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Proposal for a

Directive of the European Parliament and of the Council

amending

Directive 2004/109/EC relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as regards the implementing powers conferred on the Commission

(presented by the Commission)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 44 and 95 thereof,

Having regard to the proposal from the Commission¹,

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

Having regard to the opinion of the European Central Bank,

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

Whereas:

- (1) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC³ provides that certain measures are to 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 Commission⁴.
- (2) Decision 1999/468/EC has been amended by Decision 2006/512/EC which introduced a regulatory procedure with scrutiny to be used for the adoption of implementing measures of general scope which seek to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, inter alia by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.
- (3) In accordance with the joint statement of the European Parliament, the Council and the

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ L 390, 31.12.2004, p.38.

⁴ OJ L184, 17.7.1999, p.23 . Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p.11).

Commission⁵ on Decision 2006/512/EC, instruments which are already in force must be adjusted in accordance with the applicable procedures. That statement indicates a list of instruments which should be adjusted as a matter of urgency, including Directive 2004/109/EC.

- (4) In particular power should be conferred on the Commission to adopt measures necessary for the implementation of Directive 2004/109/EC in order to clarify the technical aspects of some of the definitions provided under that Directive, notably the maximum length of the short settlement cycle, the calendar of trading days, the circumstances under which a person should have learnt of the acquisition or disposal of voting rights, the conditions of independence to be respected by market makers, by management companies; in order to take account of technical developments in financial markets, notably to ensure the uniform application of the requirement regarding the public availability of the annual financial report and of the half-yearly financial report; to clarify the nature of the auditor's review, to define the minimum content of the condensed set of solo financial statements; to elaborate further the procedures for the notification and disclosure of major holdings as well as the procedures for filing regulated information with the competent authority of the issuer's home Member State; to define minimum standards for the dissemination of regulated information and for the setting up of storage mechanisms. Since those measures are of general scope and are designed to supplement Directive 2004/109/EC by the addition of new non-essential elements, they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC as amended by Decision 2006/512/EC.
- (5) Directive 2004/109/EC provided for a time restriction concerning the implementing powers conferred to the Commission. In their joint statement on Decision 2006/512/EC, the European Parliament, the Council and the Commission have stated that Decision 2006/512/EC provides a horizontal and satisfactory solution to the European Parliament's wish to scrutinise the implementation of instruments adopted under the co-decision procedure and that, accordingly, implementing powers should be conferred on the Commission without time-limit. The European Parliament and Council also declared that they would make sure that the proposals aimed at repealing the provisions in the instruments that provide for a time-limit on the delegation of implementing powers to the Commission are adopted as rapidly as possible. Following the introduction of the regulatory procedure with scrutiny, the provision establishing that time restriction in Directive 2004/109/EC should be deleted
- (6) Directive 2004/109/EC should therefore be amended accordingly.
- (7) Since the amendments to be made to Directive 2004/109/EC are adjustments of a technical nature which only concern the committee procedure they do not need to be transposed by the Member States. It is therefore not necessary to lay down provisions to that effect,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

⁵ OJ C255, 21.10.2006, p. 1

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

(1) Article 2(3) is replaced by the following:

“3. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraph 1, the Commission shall, in accordance with the procedures referred to in paragraphs (2) and (2a) of Article 27, adopt implementing measures concerning the definitions set out in paragraph 1.

The Commission shall, in particular:

(a) establish, for the purposes of paragraph 1(i)(ii), the procedural arrangements in accordance with which an issuer may make the choice of the home Member State;

(b) 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;

(c) 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 Council⁶ in accordance with the procedure referred to in Article 27(2).

The measures referred to in points (a) and (b) of the second subparagraph, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

(2) Article 4(6) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(b) the following sentence is added:

“Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(3) Article 5(6) is amended as follows:

(a) in the first subparagraph the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(b) the following sentence is added:

“Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

⁶ OJ L 204, 21.7.1998

(c) In the third subparagraph the following sentence is added:

“That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(4) Article 9 (7) is replaced by the following:

"7. The Commission shall adopt implementing measures in order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2, 4 and 5 of this Article. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

The Commission shall, in accordance with the procedure referred to in Article 27(2a), specify the maximum length of the 'short settlement cycle' referred to in paragraph 4 of this Article, as well as the appropriate control mechanisms by the competent authority of the home Member State. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).

In addition, the Commission may draw up a list of the events referred to in paragraph 2, in accordance with the procedure referred to in Article 27(2).”

(5) Article 12(8) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(b) the following subparagraph is added:

“Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(6) Article 13(2) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(b) the following subparagraph is added:

“Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(7) Articles 14(2), 17(4) and 18(5) are amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(b) the following sentence is added:

“Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(8) Article 19(4) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(b) the following subparagraph is added:

“The measures referred to in the first and second subparagraphs, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(9) Article 21(4) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(b) the following subparagraph is added:

“The measures referred to in the first, second and third subparagraphs, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(10) Article 22(2) is amended as follows:

(a) the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(b) the following sentence is added:

“Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(11) Article 23 is amended as follows:

(a) paragraph 4 is amended as follows:

(i) in the first and second subparagraphs the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(ii) the following subparagraph is added:

“The measures referred to in the first and second subparagraphs, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in

accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(b) paragraph 5 is amended as follows:

(i) the terms “in accordance with the procedure referred to in Article 27(2)” are deleted;

(ii) the following sentence is added:

“Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2a).”

(12) Article 27 is amended as follows:

(a) the following paragraph 2a is inserted:

“2a. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.”

(b) paragraphs 3 and 4 are deleted.

Article 2

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President