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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2006
COM(2006) 911 final

2006/0306 (COD)

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending

Directive 2003/71/EC relating to the prospectus to be published when securities are offered to the public or admitted to trading, as regards the implementing powers conferred on the Commission

(presented by the Commission)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending

Directive 2003/71/EC relating to the prospectus to be published when securities are offered to the public or admitted to trading, as regards the implementing powers conferred on the Commission

(Text with EEA relevance)

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 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading 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.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ L 345, 31.12.2003, p. 64.

⁴ OJ L 184, 17.7.1999, p.23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p.11).

- (3) In accordance with the joint statement of the European Parliament, the Council and the 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 2003/71/EC.
- (4) In particular power should be conferred on the Commission to adopt measures necessary for the implementation of Directive 2003/71/EC, in order to take account of technical developments on financial markets and to ensure uniform application of that Directive. Since those measures are of general scope, and are designed to adapt definitions, to elaborate upon or supplement the provisions of Directive 2003/71/EC by the detailed specification of the form and contents of a prospectus, or to prescribe means by which information should be made available, they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (5) Directive 2003/71/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 2003/71/EC should be deleted
- (6) Directive 2003/71/EC should therefore be amended accordingly.
- (7) Since the amendments to be made to Directive 2003/71/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

Directive 2003/71/EC is hereby amended as follows:

- (1) Articles 2(4), 4(3), 5(5), 7(1), 8(4), 10(4), 11(3), 13(7), 14(8) and 15(7) are amended as follows:
 - (a) the terms “in accordance with the procedure referred to in Article 24(2)” are deleted;

⁵ OJ C255, 21.10.2006, p. 1

(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 24(2a).”

(2) Article 24 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