal to*** the courts.

Justification

Text of Council Common Approach. Clarification of Commission proposal.

Amendment 156
Article 26, paragraph 3

3. The home Member State may exempt debt security issuers from disclosing half-yearly financial reports in accordance with Article 5 for three years following the entry into force of this Directive, provided that:

(a) the last application for admission of the issuer's debt securities to trading on a regulated market in any Member State was made before the entry into force of Directive [...]/EC [Prospectus], and

(b) the home Member State decided to allow issuers to benefit from the provisions of Article 27 of Directive 2001/34/EC.

After the end of the three-year period, exemptions may be granted only in accordance with Article 8.

3. Issuers which have only debt securities admitted on a regulated market which were issued prior to 1 January 2006 may elect, in lieu of complying with Articles 4, 5 and 6, to disclose to the public:

(a) all information which the issuer has made public pursuant to the laws, regulations or administrative provisions of its home country that apply to issuers in their capacity as issuers of securities or their admission to regulated markets;

(b) all information which the issuer has filed with any securities exchange on which its securities are admitted to trading; and

(c) all information which the issuer has distributed to holders of its securities.

Justification

This amendment is identical to Am 181 (Huhne) except that the phrase "debt securities" should be replaced by "securities other than shares", since there is no definition in the directive of "non-equity securities". This compromise amendment also relates to Article 26, paragraph 3, since if, as in Am 181, it were to be a new paragraph in addition to the Commission's paragraph 3 there would be duplication/inconsistency.

Amendment 157 Article 27, paragraph 1

1. Member States shall take the measures necessary to comply with this Directive by **31 December 2004** at the latest. 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. Member States shall determine how such reference is to be made.

1. Member States shall take the measures necessary to comply with this Directive by **[*e]** at the latest. 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. Member States shall determine how such reference is to be made.

*** 24 months after its entry into force**

Justification

Text of Council Common Approach. Longer transposition period.

Amendment 158
Article 27, paragraph 2

2. Where Member States adopt measures pursuant to Articles 3(1) or 26, they shall immediately communicate those measures to the Commission and to the other Member States.

2. Where Member States adopt measures pursuant to Articles 3(1), **8(2), 8(3), 9(5a)** or 26, they shall immediately communicate those measures to the Commission and to the other Member States.

Justification

Text of Council Common Approach. Results from other changes in the text.

Amendment 159
Article 29

The Commission shall by 30 June **2007** at the latest report on the operation of this Directive to the European Parliament and to the Council.

The Commission shall by 30 June **2009** at the latest report on the operation of this Directive to the European Parliament and to the Council.

Justification

Text of Council Common Approach. Results from additional transposition period.

EXPLANATORY STATEMENT

Introduction

Your Rapporteur wholeheartedly approves of the European Commission's objective of proposing an overhaul of the rules regarding the information which is made available to investors about publicly traded companies on Europe's regulated securities markets. EU transparency requirements for issuers are in need of updating in order to improve investor protection, reassure investors, reduce the cost of capital, and thereby encourage investment in Europe's financial markets.

Your Rapporteur would like to express broad approval of the European Commission's proposal as a method of improving disclosure requirements throughout Europe. However, although the Rapporteur fully agrees with the aims of the proposal, the Commission has not always employed the most appropriate method of attaining those objectives, and your Rapporteur has the following points to make:-

1. Quarterly reporting

Your Rapporteur is unconvinced by the case for introducing mandatory quarterly reporting (Article 6). Well-functioning financial markets require the dissemination of reliable company information in a timely fashion, but quarterly reporting is simply not the appropriate mechanism for ensuring this. The Rapporteur proposes a qualitative approach, rather than one which relies merely on frequency of information provision.

It is not, in fact, the frequency of information punctually which is valued by investors, large or small, but the provision of relevant, quality information, as soon as it becomes available - investors deserve to be provided with quality information at the right time. Mandatory quarterly reports would encourage companies to store up valuable, market-sensitive information until the next quarterly report, rather than releasing it immediately. This would not represent an improvement for investors and indeed could represent a worsening of the situation, since companies could save up bad news until the next quarterly report, instead of making an immediate announcement and investors would have to wait for information, whether good or bad. Issuers would be tempted to rely less on continuous disclosure, therefore inhibiting the current well-functioning system of continuous disclosure via market announcements and trading updates, and the markets would be bereft of a steady stream of information.

In addition to failing to deliver upon its promises of improving information provision, quarterly reporting is also a costly mechanism¹ and one which will be relatively considerably more costly for smaller companies. SMEs simply do not have the resources to cope with quarterly reporting provisions. Company management is also likely to take responsibility for allowing information into the market without auditing it, so the quarterly reporting could

¹ Barclays has estimated that the additional annual cost of producing quarterly reports would be, at a conservative estimate, EUR 1.3 million, which would include: cost of Staging Announcement and printing packs; additional staff costs; additional audit and legal fees. This figure does not include indirect costs.

become de facto audited. The extra costs incurred by quarterly reporting would inevitably be passed on to the end client, increasing the cost of raising capital, which would be counter to the Risk Capital Action Plan.

Quarterly reporting would also create a focus on short-term earnings performance rather than on a company's longer-term strategy. It would encourage companies to manage their earnings in line with their forecast of investors' expectations. In fact, the demands placed on management to release better and better figures each quarter contributed to a large degree to the many corporate scandals of recent years.

Your Rapporteur does not propose abolishing all rules on quarterly reporting. Rather, Member States should be able to choose whether to apply quarterly reporting provisions on issuers based in that Member State. Article 3 as it stands in the Commission's proposal would already permit Member States to do this. Quarterly reporting may be an appropriate reporting mechanism for some markets - but certainly not for all.

2. Wide and rapid dissemination of information

It is essential for investors to be able to access information about issuers in an efficient and fair way, that does not discriminate against any particular type of communication method, but which is appropriate for modern communication channels.

The Commission's proposal forbids (Article 17) host Member States from imposing any requirements on non-domestic issuers concerning the media to be employed regarding the dissemination of information, apart from merely requiring publication on internet sites and sending out alert messages. This would mean that issuers in the home country would be subject to one set of rules and issuers in a host country could be subject to a different set of rules, which would mean uneven distribution of information for the same market.

Furthermore, the Commission relies on a very basic common standard for information distribution of publication of information via internet sites and email alerts. This is impractical - investors are unlikely to be able or willing to search out the relevant information on the myriad of relevant available websites and are unlikely to favour being potentially deluged with scores of updating message alerts. Also, there is a danger that issuers could place less favourable news in an inaccessible part of their website.

There is also a need to improve distribution mechanisms by allowing for a "push" system of real-time information delivery, as well as a "pull" system of information availability. For example, existing news dissemination sources can be an important source of real-time information for investors which is truly cross-border and simultaneous, and services are available to professionals as well as to retail customers (via free access services). The printed media can be equally important - albeit more as a source of less time-sensitive information.

3. Implementation clash with IAS

The Commission's proposed date of 1 January 2005 is not generous enough, given that IAS will also have to be implemented by all companies on this date. Compliance with both new

sets of rules would be extremely burdensome, and the implementation date for the key Articles 4 and 5 of the transparency directive should therefore be delayed , in order to mitigate against unforced errors during the key implementation of the regulations. The implementation of IAS will be a challenge for issuers as well as investors who need to understand the difference in presentation of accounts, therefore in the interests of all participants in the financial markets, the implementation date for this transparency directive should be amended.

4. Custodian banks

Custodian banks which hold securities in their own name but on behalf of clients and which do not exercise ownership rights over the securities should not fall into the scope of the directive, and should not be subject to the provisions (Articles 9 and 10) regarding notification to the issuer of acquisition/disposal of major shareholdings. Furthermore, the markets could be misled by information concerning holdings by custodian banks and shareholdings could be double counted. The Commission's draft is unclear on this issue, and the exemption for custodian banks should therefore be spelt out in recital 11.

5. Enabling clause regarding transparency of extractive industries

Transparency is a principle, which should be applied also with regards to payments made by companies to governments, in particular by the extractive industries. It is essential to improve government accountability, for example to encourage the use of natural resources for the economic and social good, rather than them being the cause of misery and deprivation.

Member States should encourage companies to voluntarily disclose payments made to developing countries' governments where they operate. This disclosure should be made on a voluntary basis, and the Commission should support this with concrete measures.

6. Transparency of remuneration scales

Your Rapporteur considers that a fundamental aspect of transparency involves company management being fully accountable for the remuneration structure of the company. There should therefore be an addition to Article 4 to provide that the annual financial reports should include the remuneration structure of the company employees and directors so that investors have a full appreciation of the remuneration policies of companies they are investing in. For senior management of the company, the total value of remuneration should be specified, for example, including pension plans.

7. Implementing measures

The use of comitology powers in relation to matters concerning whether there is need to further enhance investor protection is not appropriate. i.e. the decision as to whether the half-yearly annual report should if necessary be subject to mandatory auditors' review should be taken following a thorough review by the European Commission not via implementing measures.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (COM(2003) 138 – C5-0151/2003 – 2003/0045(COD))

Draftsman(*): Klaus-Heiner Lehne

(*) Enhanced cooperation between committees – Rule 162a

[ZPAGE2]

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Klaus-Heiner Lehne draftsman at its meeting of 21 May 2003.

It considered the draft opinion at its meetings of 16 June, 10 September, 1 October, 17 November and 27 November 2003.

At the last meeting it adopted the following amendments by 28 votes with 2 abstentions.

The following were present for the vote Giuseppe Gargani (chairman), Bill Miller (vice-chairman), Klaus-Heiner Lehne (draftsman), Paolo Bartolozzi, Ward Beysen, Willy C.E.H. De Clercq (for Diana Wallis), Bert Doorn, Francesco Fiori, Janelly Fourtou, Marie-Françoise Garaud, Evelynne Gebhardt, Fiorella Ghilardotti, Robert Goebbels, Malcolm Harbour, Stephen Hughes, Wilfried Kuckelkorn, Carlos Lage (for Carlos Candal pursuant to Rule 153(2)), Kurt Lechner, Sir Neil MacCormick, Toine Manders, Hans-Peter Mayer (for Lord Inglewood), Arlene McCarthy, Manuel Medina Ortega, Angelika Niebler (for Rainer Wieland), Marcelino Oreja Arburúa (for José María Gil-Robles Gil-Delgado), Anne-Marie Schaffner, Peter William Skinner, Hannes Swoboda, Marianne L.P. Thyssen, Ieke van den Burg (for François Zimeray pursuant to Rule 153(2)), Joachim Wuermeling, Matti Wuori (for Uma Maija Aaltonen), Stefano Zappalà and Jürgen Zimmerling.

SHORT JUSTIFICATION

Through the Transparency Directive the Commission is seeking to further develop the European financial market by providing for greater transparency where publicly traded companies are concerned. Transparency rules are very important, especially to protect small investors. The draftsman therefore fundamentally supports the Commission proposal. There are, however, three problem areas which he believes will produce the opposite effect to what the Commission intends.

1. Quarterly financial information

The introduction of mandatory quarterly financial information will not, in overall terms, improve transparency as regards issuers whose securities are admitted to trading on a regulated market. It is undeniably the case that many Member States have laws or other arrangements laid down by their respective stock exchanges whereby companies are required under certain conditions to provide quarterly information. However, a distinction should be made according to whether that obligation stems from a decision of the relevant national legislative authority or from stock exchange regulations or is uniformly imposed on a Europe-wide basis under European legislation.

The subsidiarity principle also applies. Europe should legislate only when there is an imperative need to do so, the guiding principle being that there should be as much legislation as necessary and as little as possible. The draftsman cannot see why mandatory quarterly financial information needs to be introduced.

The Commission frequently makes the point that lessons have to be learned from big international scandals (Enron or Worldcom, for example). Furthermore, for reasons of competition, the European market has to move into line with current and future US legislation. The fact is that the companies implicated in the scandals regularly published quarterly financial information. That notwithstanding, the scandals happened. Some of the information was simply untrue. It is also the case that the new American regulations are extremely controversial, not just in academic circles.

Be that as it may, developments on the stock markets in past years have doubtless served to demonstrate what damaging consequences can ensue from short-termism. The aim of developing the capital markets is surely to promote long-term investment. From that point of view quarterly information, which eventually finds its way into quarterly reports, often has the opposite psychological effect.

It is, moreover, very unclear what additional light quarterly information is supposed to shed over and above the already mandatory half-yearly reports. Many companies deal in seasonally oriented products. Quarterly results inevitably show extreme fluctuations and in practice mean fairly little.

Finally, quarterly financial information is expensive to compile and publish and makes huge demands on the time of company departments involved primarily in business decisions. The introduction of mandatory quarterly information would be appropriate only if it were an absolutely necessary step to take. That does not appear to be the case.

2. Publication of regulated information

The Commission is proposing that companies be allowed to publish solely by electronic means. This is at odds with real life for small investors in many Member States.

The directive is intended to protect small investors in particular. The percentage of the population who have an Internet connection varies very widely in the Union. In Scandinavia, for example, it is very high, whereas in Germany or Portugal it is rather on the low side. Furthermore, the fact that a household is connected to the Internet in no way guarantees that users will invariably be able to operate the connection. Leaving that point aside, the reliability of electronic systems (server crashes, computer viruses, etc.) is another matter to consider. Possible technical problems could lead to complex legal disputes. At all events, a technical test phase and the assessment that it would necessitate have not been carried out so far. Access to corporate information via electronic media alone is consequently not sufficient. From the practical point of view it should also be borne in mind that small investors may initially acquaint themselves in broad terms with current economic developments, for instance by reading newspapers, and later, if they feel the need, conduct detailed research on the Internet. To obtain the full picture they regularly rely on printed publications, which, since they are a dependable means, can reach the largest requisite audience and enjoy the investor confidence established over many years. That is why Member States, if they so wish, should be permitted – as they are under the directive on the electronic company register – to lay down additional publication requirements. To restrict the Member States to a single electronic information source, which would inevitably downgrade and discriminate against other traditional information media, is not necessary in order to attain the Commission's goals and hence is inappropriate. The essential idea underlying company law and securities legislation would be jeopardised.

3. Comitology

The Commission's use of the comitology procedure beyond the scope of what is required likewise gives cause for criticism. Legislation falling under the heading of company law is fundamentally unsuitable to be dealt with by a comitology procedure. The draftsman has therefore proposed that the powers provided for by the Commission be removed. In specific cases, however, after discussions with the Council and Commission, exceptions might be considered in narrowly defined areas with a view to conferring comitology powers under the 'Lamfalussy-von Wogau' procedure.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

¹ Not yet published in OJ.

(9) More timely and more reliable information about the issuer's performance over the year also requires a higher frequency of interim financial information. There has been a marked trend at international level and in the majority of the Member States to move to a quarterly frequency, but the reporting standards for such quarterly information differ. A first important step should be made to make quarterly financial information mandatory for the first and third quarter of a financial year. Such quarterly financial information would not imply the establishment of interim reports following the International Accounting Standards, in particular IAS 34. Instead, quarterly financial information should provide key historical data on the issuer's performance. If the issuer so chooses, it would also include a trend information allowing investors to judge on any long term strategy which the share issuer pursues. *deleted*

Justification

As for Amendment to Article 2, paragraph 1, subparagraph (e) point (iv).

Amendment by Arlene McCarthy

Amendment 2
Recital 15

(15) To ensure timely access to information about the issuer whose securities are admitted to trading on regulated markets in more than one Member State, *the Internet sites of the issuer concerned might also be used as means of public disclosure, provided that real-time dissemination of information is ensured, together with an efficient electronic alert system for all interested parties.*

(15) To ensure timely access to information about the issuer whose securities are admitted to trading on regulated markets in more than one Member State, *fast, simultaneous and pan-European dissemination must be ensured.*

Justification

All price-sensitive and relevant periodic information should be provided to the market in a fast, simultaneous, pan-European manner because this ensures that all EU investors (retail and professional) are operating on a 'level playing field', it guards against market abuse and facilitates cross-border investment. This should be achieved through a system of competing providers so that issuers receive a cost-effective, efficient service as a result of competitive forces. This would be consistent with Directive 2003/6/EC and its implementing measures. There are some regulatory announcements, such as the date and time of an AGM, which are less relevant to investors' real-time decisions and could be distributed via other mechanisms. If pan-European dissemination obligations are placed on home Member States there is no need for additional host state regulation.

Amendment 3
Recital 16 a (new)

(16a) Not least in view of the extreme differences in the use of electronic means of communication in the Member States, a home Member State should be permitted to lay down additional requirements for information to be published in suitable media.

Justification

See Amendment to Article 5, paragraph 2, subparagraph (b).

Amendment 4
Recital 20

(20) At its meeting on 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European securities markets. In its final report, that Committee proposed the introduction of new legislative techniques based on a four-level approach, namely essential principles, technical implementing measures, co-operation amongst national securities regulators, and enforcement of Community law. The Directive should ***deleted***

confine itself to broad “framework” principles, while implementing measures to be adopted by the Commission with the assistance of the European Securities Committee should lay down the technical details.

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 5
Recital 21

(21) The Resolution adopted by the Stockholm European Council of March 2001 endorsed the final report of the Committee of Wise Men and the proposed four-level approach to make the regulatory process for Community securities legislation more efficient and transparent. ***deleted***

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 6
Recital 22

(22) According to the Stockholm European Council Resolution, implementing measures should be used more frequently, to ensure that technical provisions can be kept up to date with market and supervisory developments, and deadlines should be set for all stages of implementing rules. ***deleted***

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 7

Recital 23

(23) The Resolution of the European Parliament of 5 February 2002 on the implementation of financial services legislation also endorsed the Committee of Wise Men's report, on the basis of the solemn declaration made before the European Parliament the same day by the President of the Commission and the letter of 2 October addressed by the Internal Market Commissioner to the Chairman of the Parliament's Committee on Economic and Monetary Affairs with regard to safeguards for the European Parliament's role in this process. *deleted*

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 8

Recital 24

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

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 9

Recital 25

(25) The European Parliament should be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, that period may be shortened. If, within that period, a resolution is passed by the European Parliament, the Commission should re-examine the draft measures. *deleted*

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 10

Recital 26

(26) Technical implementing measures for the rules laid down in this Directive may be necessary to take account of new developments on securities markets. The Commission should accordingly be empowered to adopt implementing measures, provided that they do not modify the essential elements of this Directive and provided that the Commission acts in accordance with the principles set out therein, after consulting the European Securities Committee established by Commission Decision 2001/528/EC of 6 June 2001. *deleted*

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 11

Article 2, paragraph 1, subparagraph (e), point (iv)

<i>(iv) derivative securities entitling a natural person or legal entity to acquire, on its initiative, or to dispose of, on the sole initiative of a third party, shares to which voting rights with the issuer are attached;</i>	<i>deleted</i>
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Justification

Some security holders have merely a conversion or subscription right. For as long as they refrain from exercising that right, they cannot exert influence on the company. As far as transparency and protection in other respects are concerned, such security holders should not be equated with a shareholder entitled to exercise voting rights.

Amendment 12

Article 2, paragraph 1, subparagraph (i), point (i), introduction

<i>(i) in the case of an issuer of debt securities the denomination of which does not exceed EUR 5 000 or an issuer of shares:</i>	<i>(i) in the case of an issuer within the meaning of Article 2(1)(m)(ii) of Directive .../.../EC (??):</i>
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Justification

The same subject matter ought not to be treated in different ways. It is therefore difficult to understand why the Transparency Directive does not incorporate the wording of the Prospectus Directive.

Amendment 13

Article 2, paragraph 3

<i>3. In order to take account of technical</i>	<i>deleted</i>
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developments on financial markets and to ensure the uniform application of paragraph 1 of this Article, the Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures concerning the definitions set out in paragraph 1.

The Commission shall, in particular:

(a) specify, for the purposes of the exception referred to in paragraph 1(e)(ii) in relation to securities acquired for the sole purpose of clearing and settling transactions within a short period, the maximum length, in number of days, of the “short period”;

(b) establish, for the purposes of paragraph 1(i)(ii), the procedural arrangements in accordance with which an issuer may make the choice referred to therein;

(c) adjust, where appropriate for the purposes of the choice of the home Member State referred to in paragraph 1(i)(ii), the three-year period in relation to the issuer’s track record in the light of any new requirement under Community law concerning admission to trading on a regulated market;

(d) establish, for the purposes of paragraph 1(l), an indicative list of means which are not to be considered as electronic means, thereby taking into account Annex V to Directive 98/34/EC of the European Parliament and of the Council.

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment by Bert Doorn

Amendment 14
Article 4, paragraph 1

1. The issuer shall disclose its annual financial report to the public at the latest **three** months after the end of each financial year and shall ensure that it remains publicly available.

1. The issuer shall disclose its annual financial report to the public at the latest **four** months after the end of each financial year and shall ensure that it remains publicly available.

Or. en

Justification

Concerning the end-year reporting deadline, the time-frame for end-year reporting can already hardly ever be kept under three months due to the compulsory audit of financial results. Though timely reporting should be the objective, it is crucial that sufficient time is allowed to ensure quality of information. A deadline of four months is a more workable time-frame, in view of the Directive's objectives.

Amendment 15

Article 4, paragraph 2, subparagraph (c)

(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that the information contained in the annual financial report is, to the best of their knowledge, in accordance with the facts and that the report makes no omission likely to affect its import.

(c) statements made by the persons ***defined in the regulations of the Member State concerned as being*** responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that the information contained in the annual financial report is, to the best of their knowledge, in accordance with the facts and that the report makes no omission likely to affect its import.

Justification

The persons who are responsible for a report in accordance with Article 7, and who may be liable should the case arise, must likewise make the requisite statement.

Amendment by Klaus-Heiner Lehne

Amendment 16

Article 4, paragraph 4

4. The financial statements shall be audited in accordance with Article 37 of Council Directive 83/349/EEC or, where the issuer has no subsidiary, in accordance with Articles 51 and 51a of Council

4. The financial statements shall be audited in accordance with Article 37 of Council Directive 83/349/EEC or, where the issuer has no subsidiary, in accordance with Articles 51 and 51a of Council

Directive 78/660/EEC.

The audit report, signed by the person or persons responsible for auditing the financial statements, **together with** any qualifications thereto or references to any matters by way of emphasis to which the auditors draw attention without qualifying their report, **shall be disclosed** in full to the public together with the annual financial report.

Directive 78/660/EEC.

The **issuer shall disclose the** audit report, signed by the person or persons responsible for auditing the financial statements **including** any qualifications thereto or references to any matters by way of emphasis to which the auditors draw attention without qualifying their report, in full to the public together with the annual financial report.

Or. en

Justification

According to Art. 51a of Council Directive 78/660/EEC the audit report shall, among other things, include an audit opinion which shall be either unqualified, qualified, an adverse opinion or, if the statutory auditor is unable to express an audit opinion, a disclaimer of opinion, and a reference to any matter to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion. This should be clarified by changing the wording of Art. 4(4) of the draft directive.

In addition, it should be clarified that it is the issuer and not the auditor who is responsible for the disclosure of the audit report.

Amendment 17 Article 4, paragraph 6

6. The Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1 to 5 of this Article. **deleted**

The Commission shall, in particular, specify the period of time throughout which a published annual financial report, including the audit report, is to remain available to the public, as well as any other conditions to be complied with by the issuer in that connection.

Justification

Through the above wording the Commission is seeking to limit the legislative powers of Parliament and the Council.

Amendment 18 Article 5, paragraph 1

1. The issuer shall disclose to the 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 two months thereafter. The issuer shall ensure that the half-yearly report remains available to the public.

1. The issuer shall ***without delay*** disclose to the public a half-yearly financial report covering the first six months of the financial year ***once the report has been drawn up***, but at the latest two months thereafter. The issuer shall ensure that the half-yearly report remains available to the public.

Justification

The wording chosen by the Commission is legally imprecise.

Amendment 19 Article 5, paragraph 2, subparagraph (b)

(b) ***an update*** of the last management report as provided for in Article 4(5);

(b) ***notice of lasting changes to the information set out in*** the last management report as provided for in Article 4(5);

Justification

Only individual details need to be updated. A complete new version might obscure the picture in certain cases.

Amendment by Klaus-Heiner Lehne

Amendment 20 Article 5, paragraph 4

4. If the half-yearly financial report has been audited, the audit report, ***and any*** qualifications thereto or references to any

4. f the half-yearly financial report has been audited, the ***issuer shall disclose the*** audit report, ***including*** qualifications thereto or

matters by way of emphasis to which the auditors draw attention without qualifying their report, ***shall be reproduced*** in full. The same shall apply in the case of an auditors' review. If the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

references to any matters by way of emphasis to which the auditors draw attention without qualifying their report in full. The same shall apply in the case of an auditors' review. If the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

Or. en

Justification

See justification for amendment to Article 4(4) by Mr Lehne. With regard to the publication of the audit report or the review report see also proposed amendments to Article 26 by Mr Lehne.

Amendment 21 Article 5, paragraph 5

5. The Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1 to 5 of this Article. ***deleted***

The Commission shall, in particular:

- (a) specify the period of time throughout which a published half-yearly financial report, including where applicable the audit report, is to remain available to the public, as well as any other conditions to be complied with by the issuer in that connection;***
- (b) clarify the nature of the auditors' review, referred to in paragraph 5; and***
- (c) if there is evidence of an urgent need to enhance investor protection throughout the Community, make the half-yearly financial report subject to a mandatory auditors' review.***

Justification

Through the above article the Commission is seeking to limit the legislative powers of Parliament and the Council.

Amendment 22

Article 6

Article 6

deleted

Quarterly financial information

1. An issuer whose shares are admitted to trading on a regulated market shall disclose to the public quarterly financial information covering the first and third quarter, respectively, of the financial year, as soon as possible after the end of the relevant three-month period, but at the latest two months thereafter. The same issuer shall ensure that the quarterly financial information remains available to the public.

2. Quarterly financial information shall contain at least:

(a) consolidated figures, presented in table form, indicating, for the relevant three-month period, the net turnover, and the profit or loss before or after deduction of tax; and

(b) an explanatory statement relating to the issuer's activities and profits and losses during the relevant three-month period; and

(c) if the issuer so chooses, an indication of the likely future development of the issuer and its subsidiaries at least for the remaining financial year, including any significant uncertainties and risks which may affect that development.

3. Where the quarterly financial information, or any quarterly financial report, has been audited, the audit report, and any qualifications thereto or references to any matters by way of

emphasis to which the auditors draw attention without qualifying their report, shall be reproduced in full. The same shall apply in the case of an auditors' review. If the quarterly financial information has not been audited or reviewed by auditors, the issuer shall make a statement to that effect.

4. The Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures, in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1, 2 and 3 of this Article.

The Commission shall, in particular:

(a) specify the period of time throughout which published quarterly financial information is to remain available to the public, as well as any other conditions to be complied with by the issuer in that connection

(b) clarify, if necessary, the terms "net turnover" and "profit or loss before or after deduction of tax" in relation to specific types of issuers, such as credit institutions;

(c) specify the information to be given in the explanatory statement, as referred to in paragraph 2(b), and in the indication of the issuer's likely future development, as referred to in paragraph 2(c);

(d) clarify the nature of the auditors' review, referred to in paragraph 3.

Justification

In a credible information policy in relation to the public and to private investors, the substance and continuity of the information has pride of place. The information supplied should specify the long-term growth and development prospects of a company. The practice of partial quarterly reporting runs counter to that aim and is one reason for the increasing volatility and rapidly fluctuating prices on world stock markets. The constant effort to avoid throwing capital markets out of kilter and attracting adverse publicity through gloomy announcements has caused most quoted companies to adopt a short-term and hence short-

sighted business strategy. Be that as it may, there is nothing to prevent either stock exchanges or national legislative authorities from laying down rules more stringent than the provisions of the directive where quarterly reporting is concerned. In keeping with the subsidiarity principle, European legislation should not come into being unless it is absolutely necessary. It is difficult to see why it is absolutely necessary to impose quarterly reports on a uniform Europe-wide basis. The principle to observe is that there should be as much European legislation as necessary and as little as possible.

Amendment by Klaus-Heiner Lehne

Amendment 23
Article 7, paragraph 2

2. Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to those persons ***responsible for the information disclosed to the public in accordance with Articles 4, 5 and 6.***

2. Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to those persons ***referred to in paragraph 1.***

Or. en

Justification

It should be clarified that the circle of persons covered by paras. 1 and 2 of Article 7 is the same.

Amendment by Bert Doorn

Amendment 24
Article 8

Exemptions

deleted

Articles 4, 5 and 6 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 European Central Bank, and 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 in a Member State, the denomination per unit of which is at least EUR 50 000.

Justification

The exemption of issuers exclusively issuing debt securities admitted to trading on a regulated market in a Member State, denominated in a minimum of EUR 50 000, as well as public sector and national central banks from periodic information requirements, as mentioned in Art. 8, is not coherent with the Directive's objective. These bodies are often large issuers of bonds, and investors have a right to financial information and transparency. More importantly, public sector entities should take a lead in setting an example in these matters.

Amendment by Bert Doorn

Amendment 25 Article 9

1. The home Member State shall ensure that, where the security holder, or any natural person or legal entity entitled to exercise voting rights on behalf the security holder, acquires or disposes of voting rights or capital of the issuer, the security holder notifies the issuer of the proportion of voting rights and capital of the issuer held by the security holder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of **5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%**.

2. The proportion of capital need be notified only to the extent that the home Member State allows multiple voting rights to attach to shares and the issuer provides accordingly in its statutes or instruments of incorporation.

3. The home Member State need not apply:

(a) the 5% threshold where a security holder holds only derivative securities as referred to in Article 2(e)(iv) or where voting rights may be exercised in accordance with Article 10(d) or (f);

(b) the 30% threshold where the home Member State applies a threshold of one-

1. The home Member State shall ensure that, where the security holder, or any natural person or legal entity entitled to exercise voting rights on behalf the security holder, acquires or disposes of voting rights or capital of the issuer, **and if the issuer's securities are admitted to trading on a regulated market**, the security holder notifies the issuer of the proportion of voting rights and capital of the issuer held by the security holder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of **10%, 20%, 1/3, 50% and 2/3 except when these voting rights result from the holding of derivative securities.**

2. The proportion of capital need be notified only to the extent that the home Member State allows multiple voting rights to attach to shares and the issuer provides accordingly in its statutes or instruments of incorporation.

3. The home Member State need not apply:
deleted

(a) the thresholds of 20% and 1/3 where it

third;

(c) the 75% threshold where the home Member State applies a threshold of two-thirds.

applies a single threshold of 25%;

(b) the threshold of 2/3 where it applies a single threshold of 75%.

Or. en

Justification

Introducing a total of eight different disclosure levels as regards voting rights, in comparison with the current five, is excessive and in contradiction to the Directive's overall aim of enhanced transparency and standardisation of financial information. Due to the fact that notification is required when reaching, exceeding or also falling below each one of these eight thresholds and taking into account the volatility and the volume of funds managed, the additional administrative charges would be immense. Therefore the current five thresholds are sufficient and satisfactory. Under the current definition the notification requirements would also apply to unlisted companies with quoted debt securities, which is not commonplace in business practice. Notification requirements should continue to be limited to listed companies. The calculation of capital and voting rights apportionment in the case of derivatives is seen as problematic, especially in the case of warrants, as the actual shareholder capital and voting rights quota are only known when actually executed.

Amendment by Lord Inglewood

Amendment 26

Article 9, paragraph 3 a (new)

3a. Article 9 shall not apply to the acquisition or disposal of a major shareholding by a market-maker in securities, in so far as that acquisition or disposal is effected in his capacity as a market-maker in securities and in so far as the acquisition is not used by the market-maker to intervene in the management of the company concerned. The market-maker must be authorised under the law of a Member State to deal in securities for the purpose of his/her business

Or. en

Justification

Any requirement for market-makers to disclose to the issuer when they move through major

shareholding barriers would have a significant detrimental effect on the provision of liquidity, particularly in less liquid stocks. Therefore they should be exempt as they currently are under Directive 2001/34/EC.

Amendment 27
Article 10, paragraph 2 (new)

2. Member States shall ensure that their competent authorities, where they have received a written request to that effect, permit exceptions whereby voting rights attaching to shares of a company traded on a regulated market will not be taken into account for the purposes of determining the proportion of voting rights if

(a) an investment firm within the meaning of Directive 93/22/EEC is holding or intends to hold the shares in question in its trading portfolio and declares that acquisition of the shares is not intended to influence the company management;

(b) the applicant is holding or intends to hold the shares in question in order to take advantage in the short term of existing or expected differences between the purchase price and the selling price and declares that acquisition of the shares is not intended to influence the company management;

(c) the competent authority, after considering the circumstances, takes the view that publication would run counter to the public interest or seriously damage the company, provided that, in the latter case, non-publication cannot mislead the public as to the facts and circumstances central to assessment of the securities concerned.

Justification

In accordance with Article 9 of the Transparency Directive of 12 December 1988 (Directive 88/627/EEC), limited exceptions need to be made as regards taking voting rights into account. Firms frequently hold shares for short periods only, not in order to pursue

strategic goals through such holdings, but purely to exploit market price fluctuations. Financial institutions may likewise often choose to hold shares in their trading portfolios in the short term. To prevent supervisory authorities being smothered in a flood of rather meaningless declarations, exceptions should be permitted in such cases. Voting rights of this kind could be disregarded if the necessary request were made to the appropriate supervisory authority.

Amendment 28
Article 10, paragraph 3 (new)

3. Voting rights attaching to shares not taken into account by virtue of an exemption under paragraph 2 may not be exercised if a notification requirement as referred to in paragraph 1 would apply if the shares were taken into account.

Justification

In accordance with Article 9 of the Transparency Directive of 12 December 1988 (Directive 88/627/EEC), limited exceptions need to be made as regards taking voting rights into account. Firms frequently hold shares for short periods only, not in order to pursue strategic goals through such holdings, but purely to exploit market price fluctuations. Financial institutions may likewise often choose to hold shares in their trading portfolios in the short term. To prevent supervisory authorities being smothered in a flood of rather meaningless declarations, exceptions should be permitted in such cases. Voting rights of this kind could be disregarded if the necessary request were made to the appropriate supervisory authority.

Amendment by Klaus-Heiner Lehne

Amendment 29
Article 11, paragraph 1, point (d)

***(d) in the cases referred to in Article 10(a),
(b) and (g), the remuneration or any other
form of consideration given in return for
the voting rights.*** ***deleted***

Or. de

Justification

Disclosure of the direct or indirect shareholder structure is sufficient to cover the needs of

investor protection and market efficiency. To publish information on considerations is therefore superfluous.

Amendment 30
Article 11, paragraph 4

4. Upon receipt of the notification under paragraph 1, but no later than three business days thereafter, the issuer shall make public all the information contained in the notification, together with the new breakdown of voting rights and capital.

4. Upon receipt of the notification under paragraph 1, but no later than three ***or, if media other than electronic means are used, five*** business days thereafter, the issuer shall make public all the information contained in the notification, together with the new breakdown of voting rights and capital.

Justification

A breakdown of voting rights cannot be made public within three business days unless the issuer publishes the information on the Internet or, if the information is published in a print medium, the requested publication date of the notification is taken into account. In other cases at least five business days will be needed.

Practical reasons make it difficult to publish all information, as well as a changed breakdown of voting rights and capital made by security holders within a period of three days upon the receipt of this notification. With respect to business practice and current publishing obligations, especially at group level, a period of five days is suggested.

Amendment 31
Article 11, paragraph 5

5. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 1 to 4 of this Article, the Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures:

deleted

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

(b) to establish the calendar of “business days” for all Member States.

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment by Klaus-Heiner Lehne

Amendment 32
Article 12, point (a)

(a) any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer itself and giving access to the shares of that issuer; ***deleted***

Or. de

Justification

The additional information referred to in point (a), relating to the rights attaching to the various classes of shares, including those attaching to options, warrants, and convertible bonds, is not necessary in the form specified in the directive. The distinguishing feature of the options market is the fast pace of change. The investors concerned would therefore probably be overloaded with a plethora of information.

Amendment by Klaus-Heiner Lehne

Amendment 33
Article 13, paragraph 3, point (b)

(b) identification arrangements shall be put in place in order to ensure that the shareholders or, in the cases referred to in Article 10 (a) to (g), the natural persons or legal entities, are effectively informed; **(b) identification arrangements shall be put in place in order to ensure that the shareholders or, in the cases referred to in Article 10 (a) to (g), the natural persons or legal entities, are effectively informed, *in so far as the classes of shares existing in Member States so permit*;**

Or. de

Justification

In companies that issue bearer shares, for example, the above arrangement would not be

feasible in practice on account of technical difficulties and the considerable cost. If invitations were sent by post, it would likewise be impossible to employ identification arrangements to ensure that shareholders were actually informed.

Amendment by Klaus-Heiner Lehne

Amendment 34

Article 13, paragraph 3, point (c)

(c) the use of electronic means for the transmission of information shall remain subject to the individual consent of the shareholder concerned or, in the cases referred to in Article 10 (a) to (e), of the natural person or legal entity; ***deleted***

Or. de

Justification

Leaving aside the fact that the obligatory use of electronic means is in general a dubious way of proceeding, the above arrangement is impracticable. A single shareholder would be able to torpedo key communication decisions adopted general meetings of shareholders.

Amendment 35

Article 13, paragraph 4

4. The Commission shall, in accordance with the procedure provided for in Article 23(2), adopt implementing measures in order to take account of technical developments on financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3 of this Article. 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). ***deleted***

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment by Klaus-Heiner Lehne

Amendment 36

Article 14, paragraph 4, point (b)

(b) identification arrangements shall be put in place in order to ensure that debt securities holders and proxies representing those holders are effectively informed;

(b) identification arrangements shall be put in place in order to ensure that debt securities holders and proxies representing those holders are effectively informed, ***in so far as the classes of shares existing in Member States so permit ;***

Or. de

Justification

In companies that issue bearer shares, for example, the above arrangement would not be feasible in practice on account of technical difficulties and the considerable cost. If invitations were sent by post, it would likewise be impossible to employ identification arrangements to ensure that shareholders were actually informed.

Amendment 37

Article 14, paragraph 4, subparagraph (c)

(c) ***the use of*** electronic means for the conveyance of information shall ***remain subject to the individual consent of*** the debt securities holder concerned, or ***of*** a proxy entitled to ***give such consent***;

(c) electronic means for the conveyance of information shall ***be used only after*** the debt securities holder concerned or a proxy entitled to ***do so has given the necessary consent***;

Justification

See Amendment 14.

Amendment 38

Article 14, paragraph 5

5. The Commission shall, in accordance with the procedure provided for in Article 23(2), adopt implementing measures in order to take account of technical developments on financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1 to 4 of this Article. 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). *deleted*

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 39
Article 15, paragraph 4

4. In order to ensure the uniform application of paragraphs 1, 2 and 3 of this Article, the Commission shall, in accordance with the procedure referred to in Article 23(2), adopt implementing measures. *deleted*

The Commission shall, in particular, specify the procedure in accordance with which an issuer or security holder is to file information with the competent authority of the home Member State under paragraphs 1 or 3, respectively, in order to:

(a) enable filing by electronic means in the home Member State;

(b) co-ordinate the filing of the annual financial report referred to in Article 4 of this Directive with the filing of the annual information referred to in Article 10 of Directive [...]/EC [Prospectus].

The Commission shall also establish a standard form to be used throughout the Community when filing information under paragraph 3.

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 40
Article 17, paragraph 1

1. The home Member State shall ensure that the issuer discloses regulated information in a manner ensuring timely access to such information. In particular, it shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout its territory and abroad. The home Member State may not impose an obligation to use only media whose operators are established on its territory. ***Nor may it prevent the issuer from using a single medium for disseminating all regulated information.***

1. The home Member State shall ensure that the issuer discloses regulated information in a manner ensuring timely access to such information. In particular, it shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout its territory and abroad. The home Member State may not impose an obligation to use only media whose operators are established on its territory.

Justification

If the Commission already intends in the near future to focus exclusively on Internet-based information systems where the publication of regulated information is concerned, its approach will pose problems, if only because of doubts about technical feasibility and reliability, which in turn call the legal cogency of the model into question. To restrict the Member States to a single source of supply (the Internet), which would inevitably downgrade and discriminate against other proven traditional information media, is not necessary in order to attain the Commission's goals (including for example increasing transparency by making information more comparable) and hence is inappropriate. Non-institutional small investors will be placed at a disadvantage.

Internet access is at very different stages of development in the Member States. Whereas in the Scandinavian countries, say, it extends to very substantial numbers, in Germany it is confined to less than half the population. Small shareholders in particular would consequently have access problems. In addition, an Internet connection is in no way the same

thing as the ability to use it. Accurately targeted searches are, moreover, required in order to obtain information on the Internet. Many people, especially small shareholders, have to rely entirely on material published in, for instance, print media, to gain a clear overall picture. They may subsequently use the Internet for other detailed research.

Furthermore, under the directive on the electronic company register, Member States are allowed a choice and also permitted to lay down additional publication requirements.

Amendment 41
Article 17, paragraph 4

4. In order to take account of technical developments on financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3 of this Article, the Commission shall adopt implementing measures in accordance with the procedure referred to in Article 23(2). *deleted*

The Commission shall, in particular, specify:

(a) minimum standards for the dissemination of regulated information via the issuers' Internet sites, including the conditions for alerting interested parties;

(b) for the various types of regulated information, conditions and time-limits in accordance with which published regulated information must be kept available to the public.

The Commission may also specify and update a list of media for the dissemination of information to the public.

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment 42
Article 18, paragraph 2

2. The Commission shall review the results achieved under paragraph 1 by 31 December 2006 at the latest and may, in accordance with the procedure referred to in Article 23(2), adopt implementing measures to facilitate compliance with Articles 15 and 17. *deleted*

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment by Arlene McCarthy

Amendment 43
Article 19, paragraph 1, subparagraph 1

1. Where the registered office of an issuer is in a third country, the competent authority of the home Member State may exempt that issuer from requirements under **Articles 4 to 7 and Articles 11 to 14**, provided that the law of the third country in question lays down **at least equivalent** requirements.

1. Where the registered office of an issuer is in a third country, the competent authority of the home Member State may exempt that issuer from requirements under **this Directive**, provided that the law of the third country in question lays down requirements **that are comparable with those under this Directive**.

Or. en

Justification

The term 'comparable' should be used instead of 'equivalent', with regard to the requirements for issuers in third countries. This will avoid misinterpretation and will ensure coherence with other directives (e.g. the Insurance Groups Directive 98/78/EC) In addition third countries will have regulation which deals with the acquisition and disposal of major shareholdings (Article 9), for example, and therefore they should be exempt from all articles in recognition of the fact that they have different but comparable practices and regulation.

Amendment 44
Article 19, paragraph 3

3. In order to ensure the uniform *deleted*

application of paragraphs 1 and 2, the Commission may, in accordance with the procedure referred to in Article 23(2), adopt implementing measures stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on international standards set out by international organisations, a third country ensures the equivalence of the information requirements provided for in this Directive.

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment by Klaus-Heiner Lehne

Amendment 45

Article 20, paragraph 2, subparagraph 1

2. Member States may allow their central competent authority to delegate tasks. ***Any delegation of tasks related to the obligations provided for in this Directive and in its implementing measures shall end five years after the entry into force of Directive[.../.../EC] [prospectus].*** Any delegation of tasks shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out.

2. Member States may allow their central competent authority to delegate tasks. Any delegation of tasks shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out.

Or. en

Justification

The possibility of delegating tasks to a body other than the central competent authority should not be restricted in time.

Amendment by Klaus-Heiner Lehne

Amendment 46

Article 20, paragraph 4, point (b)

(b) require managers ***and, if need be,***

(b) require managers of the issuer to disclose

auditors of the issuer to disclose the information required under point (a) to the public by the means and within the time limits the authority considers necessary. It may publish such information on its own initiative in the event that the issuer, or the persons that control them or are controlled by them, fail to do so and after having heard the issuer;

the information required under point (a) to the public by the means and within the time limits the authority considers necessary. It may publish such information on its own initiative in the event that the issuer, or the persons that control them or are controlled by them, fail to do so and after having heard the issuer;

Or. en

Justification

As it is the responsibility of management and directors of the issuer to prepare and disclose the information required by this directive, management and directors, but not the auditor, should supply the explanations and additional information that the administrative authority might require to the public. The auditors are responsible solely for their own audit report including the audit opinion. Their information will therefore only be relevant to support the audit opinion and will not be prepared for any other purpose nor for any form of publication or disclosure. Therefore, the requirement to disclose information to the public at the request of the competent authority should be restricted to the management of the issuer.

Amendment 47 Article 23

Article 23

deleted

Committee

- 1. The Commission shall be assisted by the European Securities Committee, instituted by Article 1 of Decision 2001/528/EC.**
- 2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof, provided that the implementing measures adopted in accordance with that procedure do not modify the essential provisions of this Directive.**
- 3. The period provided for in Article 5(6) of Decision 1999/468/EC is three months.**
- 4. Without prejudice to the implementing measures already adopted, on the expiry**

of a four-year period following its entry into force, the application of the provisions of this Directive concerning the adoption of technical rules and decisions in accordance with the procedure referred to in paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, shall review them prior to the expiry of the four-year period.

Justification

Through the above wording the Commission is restricting the legislative powers of Parliament and the Council. Such wording is unnecessary and hence inappropriate.

Amendment by Klaus-Heiner Lehne

Amendment 48

Article 26, paragraph 3 a (new)

3a. By way of derogation from Article 5(4) and Article 6(3) of this Directive, the home Member State may provide that the requirements of Article 5(4) and Article 6(3) shall only apply for each financial year starting on or after January 2010.

Or. en

Justification

In many Member States the publication of reports on the audit or review of half-yearly financial reports raises severe problems with regard to auditor liability since the liability situation in this case differs considerably from the liability situation in case of a statutory audit of annual accounts.

As already explained in the EU communication on reinforcing the statutory audit in the EU, harmonisation of professional liability is neither possible nor necessary. However, the Directive should give Member States enough time to solve the difficult problem of auditor

liability in a proper manner before requiring the publication of the report on the audit and review of half-yearly reports. Therefore, home Member States should be allowed to exempt issuers from the requirements of Article 5(4) and Article 6(3) until 2010.